
(2014) 03 AHC CK 0267
In the Allahabad High Court
Case No : C.M.W.P. No. 31493 of 2008

Umesh Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : (2014) 104 ALR 94 : (2014) 4 AWC 3347 : (2014) 141 FLR 921 :
(2014) 2 UPLBEC 1477

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : V.D. Shukla, Ashok Khare and S. Khare, Advocate for the Appellant;
R. Singh, Rajeshwar Singh, S. Shekhar, Sachin Kumar and V.K. Singh, S.C,
Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Rajes Kumar, J.—Heard Sri Ashok Khare, learned Senior Advocate, appearing on behalf of the petitioner and Sri V.K. Singh, learned Senior Advocate,, alongwith Sri Sachin Kumar, Advocate, appearing on behalf of respondent Nos. 2 to 6. The brief facts of the case are that the petitioner was initially appointed as a Communication Officer in the Civil Aviation Department on 20.8.1975. He was promoted as a Senior Communication Officer on ad hoc basis in September, 1982. In the year 1986, the National Airports Authority was constituted and with effect from 1.6.1996, all the employees working in the Civil Aviation Department were treated and deemed to be on deputation with the National Airport Authority. However, with effect from 2.10.1989, all the employees, who were of Civil Aviation Department and were nowhere treated on deputation, were absorbed in the National Airport Authority based on their option of absorption. The petitioner has given his option of absorption and accordingly absorbed with National Airports Authority vide order dated 3.5.1990. On 9.6.1992, the petitioner was granted promotion on the post of Deputy Director (Communication). With effect from 1.4.1992, the National Airports Authority stood merged with International

Airports Authority, which was subsequently by way of statutory Corporation given the name of Airports Authority of India by virtue of provisions of Airports Authority of India Act, 1994 (Parliament Act No. 55 of 1994) and with effect from the same date, the petitioner became employee of Airports Authority of India. It appears that in the year 1996, the post of Deputy Director (Communication) stood re designated by the respondent authority as the post of Deputy General Manager carrying E-6 pay scale i.e., the pay scale of Rs. 7500-9900, which has been subsequently revised to the pay scale of Rs. 17500-23200 with effect from 1.1.1996. While the petitioner was working as Deputy Director (Communication)/ Dy. General Manager, departmental proceedings were initiated against the petitioner by issuing a chargesheet dated 13.2.1996. On 19.2.1998, an order was passed by the respondent authorities placing the petitioner in the selection pay scale of Rs. 8250-10050 with effect from 22.6.1997 and given designation of Additional General Manager to the petitioner. The pay scale of E-7 scale, at the said point of time, was the pay scale of Rs. 8250-10050 which stood revised to the pay scale of Rs. 18500-23900 with effect from 1.1.1997. In this way the petitioner was given selection pay scale of Rs. 18500-23900 with effect from 1.1.1997.

2. On 31.1.2005, Board of Directors of Airports Authority of India approved a set of regulations known as Airports Authority of India (Recruitment and Promotion) Regulations, 2005, which has been approved with effect from 1.2.2005 by the Airports Authority of India Board. Regulations 2005 effects a re categorization of cadres/grades. Under such re categorization, officers in the pay scale of Rs. 18500-23900, i.e., in E-7 scale, stood re categorized as Joint General Manager. In para-12 of the supplementary counter-affidavit/it is stated that from perusal of the DPC minutes dated 12.3.2005 and 5.4.2005, no post of Joint General Manager in Airports Authority of India was available prior to 2005 and as such Additional General Managers equivalent to (E-7), nonfunctional post with combined service of five years as Additional General Manager/Deputy General Manager, were called for interview for promotion to the post of General Manager, including the petitioner, who was put at serial No. 5.

3. It is the case of the petitioner that he appeared in the interview. However, the Departmental Selection Committee applied sealed cover process with regard to candidature of the petitioner on account of pending departmental proceedings in pursuance to a departmental charge-sheet dated 13.2.1996. In para-12 of the supplementary counter-affidavit, it is stated that since there were only four posts for promotion plus one ad hoc post of C and C of General Manager (Communication) were available, the petitioner, was also considered. By the order dated 13.6.2005, the penalty of withholding one increment was imposed upon the petitioner. Appeal filed against the said order has been rejected by the Board of Directors vide order dated 19.4.2006. The next increment was due on 1.1.2006. Thus, the increment for the period 1.1.2006 to 31.12.2006 was withheld. It is the case of the petitioner that one Sri R.K. Kapoor, who was junior to the petitioner and was the Additional General Manager (Communication) was

granted promotion by order dated 22.4.2005 as the General Manager (Communication) on ad hoc basis. It appears that in the month of June, 2006 a meeting of Departmental Promotion Committee was held for finalizing promotions to the post of Joint General Manager (Communication) as stated in para-28 of the writ petition. In view of the above decision of the Departmental Promotion Committee, an order dated 7.6.2006 was issued by the respondent authorities granting promotion to 28 persons to the grade of Joint General Manager on regular basis with effect from 1.7.2005. The petitioner was shown at serial No. 2. However, the promotion of the petitioner was made effective after the completion of penalty period, i.e., on 1.1.2007. In pursuance of the order dated 7.6.2006, vide order dated 5.2.2007, it has been communicated that the petitioner stands promoted to the grade of Joint General Manager (Communication) on regular basis with effect from 1.1.2007 in the pay scale of Rs. 18500-23900 on the expiry of his penalty. The orders dated 7.6.2006 and 5.2.2007 are impugned in the present writ petition.

4. In para-16 of the supplementary counter-affidavit, it is stated that Departmental Promotion Committee met for promotion to the grade of General Manager (Communication) on 28.11.2009. The petitioner alongwith other officers were promoted as General Manager (Communication) vide order dated 7.12.2009 and took over the charge of General Manager (Communication) (E-8) with effect from 31.12.2009 at new station.

5. Learned Counsel for the petitioner submitted that Regulations 20 to 30 make provision for departmental promotions and related matters. Regulation 21 (ii) specifies the eligibility conditions for the promotion to the post of General Manager in (E-8) scale i.e., pay scale of Rs. 20500-26500. Under the said provision, the Joint General Managers, with two years regular service in the grade of (H-7), and a combined minimum service of 5 years as JGM/DGM, are eligible for promotion, subject to recommendation of the Selection Committee. Similarly Regulation 21 (iii) makes provision for promotion as Joint General Manager in (E-7) scale, which is required to be made from amongst the Deputy General Manager in (E-6) pay- scale. Regulation 21 (iii)(b) provides that Deputy General Manager will be placed in (E-7) pay scale without the designation of Joint General Manager after completion of 5 years regular service. He submitted that after coming into effect the Regulation 2005, there existed no post of Additional General Manager. The persons working in (E-7) scale under the 2005 Regulations stood categorized as Joint General Manager. Since the petitioner had already been promoted as the Additional General Manager vide order dated 23.6.1997 and was working in (E-7) scale, on approval of 2005 Regulations, he was entitled automatically to be treated as Joint General Manager in (E-7) scale. Therefore, the impugned order, promoting the petitioner on the post of General Manager (Communication) is wholly unjustified. The petitioner was entitled to be considered for promotion on the post of General Manager (Communication) in the DPC held prior to 2009 and consideration of his promotion in the year 2009 on the ground that the petitioner became eligible in 2009 as he has completed

two years service on the post of Joint Managing Director with effect from 1.1.2007 is wholly unjustified.

6. Sri V.K. Singh, learned Counsel for the respondents submitted that the petitioner was holding the non-functional post, namely, Additional General Manager. Under Regulations 2005, there was no post of Additional General Manager. He further submitted that the petitioner was holding the post of Deputy General Manager and has been given designation of the Additional General Manager, therefore, he has been promoted on the post of Joint General Manager in the DPC held in the year 2006. Though the promotions of others have been made effective from 1.7.2005, but the petitioner's promotion has been made effective from 1.1.2007 on account of penalty being levied on him. He submitted that though the petitioner was called upon in an interview held in the month of March, 2005 and the petitioner's name has been kept in a sealed cover as a departmental proceeding was pending, but the same could not be given effect as the petitioner has been subjected to penalty and the posts were filled. Thereafter, when the period of penalty was over, he was considered for promotion and in the year 2009 he has been promoted on the post of General Manager (Communication) after being served for the period of two years as Joint General Manager under Regulation 21(h) of Regulations 2005.

7. We have considered rival submissions and perused the records.

8. It would be relevant to refer Regulation 4 and relevant part of Regulation 21 of Regulations 2005 which deals with promotion:

4. Categorization of Cadres/Grades:

4.1 The posts in Authority are broadly categorized as Executive and Non-Executive and fall in the following groups/levels:

(I) Executives:

4.2 The authority will have the discretion to change the scales of pay from time to time.

4.3 Employees recruited in the Authority's service shall be placed in any of the approved pay scales of the Authority as prevailing from time to time and applicable to the post to which recruitment is made, save as provided in Para-3 of these Regulations.

4.4 The candidate who has applied for a higher post or if he is in the Select Panel for a higher post can be appointed in a lower post subject to his suitability and willingness to accept the same

21. PROMOTIONS- EXECUTIVES GRADES (GROUP "A" & "B" POSTS):

GROUP "A" POSTS:

(i) GENERAL MANAGER (E-8) [Rs. 20500-26500] TO EXECUTIVE DIRECTOR (E-9) [Rs. 23750-28550] - 100% PROMOTION

General Manager (E-8) with 5 years regular service in the grade will be eligible for promotion to the grade of Executive Director (E-9) subject to recommendation of the Selection Committee based on the interview and prescribed bench-mark of VERY GOOD.

(ii) JOINT GENERAL MANAGER (E-7) [Rs. 18500-23900] TO GENERAL MANAGER (E-8) [Rs. 20500-26500]- 100% PROMOTION Joint GMs with 2 years regular service in the grade and a combined minimum service of 5 years as JGM/DGM will be eligible for promotion subject to recommendation of the Selection Committee based on interview and the prescribed bench-mark of VERY GOOD.

(iii) DY. GENERAL MANAGER (E-6) [Rs. 17500-22300] TO JOINT GENERAL MANAGER (E-7) [Rs. 18500-23900]

(a) Promotion with designation against one-third vacancies of DGM:

One third vacancies of DGM will be operated as Joint GM as a functional post in the respective discipline. DGMs with three years' regular service in the grade will be eligible for normal promotion against these vacancies subject to DPC recommendation based on the prescribed bench-mark of VERY GOOD.

(b) Placement in Joint GM scale without designation:

DGMs not promoted/covered against vacancies of Joint GMs will be placed in E-7 scale (without designation) after completion of five years' regular service in the grade subject to the condition that there is no disciplinary case pending against them and their performance is satisfactory.

9. There is no dispute on the fact that the petitioner has been promoted as Deputy Director (Communication) vide order dated 9.6.1992 when he was the employee of the National Airports Authority. Vide order dated 19.2.1998, the petitioner, consequent upon completion of 5 years of service in the grade of Deputy Director in the scale of Rs. 7500-9900, was placed in selection grade of Rs. 8250-10050, with effect from 22.6.1997, and the petitioner has been given designation of Additional General Manager, in the counter-affidavit, it is not disputed that the said pay scale has been revised to pay scale of Rs. 18500-23900 with effect from 1.1.1997. As per the averments made in the supplementary counter-affidavit, the petitioner was in a pay scale of Level E-7. Regulation 4 provides categorization of cadres/grades. For E-7 level officers, the pay scale was Rs. 18500-450-23900. The designation given was Joint General Manager and equivalent. Therefore, on the commencement of Regulations 2005 and the categorization of cadre, the petitioner would be deemed to be the Joint General Manager. Since the petitioner has already been promoted in the pay scale of Rs. 18500-23900, which was available to the Joint General Manager, there was no occasion to promote the petitioner on the post of Joint General Manager on ad hoc basis in a pay scale of Rs. 18500-450-23900 by the impugned order dated 7.6.2006. Therefore, we are of the view that the order dated 7.6.2006 promoting the petitioner on the post of Joint General Manager in

the pay scale of Rs. 18500-450-23900, with effect from 1.7.2007, which the petitioner was getting since 1997, is meaningless and, accordingly, the promotion order dated 5.2.2007 has no effect. The petitioner would be deemed to be in the cadre of Joint General Manager, with the pay seal of Rs. 18500-450-23900, prior to 7.6.2006. Therefore, we are of the view that the orders dated 7.6.2006 and 5.2.2007 so far as the petitioner is concerned, are meaningless and are not sustainable. Our view is further fortified by the fact that in the DPC held on 12.3.2005 and 5.4.2005, the petitioner has been called upon for interview for promotion to the post of General Manager (Communication). The petitioner appeared in the interview, but since the departmental proceeding was pending, his candidature has been kept in a sealed cover, meaning thereby, that the petitioner was found eligible for promotion on the post of General Manager (Communication) in the year 2005 itself, which appears to be for the reasons that the petitioner was already getting promotional pay scale of Rs. 18500-23900 since 1997, which is of Level E-7. Now the question is that what relief can be available to the petitioner. We are of the view that after the expiry of penalty period, the petitioner would be entitled for consideration of promotion on the post of General Manager (Communication). If the DPC has been held after 1.1.2007 and the junior to the petitioner has been promoted, the petitioner would also be entitled to be considered for promotion, subject to the provision of Regulation 21 of Regulations, 2005.

10. The petitioner may make a representation in respect of his claim of promotion retrospectively before the competent authority and authority concerned is directed to decide the representation within a period of two months thereafter in the light of the observations made above, by a speaking order, in accordance to law. With the aforesaid observations and directions, the writ petition stands disposed of.