
(1981) 07 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 776 of 1979

Sudesh Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-07-1981

Acts Referred:

Oil and Natural Gas Commission Act, 1959 — Section 32

Citation : (1981) WLN 190

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—By this writ petition the petitioner has challenged the consolidated seniority list prepared for the Laboratory Assistant (Chemistry) and the Laboratory Assistant (Physics). As a result of the consolidated seniority list he was placed below Shri S.C. Ghosh, Shri S.S. Mariapan and Shri S.C. Gupta, non-petitioners No. 5 to 6, respectively. He has further challenged the promotion of non-petitioners No. 5 and 6 to the post of T.A. Grade II (Chemistry).

2. The material facts, as averred by the petitioner, are that he was initially appointed as a Laboratory Assistant on 2-1-1960 by the Director of Geology Oil and Natural Gas Commission, Dehradun (hereinafter referred to as "the O.N.G.C."). Thereafter he was selected by the Department Promotion Committee (hereinafter referred to as "the D.P.C.") as a Laboratory Assistant (Chemistry) on 1-3-1967, which post he joined on 2,-7-1967 H effecting promotion lo the post of Technical Assistant, Grade II (Chemistry a consolidated seniority of the Laboratory Assistant (Physics) and the Laboratory Assistant (Chemistry) was prepared, wherein the petitioner was placed at No. 7 below non-petitioners No. 5, 6 and 7. The non-petitioners No 5 and 6, namely Shri S.C. Ghosh and Shri S.S. Mariappan, were promoted to the post Technical Assistant, Grade II (Chemistry). According to the petitioner it is the date of selection, winch is material for the preparation of the consolidated seniority and not the date of

joining. The petitioner alleged that the date of selection Shri S.C. Ghosh for the post of Laboratory Assistant (Physics) was 3-5-1967, whereas the date of selection of the petitioner and Shri S.C. Gupta was 1-3-1967 and the date of selection of Shri S.S. Mariappan for the post of Laboratory Assistant (Physics) was 28-12-66. As regards the date of joining, the petitioner stated that Shri S.S. Mariappan joined on 3-7-1967, Shri.S.C. Ghosh on 17-7-1967. Shri S.C. Gupta on 16-8-67 and the petitioner on 24 7-1967. It may be stated here that the date of selection as well as the date of joining so far as Shri S.S. Mariappan is concerned both the dates are prior to the date of the petitioner. Shri S.C Ghosh though was selected on 3-5-1967, but he joined a week earlier to the petitioner. As regards Shri S.C. Gupta, he was selected on the same date on which the petitioner was selected, but the Petitioner has stated that he joined on 16-8-1967, much later to the date of joining of the petitioner. As regards Shri S.S. Mariappan, the petitioner's case is that the petitioner should have been placed above Shri S.S. Mariappan, being a promotee.

3. Return to the writ petition has been filed by non petitioners No. 2, 3 and 4. Their case is that on 15-7-1976 there were two unreserved posts of the Technical Assistant (Chemistry) required to be filled in. Against two posts 6 unreserved candidates are required to be called for test/interview. The petitioner was junior to the six unreserved candidates, who were called for test interview. The post of Technical Assistant Grade II is a post to be filled in by 100% promotion on the basis of seniority-cum-fitness and various categories of employees are eligible for promotion to this post and, therefore the D.P.C. prepared a consolidated seniority list in accordance with the provisions contained in part B(b) of Annexure R/1 and Regulation 19. The consolidated seniority list was prepared and the petitioner found his place junior to the candidates called for interview/test. It was averred that at the combined seniority list of the Laboratory Assistants (Chemistry and Physics), who are within the zone of consideration, is prepared by the D.P.C. and that none junior to the petitioner has so far been considered for promotion. The post of the Technical Assistant (Physics/Chemistry) is decentralized and only the persons working in the Northern Region renamed as Central Region are considered for promotion for this post. The consolidated seniority list is prepared on the basis of the total length of services rendered. However inter se seniority of the candidates in their respective list is not to be disturbed in the consolidated list. In the inter se seniority list of the Laboratory Assistant (Chemistry) Mr. S.C. Gupta, non-petitioner No. 7 ranked senior to the petitioner. Therefore, that inter se seniority had to be maintained in the consolidated seniority list. It was also averred that the post of Laboratory Assistant (Physics) is 100% direct recruitment post, while that of Laboratory Assistant (Chemistry) is 100% promotion. Therefore, the persons being direct recruit or being promotee has no bearing on the case of the petitioner for consideration for promotion to the post of the Technical Assistant Grade II (Chemistry), According to the R & P Regulations, the post of the Technical Assistant Grade II (Chemistry) is 100% promotion and its feeding channel is Laboratory Assistant (Physics and Chemistry). Therefore,

the persons working as Laboratory Assistants (Physics), are also eligible and entitled to be considered for the promotion to the post of Technical Assistant Grade FI (Chemistry). Thus, it was stated that the length of service of Shri S.C. Ghosh, non-petitioner No. 5, and Shri S.S. Mariappan, non-petitioner No. 6, was more, as compared to the petitioner and as regards Shri S.C. Gupta, non-petitioner No. 7, he was ranked senior by the D.P.C. on 1.3.1967, while making promotion to the post of Laboratory Assistant, which seniority-could not be disturbed according to Annexure R/1 and Regulation 19. The inter se seniority in the respective list could not be disturbed despite the fact that the date of joining by Shri S.C. Gupta was later to the date of joining of the petitioner. It was also stated that as a matter of fact what was prepared was simply a panel, though named under the regulation as consolidated seniority list. The panel was prepared for the purpose of calling the candidates for interview for considering them for promotion.

4. Rejoinder to the reply was also filed by the petitioner.

5. I have heard Shri D.C. Sharma, learned Counsel for the petitioner, and Shri N.P. Gupta, learned Counsel for the non-petitioners No. 2, 3 and 4.

6. The grievance of the petitioner is that he has wrongly been placed at Sl. No. 7 in the consolidated seniority list. He should have been placed above non-petitioners No. 5, and 7 and should have been called for interview for the post of Technical Assistant Grade II (Chemistry). It may be mentioned that non-petitioners No. 5 and 6 had been directly recruited as Laboratory Assistants (Physics), a cadre different from the cadre of Laboratory Assistant (Chemistry). The post of Laboratory Assistant (Chemistry) is a promotion post. The petitioner as well as non-petitioner No. 7 have been promoted on this post. As these are two different cadres, the question of placing the petitioner above non-petitioners No. 5 and 6 does not arise in their respective cadres. As regards ranking of the petitioner and Shri S.C. Gupta, it may be stated that both of them were selected on one and the same date, but rank was as given by the D.P.C. In the final seniority list of the Laboratory Assistant (Chemistry), Shri S.C. Gupta is placed at No. 8, whereas the petitioner was placed at 11, as is borne out by the final seniority list submitted by the learned Counsel for the non-petitioner.

7. It will be useful here to reproduce the relevant regulation so that the question in controversy may be viewed in the light of the relevant regulation.

8. In exercise of the powers conferred by Section 32 of the Oil and Natural Gas Commission Act, 1959 (43 of 1959), and all other powers enabling in this behalf the Oil and Natural Gas Commission, with the previous approval of the Central Government, made regulations relating to the terms and conditions of appointment and service of the employees. Regulation 19 deals with seniority. Part "A" thereof deals with the principles of direct recruits and part "IV" deals with departmental promotees and Part "C" deals with relative seniority of direct recruits and departmental promotees, when the vacancies on any one occasion

arc reserved for both. It may be stated here that Part "A" and Part "C" arc not, relevant. The following provisions of Part "IV" arc relevant, which are reproduced:

ANNEXURE II

(Regulation 19)

PRINCIPLES FOR SENIORITY

The following principles will be followed for regulating the seniority of the employees in the Oil & Natural Gas Commission:

A. Direct Recruits

xx xx xx xx xx B. Departmental Promotees:

(i) The inter-se-seniority of departmental candidates selected for promotion on any single occasion shall be determined in the order of their selection as recommended by the Departmental Promotion Committee.

xx xx xx xx xx (iii) Where promotions to a grade are made either from more than one grade, or from the same grade divided into different cadres on regional, project or Directorate bass eligible persons shall be placed in separate lists in order of the inter-se-seniority the respective grades or cadres.

(a) If the promotion is to be made on the basis of merit alone, the Departmental Promotion Committee shall prepare a "Select List" on the basis of merit. Promotion shall barnacle from this "Select list" m the order in which the names have been so finally arranged:

(b) If however, the promotion is to be made on the basis of seniority-cum-fitness, i.e. seniority subject to the rejection of unfit, the Departmental Promotion Committee, shall place the candidates from the various lists into one "consolidated seniority list" based on the total length of service rendered in that grade or cadre and make recommendations for promotion on the basis of this of this "consolidated list". The inter-se-seniority of the candidates in their respective lists will not be disturbed in the "consolidated list."

9. From the perusal of Clause (i) of Part "B" of Annexure II, reproduced above, it would appear that the inter-se-seniority of the departmental candidates selected for promotion on any single occasion, shal be determined in the order of their selection as recommended by the D.P.C. The non-petitioners" case is that the inter-se-seniority of the petitioner and non-Petitioner No. 7 Shri S.C. Gupta was determined in the order of their selection as recommended by the D.P.C., which has not been desputed by the learned Counsel for the petitioner. Nothing has been placed on record by the petitioner to show that the order selection, as recommended by the D.P.C. for stated in the final seniority list. It is relevant to state here that Shri S.C. Gupta joined as Laboratory Attendant earlier to the petitioner. The petitioner joined as Laboratory Attendant on 2-1-1961, whereas Shri S.C. Gupta joined as Laboratory Atendant on 2-1-1961, whereas Shri S.C.

Gupta and 6 are concerned, they were direct recruits to the post of Laboratory seniority of the petitioner vis-a-vis non-petitioners No. 5 and 6 does not arise, but as the employees of both the cadres are eligible for the post of Technical Assistant Grade II (Chemistry) a panel or consolidated Seniority list is required to be prepared in accordance with Sub-clause (b) of Clause (iii) of Part II (Chemistry) is to be made on the basis of seniority-cum-fitness, so the "consolidated seniority list" based on the total length of service rendered in that grade or cadre. There is, however, an interdict for the D.P.C. that in the consolidated list the inter-se-seniority of the candidates in their respective lists will not be disturbed. In face of this interdiction the D.P.C. could not place the petitioner higher to Shri S.C. Gupta, non-petitioner No. 7, as he already ranked senior to the petitioner in their respective list. Thus, the placing of the petitioner in the consolidated list or the panel prepared by the D.P.C. for considering the candidates for promotion to the post of Technical Assistant Grade II (Chemistry) is in accordance with Sub-clause (b) of Clause (iii) of Part "B" of Annexure II. Admittedly, the total length of service rendered by non-petitioners No. 5 and 6, is more as compared to the petitioner and the non-petitioner No 7 already ranked senior to the petitioner in the seniority list of Laboratory Assistant (Chemistry), which should not be disturbed. In view of the preparation of the consolidated seniority list or panel in accordance with regulations, the petitioner could not be called for interview and, as such, the petitioner is not entitled to challenge the promotions of non-petitioners No. 5 and 6 and the seniority of non-petitioner No. 7 as well, who too appears to have been promoted on 17-9-1977, as is evident from the entry in the final seniority list of the Laboratory Assistant (Chemistry).

10. No other point has been pressed before me.

11. In view of what has been discussed above, this writ petition is devoid of merit, so it is hereby dismissed.