

(1995) 11 AHC CK 0104
In the Allahabad High Court
Case No : Writ Petition No. 1097 (S/B) of 1994

Sudhir Mohan Tandon

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Companies Act, 1956 — Section 617

Citation : (1995) 11 AHC CK 0104

Hon'ble Judges : Shobha Dikshit, J;A.S. Gill, J

Bench : Division Bench

Advocate : S.C. Misra, for the Appellant; G.N. Srivastava, S.S.L. Srivastava and W.U. Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Shobha Dikshit, J.—The petitioner challenges the promotion of Respondent No. 3 to the post of Administrative Officer, Uttar Pradesh Panchayatiraj Vitta Evam Vikas Nigam Limited on the ground that the same is illegal, arbitrary, unconstitutional, mala fide and discriminatory, hence liable to be quashed. Petitioner further impugns the order of promotion while claiming seniority by several years over the opposite party No. 3. It has further been alleged by the petitioner that the Chairman of the aforesaid Nigam by promoting opposite party No. 3 has acted without Jurisdiction because he is not the competent authority to pass the order for promotion in question.

2. The facts in brief for the purpose of deciding the controversy raised in the writ petition are as follows:

Uttar Pradesh Panchayatiraj Vitta Evam Vikas Nigam Limited (hereinafter referred to as the Nigam) is a Government company as defined u/s 617 of the Companies Act, 1956. It is an apex financial institution constituted by the State of Uttar Pradesh to provide assistance to Panchayatiraj institutions. The objects of the company are contained in the Memorandum and Articles of Association which

also provide for constitution of Board of Directors and its powers, appointment of Chairman and Directors and other functionaries including the staff in the Nigam. However, there exist no separate rules or regulations for making appointment, recruitment, promotion, etc., of the employees working in this Nigam. Under Article 125 of the Articles of Association, control of the company has been vested in the Board of Directors which is empowered to exercise all the powers which the company is authorised to exercise under the Companies Act. Besides these general powers, the Board of Directors is also authorised under Article 126(ix) of these Articles to exercise special powers with regard to the appointment of officers, clerks and servants from time to time and to determine their powers and duties, fix their salaries as also to remove and suspend them. We shall, however, refer to the said special powers of the Board of Directors, Chairman and Managing Director, etc., at an appropriate stage.

3. The post of Administrative Officer in the pay scale of Rs. 2,200-4,000 fell vacant due to the resignation by the then incumbent Sri Suresh Pal Singh, a deputationist in the year 1993. On the said post falling vacant, the petitioner applied for being promoted to the same in March, 1993 claiming eligibility, possessing experience of working on this post and also being the senior most employee in the Nigam. An accountant Sri Vishnu Prakash Saxena also applied for promotion/appointment to the said post. The State Government meanwhile vide orders dated 24.2.1993 directed the then Panchayatiraj Officer, Lucknow, one Sri Akhilesh Kumar Pandey to look after the work of Administrative Officer in addition to his own duties. Respondent No. 3, however, approached this Court through Writ Petition No. 9995 (SS) of 1993 with the prayer that he as a departmental candidate be considered for this post and it should not be filled through deputation until the departmental candidates are considered. This Court passed the following Interim order in the said writ petition on 28.12.1993:

Issue notice to opposite party No. 2. List in the third week of January, 1994, Till then, it is provided that the opposite parties would not appoint any person on deputation till the departmental candidates are considered.

Petitioner is directed to take steps on the first opening day after the winter vacation and serve opposite party No. 2 outside the Court as well, for which purposes office will issue necessary notice. On the next day of listing, he would also file affidavit of service.

4. Pursuant to the aforesaid orders, a meeting of the Board of Directors was convened on 14.6.1994 for taking a decision for making promotion on the post of Administrative Officer. In the said meeting, it was resolved that all the applications submitted before the opposite party No. 2. i.e.. Managing Director shall be considered and disposed of by him within 15 days so that the post in question may be filled by a duly selected candidate. It was further resolved that in case the aforesaid selection process is not completed within the said period and the writ petition remains pending, the post of Administrative Officer be placed in abeyance and in its place, another post of Special Executive Officer be

created in the same pay scale of Rs. 2,200-4,000 and a suitable candidate be appointed from open market. The Managing Director accordingly vide his order dated 10.8.1994 proposed that a committee under his Chairmanship be constituted consisting of himself. Special Secretary Panchayatiraj, Deputy Director (Personnel), Public Enterprises Bureau to take the decision in this regard. This proposal was placed before the Chairman for approval. The office of the Nigam prepared a resume of the details of the service record of all the three applicants recording therein that the petitioner Sri Sudhir Mohan Tandon is a Graduate and started working with the Nigam in 1976 and has also worked as Administrative Officer for about 11/2 years. The other applicant Sri Vishnu Prakash Saxena is also a Graduate and is working with the Nigam as Accountant from 1987 having financial powers also. The third applicant, i.e., Respondent No. 3 Sri Ashok Kumar Singh though is also a Graduate and is working as Stenographer in the higher pay scale of Rs. 1,400-2,200 but is much Junior and less experienced. He was appointed in the Nigam in January, 1986 as Junior Clerk-cum-Typist and thereafter as Stenographer initially in the pay scale of Rs. 470-735 which was subsequently revised to Rs. 515-865. It has been categorically mentioned in this note that opposite party No. 3 has been appointed afresh with effect from 12.10.1988 as Stenographer in this pay scale of 515-865. The aforesaid note was prepared by the Senior Accounts Officer who after comparing the service record of all the three applicants, proposed that since all are Graduates and there are no service rules in the Nigam as also no character roll entries have been awarded to any of the employees, therefore, on a comparison of the seniority and experience of the applicants, it would be most appropriate that the senior most person Sri Sudhir Mohan Tandon (petitioner) should be considered for promotion. The Managing Director after considering the comparative merit of all the three applicants approved the said proposal that since Sri Sudhir Mohan Tandon is the senior most amongst all the three applicants as also possesses sufficient experience, therefore, his candidature should be considered for promotion to the post of Administrative Officer. These recommendations were placed before the Chairman for approval, who vide his orders dated 28.9.1994 disapproved the recommendation and took the decision himself in favour of opposite party No. 3 Sri Ashok Kumar Singh for the reason that since Sri Ashok Kumar Singh has so far never been given any promotion, therefore, he should be promoted. The other reason given is that he is in the highest pay scale also Le. Rs. 1,400-2,200. Therefore, he be promoted to the post of Administrative Officer. With these recommendations, the Chairman directed that the orders be passed immediately on that day itself and he should be Informed accordingly. It is for these reasons that the impugned order dated. 1.10.1994 promoting opposite party No. 3 to the post of Administrative Officer in the pay scale of Rs. 2,200-4,000 was issued by the Managing Director which is Annexure-1 to the writ petition and is under challenge.

5. It has been averred in the writ petition that petitioner is a Graduate in Commerce (B. Com.) and joined the Nigam as Clerk on 8.11.1966 in the pay

scale of Rs. 200-320 and was subsequently promoted in the year 1981 in the pay scale of Rs. 230-380 (unrevised). He was further promoted on the post of Office Superintendent with effect from 29.4.1985 in the pay scale of Rs. 490-760 (revised pay scale of Rs. 1,350-2,200). Petitioner also claims to have worked as Administrative Officer on ad hoc basis for 1? years with effect from 8.9.1986 till December, 1987 and he further continued to look after the work of Administrative Officer since December, 1993 when the post fall vacant due to the resignation of the last incumbent. According to the Petitioner, though Respondent No. 3 is also a Graduate but was appointed much later in the Nigam. He was initially appointed as an Assistant Clerk and worked as such from 3.4.1986 to 31.7.1986 in the pay scale of Rs. 360-550. Later on, he was appointed as Stenographer vide orders dated 16.4.1987 in the pay scale of Rs. 515-865 (revised to Rs. 1,400-2.300) and was confirmed on this post vide orders dated 24.2.1989. Thus, the petitioner claims seniority over Respondent No. 3 and contends that he cannot be placed over and above him by being promoted arbitrarily and illegally to higher post of Administrative Officer by-passing him. Petitioner alleges mala fides against opposite party No. 4 Chairman of the Nigam because according to him, at the relevant time, since the Respondent No. 3 was attached as a Stenographer to the Chairman and the Chairman in order to bestow favour on him, passed the impugned order of promotion arbitrarily and illegally as also without jurisdiction as the Chairman is not the competent authority to pass the order of promotion to the post of Administrative Officer. According to the Petitioner, it is the Managing Director who is the competent authority to make appointments and promotions in the Nigam.

6. A counter affidavit has been filed on behalf of opposite parties 2 and 4 as also by opposite party No. 3. The stand taken in both these counter-affidavits is that the impugned order of promotion is perfectly valid and legal and the same has been passed by a competent authority, i.e., Chairman as he is the appointing authority for the post of Administrative Officer and there has also been a valid delegation of power in favour of the Chairman by the Board of Directors for making such an appointment. The allegation of arbitrariness, discrimination and mala fides have been denied. Petitioner, however, has reiterated his stand by filing a rejoinder-affidavit.

7. Learned Counsel for the petitioner challenges the impugned order firstly on the ground that the same is wholly arbitrary and has been passed on irrelevant criterion/consideration. It has been contended that once it is the admitted case of all the parties that the petitioner is the senior most applicant amongst all the three candidates and he alone possesses the requisite experience of working on the post of Administrative Officer, therefore, promotion could not have been denied to him merely on the ground that since he has been promoted twice earlier, therefore, he could not be promoted any further. It has been urged that this criteria for considering candidates for promotion is wholly arbitrary, irrational, extraneous, perverse and mala fide. Merely because the Respondent No. 3 did not get a chance of promotion earlier, the same would not adversely

affect the prospects of promotion of the Petitioner. Petitioner's right for being considered for promotion cannot be negated on this ground. This contention of the petitioner was repelled by the learned Counsel for the Respondent No. 3 on the ground that the petitioner had in fact given up his right to promotion and, therefore, is estopped to stake claim for the same. It has been submitted that earlier, the State Government had issued a G.O. dated 31.10.1991 by which an option was given to the employees that in case they have no further chance of promotion in their career, they may opt for the super scale of Rs. 1,350-2,200 and the petitioner knowing fully well that he would have no chance of further promotion opted for this scale with effect from 1.1.1986 and received arrears of pay also for the period 1.1.1986 to 14.1.1992. Since this benefit of the G.O. has already been taken by the Petitioner, an attempt has been made on behalf of opposite parties to justify the reason for not considering the case of the petitioner for promotion to the post of Administrative Officer. In fact estoppel has been pleaded by the opposite parties.

8. We have considered the arguments addressed by the learned Counsel for the parties and are of the opinion that merely because Respondent No. 3 had not so far got a chance of promotion and the petitioner had already been promoted twice in past in about two decades of service rendered by him, it would certainly not be a valid and objective ground for denying him another chance of promotion. Such consideration is undoubtedly arbitrary and irrational/Irrelevant as it would result in inequality of opportunity amongst the eligible candidates for being promoted to the post in question. In the absence of service rules, rule of seniority and experience is the golden rule and there is no reason as to why seniority should be ignored when no other criteria for promotion to the post of Administrative Officer has been prescribed. Petitioner is undoubtedly ahead in seniority and the constitutional mandate of not to act arbitrarily is also in favour of the Petitioner, hence denial of promotion to him on this ground is illegal and arbitrary.

9. The Respondent Nigam is a Government owned company and is not expected to act arbitrarily. It is surprising that no rules/guidelines exist for making appointment/promotion to various posts. Opposite parties ought to have laid down some guidelines/criterion of eligibility conditions, etc., before making the promotion in question. In the absence of any guidelines, selection or promotion is in all probability to suffer from the vice of arbitrariness hence to prevent the same it is essential to lay down guidelines/criterion for selection/promotion to make it fair and objective.

10. There is yet another aspect of the matter on the question of estoppel. Admittedly, the practice in the past in the Nigam was to fill the post in question through deputation and because the post was never filled by promoting the departmental candidates in past, therefore, for the petitioner to avail the benefit of the CO. dated 31.10.1991 is justified in the existing facts and circumstances. But now since the avenue for promotion to the post of Administrative Officer has

been opened by the direction of this Court, the petitioner cannot be estopped from claiming his right for being considered for the said post. It is the opposite party No. 3 who had approached this Court through writ petition No. 9975 (SS) of 1993 with the grievance that the post of Administrative Officer should not be filled through deputationists until and unless the claim of the departmental candidates is considered. Since this Court directed the opposite parties to consider the departmental candidates, therefore, the petitioner is well within his rights to stake his claim for being considered for promotion to the said post and the benefit taken by him in the past when factually no avenues for further promotion to the petitioner were open cannot deprive him for this new avenue which has opened for promotion. Thus, this argument put forward on behalf of opposite party No. 3 is devoid of any merit and the same is rejected.

11. Learned Counsel for the petitioner next contended that the impugned order is without jurisdiction as the same has been passed by the Chairman who is not the competent authority for passing the same. While placing reliance on the resolution dated 14.6.1994 by which the Board of Directors had authorised the Managing Director to select the suitable candidate for promotion to the post of Administrative Officer out of the three departmental applicants, it has been urged that the Chairman could not have taken the decision as to who shall be promoted to the post in question. Repelling this argument, the opposite parties placed reliance on Article 126(ix) which provides as follows:

To appoint officers, clerks and servants for permanent, temporary or special service as the Board may from time to time think fit and to determine their powers and duties and to fix their salaries and emoluments and to require security in such instances and to such amount as the Board may think fit and to remove or suspend any such officers, clerk and servants:

Provided, however, that no post the basic pay of which, either exceeds Rs. 2,500 p.m. or the maximum of the scale of which exceeds Rs. 2,500 p.m. shall be created and filled without the prior approval of the Governor of Uttar Pradesh, but in case it is found useful to avail the services of retired Government servants of good competence and experience, this limit of Rs. 2,500 may be raised to Rs. 3,000 inclusive of pension : Provided further that appointment any foreign national shall not be made without the prior approval of Governor of Uttar Pradesh except the appointment of foreign technical personnel and also when such appointment is in broad conformity with the policy of the Government.

The Board of Directors, therefore, have the power to appoint/promote the employees.

12. So far as the question of delegation is concerned, opposite parties have placed reliance on a resolution of 1979, a copy of which has been annexed as Annexure-2 to the counter affidavit filed on behalf of the Nigam. We have perused this annexure where full powers to make promotions to the post carrying pay scales the maximum of which does not exceed Rs. 1,400 per month

has been delegated in favour of the Chairman. Learned Counsel for the petitioner controverted this contention and has annexed a copy of G.O. dated 13.1.1984 as Annexure-1 to the rejoinder-affidavit wherein it has clearly been stated that in the Public Bureaus/Nigams, etc., the non-government Chairman or Directors shall not be entitled to exercise administrative powers. He, therefore, contends that even assuming that such a delegation was made in the year 1979 the same is not in force in view of the said G.O. We have also perused Article 126 which provides for specific powers of the Board. Under Sub-clause (iv) of this Article, the Board has been empowered to delegate some of the powers mentioned in this Sub-clause (iv). But such delegation has not been provided for in other sub-clauses and specially Sub-clause (ix) of Clause 126. Therefore, from a perusal of these Articles of Association also, it is clear that the Board of Directors could not have delegated powers to appoint officers, clerks and servants, etc., to the Chairman as has been averred by the opposite parties. Respondents counsel have failed to repeal this contention and produce any other delegation in favour of the Chairman. Article 131 also clearly provides that subject to the provisions of the Companies Act and also to the control of superintendence of the Board, the business and affairs of the company shall be carried out and managed by the Managing Director. Thus, it is clear that the power to appoint/promote a suitable candidate to the post in question did not vest in the Chairman and it was the Managing Director who was the competent authority to pass the order as per resolution dated 14.6.1994. On this count also, the impugned order stands vitiated and is liable to be quashed.

13. The petitioner has also assailed the order of promotion of opposite party No. 3 on the ground of mala fides. It has been stated that since the opposite party No. 3 was attached to the Chairman, therefore, he has bestowed favour on him and promoted him to the post of Administrative Officer. Since the Chairman has not been impleaded by name in the writ petition, therefore, we are not inclined to consider this ground of challenge.

14. No other ground has been raised.

15. In the light of aforesaid findings, we allow the writ petition and quash the order dated 1.10.1994 contained in Annexure 1 and direct the opposite parties to hold a fresh selection in accordance with law and till such time, that the selection is made, it is open to the State Government to make a suitable interim arrangement as was earlier made vide letter dated 24.2.1993 or in any other manner. No order as to costs.