
(2007) 01 DEL CK 0083
In the Delhi High Court
Case No : W.P (C) No. 9805 of 2006

Sh. Raghubir Singh (Retd)	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Constitution of India, 1950 — Article 16(4), 226

Citation : (2007) 138 DLT 467

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : K.L. Bhandola, for the Appellant; Raman Oberoi, for the Respondent

Judgement

Vipin Sanghi, J.—Present petition under Article 226 of the Constitution of India is directed against the order dated 8th September, 2005

passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the Tribunal) in O.A. No. 681/04, whereby

the Original Application filed by the petitioner has been dismissed.

2. Petitioner joined service as Carpenter in MES on 9th October, 1964. He was promoted as a Cabinet Maker on 1st September, 1979. He was

further promoted to the Highly Skilled-II category on 18th October, 1984 and to the Highly Skilled-I category on 15th October, 1985. According

to the petitioner as per the Recruitment Rules, he was eligible for promotion as Master Craftsman in the year 1988 when he completed 10 years"

continuous regular service with 3 years" service as Highly Skilled Grade-I. Petitioner states that even though he was eligible, his case was not

considered while his juniors were promoted.

3. It appears that a Departmental Promotion Committee meeting was held in

1999, to consider promotions, inter alia, to the post of Master

Craftsmen but the petitioner's case was not even considered though he was otherwise eligible. On his representation, he was informed that a

Departmental Promotion Committee Meeting would be held to consider his case for promotion. However, he did not hear from the Respondents

and consequently, he filed O.A. No. 3260/01 which was disposed of at the admission stage on 5th December, 2001 with a direction to the

respondents to decide the representation of the petitioner. Consequently, in 2002 a review DPC meeting was held which also did not find the

petitioner fit for promotion.

4. Aggrieved by the said decision, on the ground that relevant rules and instructions had not been followed, the petitioner again preferred an

application before the Tribunal being O.A. No. 68/04, which has been dismissed by the Tribunal on 8th September, 2005 and that order is now

impugned before us.

5. Before the Tribunal, the stand of the respondents was that the petitioner's case was considered by the review DPC meeting that was held for

1999 in the year 2002, but it did not find him fit for promotion on merit.

6. The Tribunal proceeded to dismiss the application of the petitioner by stating that "simply because the DPC, observed that the applicant was not

found fit for promotion on merits by the original DPC, also we cannot hold the review DPC has not considered his case properly." The Tribunal

relied upon the decision of the Supreme Court in Union of India and Ors. v. N.R. Banerjee and Ors. 1997 (1) SLR 751, wherein the Supreme

Court had noted the legal position that mere inclusion of one's name in the select list does not confer any right on the selectee to get appointed.

The state is under no legal duty to fill up all or any of the vacancies.

7. Petitioner has challenged the order of the Tribunal as well as the action of the respondents on the ground that the observations of the Tribunal

were contradictory to the communication dated 9th August, 1999 (Annexure III to the writ petition), wherein it was admitted by the respondents

that the petitioner's case was somehow omitted from consideration by the DPC in the year 1999 and that it was requested to the Chief Engineer to

consider the petitioner's case for promotion to the post of Master Craftsman "in order to obviate discrepancies, discrimination and further

resentment".

8. We have considered the stand taken by respondents in their communications dated (i) 9th August, 1999, (ii) 28th January, 2002 addressed to

the petitioner and (iii) 8th February, 2003 addressed to the Section Officer, National Human Rights Commission for Scheduled Castes &

Scheduled Tribes. We have also considered the reply filed by the respondents before the Tribunal in this case. It is evident that the Tribunal has

misdirected itself in ignoring vital and material evidence and in reaching findings contrary to the record.

9. The position as it emerges is best reflected in the respondents letter dated 8th February, 2003 addressed to the National Commission for

Scheduled Castes and Scheduled Tribes and the relevant portion is extracted herein below:

(a) MES/445658 Shri Raghubir Singh, Carpenter HS Grade - I (Retired) was appointed as Carpenter on 10.10.1964 and promoted as Carpenter

HS Grade - I on 15.10.1985

(b) The ACR of the individual is held since 1992 and not from 1994 as stated by the individual

(c) No DPC for promotion to Master Craftsman held in 1995 hence the question of non-considering his name does not arise.

(d) The DPC of August, 1996 was held in January, 1997 and the individuals in various categories appointed up to 01.03.1962 were considered

for promotion to Master Craftsman. Whereas Shri Raghubir Singh was appointed on 10.10.1964. Hence his name was not considered. As per

our record no any junior to him has been promoted in 1997 panel.

(e) A review DPC for 1999 was held on instruction of E-in-C's Branch and his name was considered but not found fit on merit basis. DPC of

2000-2001 was not held as scheduled in light of E-in-C's Branch letter No. 85606/1 (Ind.) MC/RR/CSCC dated 10th September, 1999 under

which it was intimated that further recruitment to the post of Master Craftsman would be made based on revised recruitment rules only. The

decision received under E-in-C's Branch letter No. 75013/Ind/MC/RR/CSCC dated 18th January, 2002 and next DPC held on March, 2002.

The name of Shri Raghubir Singh was considered and not found fit on merit basis.

10. From the aforesaid, it is evident that the Tribunal has wrongly proceeded on

the basis that the petitioner's case was considered by the DPC in

1999. As per the records it was considered only once by the review DPC, that is, in April, 2002, for 1999, and he was not found fit on merit

basis. The Tribunal, we find, also made other factual errors in para 3 of its impugned order by observing:

1. ""In August/September, 2002 a DPC was held but the applicant was not promoted

2. ""He filed OA No. 3260/2001 which was disposed of at the admission stage by order dated 5.12.2002 directing the respondents to decide the

representation of the applicant. The review DPC also did not find the applicant fit for promotion"".

11. As aforesaid, there was no consideration of the case of the petitioner by the DPC in August/September, 2002. It was only once considered by

the review DPC in April, 2002 for 1999. Secondly, the order in OA 3260/2001 was of 5.12.2001 and not 5.12.2002.

12. The further grievance of the petitioner is that even though by its order dated 15th March, 2004, the Tribunal had directed the respondents to

produce the proceedings of the review DPC for its perusal, the Tribunal did not insist on the production of the said record and did not go through

the same before passing the impugned order.

13. This Court, by its order of 1st June, 2006 recorded the submission of the petitioner that the minutes of the review DPC meeting were not

produced before the Tribunal and directed that the records of the original DPC of 1999 as well as the review DPC of 2002 be produced by the

respondents before the Court. On 4th October, 2006 when this matter was heard, the respondents produced the desired record which was

perused by us in Court with the assistance of the learned Counsel for the respondent.

14. We may notice that the petitioner belongs to the reserved category i.e. scheduled caste. A perusal of the proceedings of the Departmental

Promotion Committee Meeting held in 1999 shows that there were 8 general vacancies and 1 reserved vacancy for Scheduled Castes for the post

of Master Craftsman. 25 candidates were considered by DPC in the general category and 5 candidates were considered in the reserved category

of Scheduled Castes. The petitioner's case was not even considered in 1999. The

review DPC meeting held on 16th April, 2002 (for the year

1999), on the one hand did not consider the petitioner fit for promotion on the basis of merit, while on the other hand it made the following remark:

It has been observed that in the earlier DPC held during March, 1999, the reserved (S/C) candidates have not been considered for promotion

under general pool, though they were eligible otherwise in general category as per their seniority and merit.

15. On a perusal of the select panel prepared by the DPC in 1999, it is seen that one Harish Chander was selected in the reserved category, apart

from 8 others in the general category for the post of Master Craftsman. Sh. Harish Chander secured an aggregate of 44 marks. In fact, the marks

secured by Sh. Harish Chander were higher than those secured by any of the other candidates including those falling in the general category.

Consequently, it is clear that Sh. Harish Chander was entitled to be selected on his sheer merit and not on account of belonging to the reserved

class. He ought to have been placed at the top in the select list amongst the general category candidates. He could not have been kept out of

competition for the general category vacancies by limiting his chances of consideration only against the reserved category vacancies. Though this

aspect is all too well settled, we may only refer to a few decisions of the Supreme Court in this regard. In R.K. Sabharwal and others Vs. State of

Punjab and others, , the Constitution Bench of the Supreme Court held as follows:

When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the post

shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category

are not entitled to be considered for the reserve posts. On the other hand the reserve category candidate can compete for the non-reserve posts

and in the event of their appointment to the said post there number cannot be added and taken into consideration for working out the percentage of

reservation.

16. In Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , the Supreme Court observed as follows:

There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission

should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the Constitutional mandate enshrined in Article 16(4).

17. The Supreme Court also referred to its judgment in *Indra Sawhney v. Union of India*, (1992) 6 SCR 321 , wherein in para 811, the Court held

thus:

In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen

that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be

counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

18. To the same effect is the decision of the Supreme Court in *Union of India and others etc. Vs. Virpal Singh Chauhan etc.*, .

19. Swamy's complete Manual on Establishment and Administration for Central Government Offices, Tenth Edition, at page 857 (in Chapter 54

Promotions"" sets out Para 6.3.2.(iii) which reads as follows:

(iii) As regards promotions made by ""Selection-cum-Seniority"" and ""Selection by Merit"" in Group "C" and Group `D" posts/services, Select Lists

of SCs/STs officers should be drawn up separately in addition to the general list, to fill up the reserved vacancies, SCs/STs officers who are within

the normal zone of consideration, should be considered for promotion along with and adjudged on the same basis as others and those SCs and

STs amongst them, who are selected on that basis may be included in the general Select List.

20. Coming back to the facts of this case, the review DPC assigned a total of 35 marks to the petitioner. It is also seen that one Sh. Sukhdeo was

selected and placed at Serial No. 8 in the select list of general category, who had secured 35 marks, just like the petitioner, while there were three

others in the general category who had secured 34, 31 and 30 marks and they were placed at Serial No. 3, 7 and 5 of the select list.

Consequently, even the petitioner could have staked his claim to be placed in the select panel, not only against the reserved seat, but also against

the 8 seats falling in the General category. It appears from the record that the review DPC did not find him fit for promotion, since in the select list

prepared in 1999, the name of Sh. Harish Chander was shown against the reserved seat and he obtained 44 marks as opposed to the petitioner's

35 marks. However, as we have noticed above, Sh. Harish Chander could not have been fitted against the reserved category seat since he was

meritorious enough to be promoted even without the support of reservation and he ought to have been placed in the select list in the General

category, thereby making the reserved category seat available to other candidates falling in the reserved category. We find that of the candidates

considered for the reserved category post, one Sh. Balmukund had secured 38 marks whereas another person, Sh. Puranchand had secured 42

marks in the assessment carried out by the DPC meeting held in 1999. These persons ought to have been granted promotion on their own merit.

As we have already noticed, general category candidates who secured as low as 34, 31 and 30 marks were in fact promoted by the respondent. It

appears that Sh. Balmukund and Shri Puranchand were the innocent victims of the callous and mindless attitude of the DPC of 1999, who were

probably not even aware that they ought to have been promoted to the post of Master Craftsman in 1999 in preference to those securing much

lesser marks.

21. We are appalled at the manner in which the DPC went about preparing the Select List in the year 1999 and the review DPC considered the

case of the petitioner. It is clear from a perusal of the records and as indicated hereinabove that the DPC that had met in the year 1999 was not

aware of the basic jurisprudence related to reservations as set out hereinabove by us. It is even more shocking to note that even though the review

DPC makes a note of the fact that the reserved category candidates have not been considered for promotion under general pool though they were

eligible as per their seniority and merit, yet it consciously committed the grievous error of denying the petitioner promotion by declaring him unfit for

promotion ostensibly on the basis that the lone reserved category post was filled by Sh. Harish Chander, who had secured 44 marks, as opposed

to petitioners 35 marks.

22. The manner in which both the DPCs interpreted the aspect of reservation in fact tantamounted to confining the chances of promotion of

Scheduled Caste candidates only to the reserved seats, and the procedure

adopted worked to their disadvantage rather than conferring upon them the benefit intended to be granted by providing for reservations.

23. A Departmental Promotion Committee is expected to consist of independent persons well versed in service jurisprudence so that it can

objectively assess the reports and records of the candidates being considered by them. The task entrusted to a Departmental Promotion

Committee is of seminal importance since it affects the service careers of candidates vying for promotion. A Departmental Promotion Committee is

expected to act with due application of mind by taking into account, and applying the law of the land. The Courts have been attaching a great deal

of sanctity to the proceedings of DPC and restricting judicial review of its proceedings and decisions primarily on grounds of mala fides and

arbitrariness. In *Smt. Nutan Arvind Vs. Union of India and another*, the Supreme Court, in relation to a DPC observed as follows:

6. The DPC which is a high-level committee, considered the merits of the respective candidates and the appellant, though considered, was not

promoted. It is contended by learned Counsel for the appellant that one K.S. Rao was the officer at the relevant time to review the performance of

the appellant whereas in fact one Menon had reviewed it. The latter was not competent to review the performance of the appellant and to write the

confidentials. We are afraid we cannot go into that question. It is for the DPC to consider at the time when the assessments of the respective

candidates is made. When a high-level committee had considered the respective merits of the candidates, assessed the grading and considered

their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority. The DPC would come to its own

conclusion on the basis of review by an officer and whether he is or is not competent to write the confidentials is for them to decide and call for

report from the proper officer. It had done that exercise and found the appellant not fit for promotion. Thus we do not find any manifest error of

law for interference.

24. Similarly, in *Mrs. Anil Katiyar Vs. Union of India and others*, , the Supreme Court in Para 4 held as follows:

4. Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal

has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the

DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on

the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides.

25. The Courts assume that a specialized body like a DPC consists of members who know their job and understand their responsibility. However,

instances like the present are bound to undermine the said assumption. It is absolutely imperative that the Administration should look into these

aspects and take remedial steps, so that justice to the intended and deserving persons is not denied.

26. We had initially reserved judgment in the case on October 4, 2006. During the course of preparation of the judgment, we felt the necessity to

seek certain information from the Respondent. Accordingly, the matter was posted for directions and notices were issued to the parties through

their counsels. On November 14, 2006 we posed various queries to the learned Counsel for the respondents, reflected in the order sheet and also

sought information about the composition of the DPC under the rules. The respondents have filed an affidavit dated December 5, 2006 and an

additional affidavit dated December 15, 2006 which have been taken on record. We heard further arguments of the parties on December 18,

2006 and thereafter reserved judgment.

27. The respondents have stated in the additional affidavit that the work of a Master Craftsman is supervisory in nature, while that of the carpenter

highly skilled-I involves the execution of skilled carpentry works. The respondents have also stated that the scale of pay of carpenter highly skilled-

I is 4000-100-6000, while that of a Master Craftsman Carpenter is 4500-125-7000. It is also stated that the petitioner has been granted 2nd

ACP upgradation in the pay scale 5000-150-8000 with effect from October 1, 1999 vide HQ CWE Dehradun letter dated 20.9.2001 and his

pay fixation w.e.f. 1.10.99 has been done at Rs. 5750/- till the date of his retirement. In the Additional Affidavit dated 15.12.2006, it is stated that

the 2nd ACP benefit is infact more than what he would have got upon promotion in 1999.

28. Learned Counsel for the petitioner upon instructions stated that irrespective of the financial implications, the petitioner was not interested in

getting the benefit of the 2nd upgradation under the ACP scheme and he would insist on being granted promotion if he is found entitled for the said

relief. To this, Ms. Oberoi learned Counsel for the Respondents submitted that the petitioner cannot have the benefit of promotion and upgradation

under the ACP scheme simultaneously. The respondents have also disclosed that the constitution of the DPC is as follows:

(i) Command Chief Engineer or his nominee with not less - CHAIRMAN

(ii) Lieutenant Colonel/Superintending Engineer - MEMBER

(iii) Major/Executive Engineer - MEMBER

(iv) Administrative Officer - MEMBER

29. Learned Counsel for the Respondents submitted that even if the respondent is directed to promote the petitioner to the post of Master

Craftsman, he should not be granted arrears of difference in wages etc because the petitioner has not worked in that capacity and he

superannuated as carpenter HS-I.

30. In the present case, we find that both the DPC meetings held in 1999 and the review DPC held in 2002 have prepared selection panel

contrary to law and procedure resulting in meritorious candidates falling in the reserved category, including the petitioner being deprived of the

promotion due to them.

31. We do not agree with the respondents that the petitioner should not be granted arrears of pay or pension for the post of Master Craftsman

since he has not served on the said post. The reason for the petitioner not serving in the post of Master Craftsman is entirely attributable to the

respondents. They cannot deny the just claim of the petitioner, who has already been made to suffer due to their own wrongs. The work

performed by the Carpenter HS-I is as demanding, if not more, as compared to that of a Master Craftsman. The work of a Master Craftsman is

mostly supervisory whereas that of the Carpenter HS-I is skilled manual. For promotion to the post of Master Craftsman, the Carpenter HS-I is

required to have requisite experience, which the petitioner undoubtedly possessed. He was also meritorious in comparison with those promoted.

Master Craftsman were not required to possess any additional or specialised qualification or experience which the petitioner did not possess.

Curiously, on the one hand the respondents claim to have granted 2nd ACP upgradation to the petitioner, which according to them is financially

even better than promotion to the post of Master Craftsman, while on the other hand the respondents are opposing the grant of arrears of pay and

pension to the petitioner in the promoted post. We cannot accept such contradictory stands. We Therefore reject the submission of the respondent

that he should not be granted arrears of pay/pension for the post of Master Craftsman.

32. In view of our aforesaid findings, we are of the view that the petitioner is entitled to the relief claimed by him and to be promoted to the post of

Master Craftsman along with those who were promoted on the basis of the select list prepared in 1999. We direct that the petitioner should be

placed in the merit list prepared by the DPC held in 1999 above the general category candidate Shri Sukhdeo, who also secured the same number

of marks i.e. 35. The petitioner and Shri Sukhdeo have the same date of seniority i.e. 15.10.1985 but the petitioners date of birth is 5.7.1941,

while that of Sh. Sukhdeo is 1.9.1941. The petitioner would, in these circumstances, not get the benefit of the 2nd ACP upgradation that,

according to the respondents, has been accorded to him. The respondents will, after granting notional promotion to the petitioner to the post of

Master Craftsman, as directed by us, and after computing his pay and allowances in the promoted post, be entitled to make necessary

adjustments. In view of the withdrawal of the 2nd ACP upgradation, petitioners arrears of pay and pension/arrears of pension would also be

worked out by the respondents accordingly.

33. We accordingly, set aside the impugned order dated 8th September, 2005 passed by the Tribunal in O.A. No. 681/2004 and further hold that

the petitioner is eligible and entitled to be promoted to the post of Master Craftsman from 1999 onwards when Sh. Sukhdeo was promoted to the

post of Master Craftsman on the basis of DPC meeting held in 1999. Respondents should pass appropriate orders in this regard forth with.

34. The necessary orders be passed granting promotion and all other consequential reliefs including refixation of pay and recomputation of pension

within one month from today. The petitioner be paid the arrears of salary and pension with interest @ 8% P.A. within two months, and his revised

pension be paid to him from 1st February, 2007 onwards.

35. We find from the composition of the DPC that it does not have any member who has a legal background. In the aforesaid facts and

circumstances, we consider it appropriate to direct the respondents including the Additional Director General (Personnel) to look into the aspect of

the composition of Departmental Promotion Committees, with a view to ensure that the members of such Committees are aware of the laws and

procedures which apply for making selections. The respondents should consider the feasibility of having at least one member on the DPC drawn

from the legal branch/departments being knowledgeable in service jurisprudence. The members of the DPC should also be given a briefing of the

basic tenets of service jurisprudence which they may need to apply while considering the cases of candidates for selection and promotion. The

respondents are directed to file an affidavit reporting compliance and inform this Court the steps that it has taken to implement the directions

contained herein within three months from today, and the matter be listed for directions soon thereafter. If no such affidavit is filed, the matter be

placed before the Court by the Registry after the expiry of three months hereof, on 16th April, 2007. The petitioner shall also be entitled to costs

which are quantified at Rs. 5,000/-.