

(1994) 12 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Petition No"s. 1141 and 1278 of 1990

S.M. Bhatia

APPELLANT

Vs

Bureau of Indian Standards and Another

RESPONDENT

Date of Decision : 03-12-1994

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 6

Citation : (1994) 4 AD 1187 : (1994) 56 DLT 732 : (1994) 31 DRJ 562

Hon'ble Judges : K. Shivshankar Bhat, J

Bench : Single Bench

Advocate : K.K. Rai, B.K. Sood and Rajesh Chhabra, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) Petitioner who is employed in the 1st respondent organisation, which is a statutory body, seeks the relief of promotion as Director. The eligibility for promotion is 5 years" experience as Joint Director/System Scientist C. This requirement could be relaxed as per Regulation 12. Accordingly, the Executive Committee relaxed the eligibility criteria from 5 years to 4 years in the post of Joint Director, provided the candidate has put in, either 18 or more years of total service etc. This relaxation was communicated as per office note dated 7.11.1988. Accordingly, petitioner was called for interview/ discussions, since, petitioner was eligible for promotion. In all 65 candidates participated in the selection process. The Standing Committee recommended the names of all 65 candidates for promotion. It is necessary to note here, promotion does not depend upon availability of any vacant post, but, it is in the nature of a benefit conferred to the eligible person on being selected as per the Rules.

(2) The Central Government who had to approve the selection, for promotion, did not approve the selection. According to the petitioner. Central Government found that the Standing Committee had no Sc / St member and Therefore, the Committee"s recommendations were not approved. Subsequently, the earlier

relaxation of the requirement of 5 years" experience was withdrawn retrospectively. But, petitioner completed 5 years experience on 31.5.1989 and Therefore, atleast from the said date he had to be promoted.

(3) Petitioner contended that non-approval of the recommendation by the Central Government was on an erroneous ground because, there was no requirement that there should have been SC/ST member in the Committee.

(4) According to the respondents the Committee had no experts in it as members, as per the Regulations and the recommendations were not approved, not because of SC/ST member being not in the Committee.

(5) Petitioner contended that in view of Section 6 the Bureau of Indian Standards Act 1986 (the Act, for short), no act or proceedings of the Bureau, the Executive Committee or any Committee constituted under the said Section shall be invalid merely because of any defect in the constitution of the Committee.

(6) Above contention overlooks the fact that the Staff Selection Committee is not a Committee constituted u/s 5. Section 5 refers to various Advisory Committees. Therefore, the submission of the petitioner based on Section 6 cannot be sustained. According to the petition, by virtue of the relaxation, a right accrued to the petitioner for promotion and their right cannot be taken away by withdrawing the relaxation.

(7) Selections were subject to the approval of the Central Government. If so, till then no right accrued to the petitioner. The Central Government did not approve the selections/ recommendations and thereafter, the earlier relaxation was withdrawn. In fact relaxation was a one-time relaxation which was not to be operative indefinitely. A power to relax necessarily includes a power to withdraw the same.

(8) It was then contended that withdrawal of relaxation retrospectively was bad. This again overlooks the fact that in no way petitioner's right was affected. Petitioner, at the most, had a right to be considered for promotion, by virtue of the relaxation. Since the selection/recommendation was not approved by the Central Government, any further selection/recommendation can be made only as per the Rules governing the promotion as on the date of the promotion. In that sense, withdrawal though termed retrospective, operates prospectively.

(9) This apart it is found from the records that the power of relaxation was itself not exercised as per Regulation of the Bureau of Indian Standards (Recruitment of Scientific Cadre) Regulations 1988. Reasons for relaxation had to be recorded. The decision to relax was taken by the members of the Committee without recording any reason and without discussion. It was a decision by circulation of the subject. Realizing this defect the very relaxation was withdrawn retrospectively.

(10) Petitioner pleads estoppel. According to the petitioner, respondents are estopped from withdrawing the relaxation. This contention has to be referred,

only to be rejected. The reason behind the contention is incapable of being precisely understood.

(11) Petitioner completed 5 years of service on 31.5.1989. But he was promoted only from 26.2.1990. It was contended that promotion should have been granted from 31.5.1989.

(12) Respondents rely on the fact that in April 1990 petitioner's case was considered and he was not found fit for promotion. Only in March 1991 he was found fit; hence normally he should have been promoted from March 1991. But since a few juniors of the petitioners were promoted w.e.f. 26.2.1990, petitioner was given the promotion from the said date. It is necessary to note that promotion is not a matter of course on completion of 5 years experience; promotion depends upon fitness to be found by the Selection Committee, in terms of the relevant Regulations. Completion of 5 years only gives eligibility.

(13) Both Mr. K.K.Rai and Mr.B.K.Sood cited several decisions in support of their rival contention. I find them unnecessary to be referred ,since, I have no doubt in my mind, as to the basic principles applicable to the case. Writ petition is accordingly dismissed.