
(1972) 01 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No. 1031 of 1971

Sham Lal and Others

APPELLANT

Vs

Bir Singh and Others

RESPONDENT

Date of Decision : 14-01-1972

Acts Referred:

Citation : (1973) 9 DLT 121 : (1973) 26 FLR 161 : (1973) LabIC 957

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : M.K. Ramamurthi, M.S. Ganesh, Bindra Rana, Umesh Mishra, R.P. Bansal, B.R. Sabharwal, Jitendra Sharma and S.K. Mahajan, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This is a Writ Petition instituted by Sham Lal and four others to challenge an award of the Additional Industrial Tribunal dated 21st July, 1971, whereby orders promoting the five petitioners to the post of Head Mechanic in the service of the Water Supply and Sewage Disposal Undertaking, Delhi Municipal Corporation have been declared to be invalid.

(2) The first three petitioners. Sham Lal, Rameshwar Das and Balkishan were promoted to the post of Head Mechanic by an order dated 27th April, 1968 and the other petitioners, Mohd. Tahir and Brahm Datt were promoted by a similar order dated 2nd July, 1968. The first three petitioners were formerly Fitters Class I and the other two, were Fitters class Ii in the service of the Undertaking An industrial dispute was raised by the workmen of the Undertaking to challenge the promotion of the petitioners on the ground that promotion had to be made strictly in order of seniority from the cadre of 1st Class fitters. Thus according to the workmen, petitioners 1,2 and 3 who were promoted by the order dated 27th April, 1968 could not have been promoted because they were. not senior-most and petitioners 4 and S could not have been promoted because they were not even First Class fitters.

(3) By its a Ward dated 21st July, 1971 the Additional Industrial Tribunal held that .the promotion of the five petitioners was invalid. According to the Tribunal although there were no promotion rules, evidence led on behalf of the workmen showed that promotions had to be made strictly in the order of seniority. The promotions were Therefore, held to be not valid. Certain documents which were produced by the Management were held to be not proved and were Therefore not considered. To these proceedings the petitioners were not Parties because they were not represented by a Union, nor were they represented in their individual capacity. They have now instituted this Writ Petition to challenge the award declaring their promotions to be illegal. Three contentions are raised on behalf of the petitioners. Firstly, it is contended that in the absence of promotion rules, the Tribunal was not justified in interfering with the promotion order and had no jurisdiction in this respect. Secondly, it is contended that the documents filed by the Undertaking in the course of the proceedings could cot have been disregarded on the ground that they were not proved in the particular circumstances of this case. Lastly, it is contended that no notice was given to the petitioners concerning the proceedings. Hence, the award is challenged as being not in accordance with the principles of natural justice.

(4) I shall first deal with the question as to whether the Tribunal was entitled to apply a rule of promotion when there was no rule. According to counsel representing the Delhi Municipal Corporation Workers Union, (Regd.), which represents the workmen, the past practice in the department, has .been to promote persons only on the basis of seniority. Shri Tej Singh, WW. 3, gave evidence before the Tribunal showing that the lowest post was that of a worker on the muster roll from which promotions were made to the post of Beldar on the basis of seniority and subsequent promotions are made to the posts of lineman, Assistant Fitter, Fitter and First Class Fitter, also on the basis of seniority. Lastly, promotion to the post of Head Mechanic was also to be on the basis of seniority. Shri Mannu La1, WW2, stated that certain fitters had been promoted as Head Mechanic in 1960 or 1961, but their promotions were set aside on a protest by their seniors. Thus, the evidence on behalf of the workmen was intended to show that there was a practice in the department to promote the senior-most person to the next higher post. However, no documents to support even this practice, are to be found on the record, As far as the Industrial Tribunal is concerned, it is not entitled to interfere in the question of promotion except if an unfair labour practice was shown to exist, it would be impossible for an industry or an Undertaking to run on a satisfactory basis if only the senior-most persons had to be promoted to the next higher post irrespective of merit. All promotions must necessarily be based on considerations of. seniority as well as of merit. In the present case, documents have been bled with the petition, to show that the promotion in question were in fact made on the basis of recommendations of a Departmental Promotion Committee.

(5) Mr Ramamurthy, learned counsel on behalf of the petitioners has cited Brook Bond (India) Ltd. v. Their Workmen, which is a judgment of the Supreme Court

In that case, it was held :-

"In dealing with these disputes, however, anxious industrial adjudication may and must be to protect the legitimate rights of the employees, regard must always be had to the fact that in matters of promotion, discretion has primarily to be left to the employer."

Elsewhere in the judgment, it was observed as follows : -

"It is true that though promotions would normally be a part of the management's function, if it appears that in promoting one employee in preference to another, the management has been actuated by malicious considerations or that the failure to promote one eligible person amounts to an unfair labour practice, that would be a different matter. But in the absence of mala fides, normally it must be left to the discretion of the management to see which of the employees should be promoted at a given time....."

Relying on these passages Mr. Kamamurthy submits that promotion is entirely a matter within the discretion of the employer, i.e., the Water, Supply and Sewage Undertaking of the Delhi Municipal Corporation. As there were no promotion rules, it was for the employer to see how promotions were to be made. He also relies on the fact that promotions have been made on the recommendations of a Departmental Promotion Committee, which in this case consisted of a Board which included the Administrative Officer, the Superintending Engineer and the then Chief Engineer. Thus, it is submitted that there is nothing mala fides about the promotions which have been declared invalid by the Tribunal. It is further submitted that promotions were made after interviewing a number of candidates. There is a great deal of substance in Mr. Ramamurthy's submission. The Tribunal has struck down the promotions of the petitioners merely because oral evidence was led to show that in the past promotions were made on the basis of seniority. I had sent for the record of the Tribunal and I am not at all satisfied that there was any satisfactory material on the record, to show that the past promotions were made on the basis of seniority. A mere oral statement to this effect without any proof or past instances can hardly be said to establish or prove an existing practice. If there had been a number of previous promotions based solely on seniority, these could surely have been enumerated by the persons giving evidence. I am doubtful whether a practice of this type could be binding on the employer even if it had ever existed before. I cannot possibly accept the suggestion that a custom for future promotion can be established from previous promotions. I do not, however, find that there was proof of such a practice let alone anything to show that it was binding on the employer as a custom. I, therefore, accept the correctness of the first submission and hold that, the Industrial Tribunal had no authority to create a rule of promotion when none existed. In the jurisdiction of the Tribunal is limited only to cases where there has been an unfair labour practice or an order of promotion is mala fide. I do not find any material to justify such a conclusion. In fact, the Tribunal has not given any such finding.

(6) The second submission by the petitioner is that the documents filed by the Undertaking in the course of the proceedings have been disregarded. In this respect, I have been referred to the file of the Tribunal which shows that most of these documents were produced at the instance of the Union. There is a specific order by which the Management was required to produce certain files. It was then ordered that copies of certain documents should be produced and these were filed. As the documents in question were filed at the instance of the workmen, it is urged by the petitioner that the Tribunal was not at all justified in treating these documents as unproved. I agree with this submission also. The records in question were produced, inspected by the representatives of the workmen and then copies were filed. No further proof of the original files could have been necessary after this procedure had been adopted. In fact there are numerous directions issued by the Tribunal requiring the Undertaking to produce the relevant papers. When this procedure was adopted, it was not at all within the Tribunal's power to find that these documents were not properly on the record. However, as I have already held the award to be invalid on the first ground, it is not necessary to give any fresh direction for a re-assessment of the evidence on record. Hence, I accept this submission by Mr Ramamurthy, but do not make any direction which would otherwise be necessary, for the Industrial Tribunal to re-hear the parties.

(7) The third submission on behalf of the petitioners is concerned with the failure to observe the rules of natural justice in this case. The Award under challenge relates to orders which had promoted the petitioners to the post of Head Mechanic. The Undertaking as such was not really interested in these orders. The persons directly affected by the invalidation of the promotions would be the petitioners. It was, Therefore, obvious that the award could only have been made after giving notice to the petitioners. The award is Therefore, not in accordance with the rules of natural justice. This again is a ground which would be sufficient to invalidate the award under challenge. The consequences of accepting this submission, would be that the matter would have to be re-decided by the Tribunal. However, as I have found that the Tribunal's award has been given without jurisdiction in my conclusion on the first point, it is not necessary to give a direction to the Tribunal to make a re-adjudication.

(8) In view of my conclusions on the points raised by the petitioners in support of this Writ Petition, I have to accept this Writ Petition and issue a writ of certiorari to quash the award made by the Tribunal declaring the promotions of the petitioners be invalid. The petitioners will get the costs.