
(2013) 04 DEL CK 0167
In the Delhi High Court
Case No : W.P. (C) 727/2012

Union of India and Another

APPELLANT

Vs

Sanjeev Kapur and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 4 SCT 41

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Judgement

Pradeep Nandrajog, J.—Issue pertains to the promotion (with reference to the seniority position) to the post of Director Grade-I (Group-I) in the office of the Director General of Quality Assurance from amongst the eligible officers belonging to the Defence Quality Assurance Service (DQAS). The protagonist is Sanjeev Kapur, a Principal Scientific Officer (PScO). The antagonist were U.V. Dasgupta and Anil Garg, impleaded as respondents No. 4 and 5 by him in O.A. No. 1302/2010, to whom a helping hand was extended by the Union of India, the Director General of Quality Assurance and the Union Public Service Commission. The cadre of the Scientific Officers in the office of Director General of Quality Assurance is as follows: Senior Scientific Officer-II (SSO-II) > Senior Scientific Officer-I (SSO-I) > Principal Scientific Officer (PScO). The issue of seniority becomes relevant for the reason promotions in the cadre till the post of Principal Scientific Officer is discipline wise. There are six disciplines in the organization under the umbrella of Director Grade-I (Group-I) in the hierarchical pyramid moving upwards from the post of Senior Scientific Officer-II. By way of reference we may note that pertaining to two disciplines i.e. of Engineering and Electronics a similar pyramidal cadre structure exists till the post of Director Grade-I (Group-II).

2. With the post of Director Grade-I (Group-I) at the apex, the six disciplines: (i) Explosive, (ii) Instrument, (iii) Metal, (iv) Armament, (v) Gentex and (vi) Chemical, forming the pyramidal structure would be as under:-

3. The post of Senior Scientific Officer Grade-I (SSO-I), as per the relevant Recruitment Rules have to be filled up 50% by promotion from the eligible Senior Scientific Officers Grade-II and 50% by direct recruitment. The post of Principal Scientific Officer (PScO) has to be filled up 100% by promotion from the eligible Senior Scientific Officers Grade-I.

4. Since there are six disciplines in the pyramidal structure upto the post of Director Grade-I (Group-I), separate seniority list are maintained, stream wise, till the post of Senior Scientific Officer-I. Since convergent of the stream takes place at the level of Principal Scientific Officer, the issue of seniority becomes relevant.

5. The protagonist Sanjeev Kapur joined service as a directly recruited Senior Scientific Officer-II on April 29, 1981 in the stream of "Explosives" and was promoted in his stream as Senior Scientific Officer-I on July 31, 1987. The antagonists, U.V. Dasgupta and Anil Garg were appointed as Senior Scientific Officer-I in the stream of "Metallurgy" on November 29, 1990 and September 23, 1991 respectively. All of them earned promotion to the post of Principal Scientific Officer. Whereas on promotion Anil Garg joined as a Principal Scientific Officer on December 18, 1997, U.V. Dasgupta on January 23, 1998 and Sanjeev Kapur on March 02, 1998.

6. The apparent reason was Sanjeev Kapur not being released from the place where he was posted as Senior Scientific Officer-I. Qua him it assumes importance to note that notwithstanding a clear vacancy being available in the office where he was working i.e. Kirkee in the stream of "Explosives", he was ordered to move out to Khamaria. The other two were promoted in their very office. The result was that Sanjeev Kapur who was promoted as a Senior Scientific Officer-I on July 31, 1987 joining with some interval of time upon being promoted. The seniority in the integrated seniority list of Principal Scientific Officers was made by the department on the basis of respective date of joining duties as Principal Scientific Officer.

7. At the outset, seniority based on the fortuitous circumstance of when would a person, upon promotion in a discipline, be released by the office where he is working to enable him to join some other office would be arbitrary and would be liable to be struck down. Needless to state that no employee has a control over the date his employer would release him from the work place to join another work place on promotion. To make a person lose his seniority in this manner would be most arbitrary.

8. Besides, a perusal of the Recruitment Rules, called the Defence Quality Assurance Service Rules, 2000, pertaining to the post of Director Grade-I, would reveal that the post has to be filled up by promotion based on selection from the Principal Scientific Officers having eight years regular service in the grade. Thus, eligibility condition is eight years regular service in the grade. But, issue of seniority would have a bearing on short listing the candidates who fall in the

zone of consideration.

9. Litigation commence when Sanjeev Kapur found out that in an integrated seniority list of Principal Scientific Officer, treating date of joining the post of Principal Scientific Officer as the relevant date to determine inter-se seniority, notwithstanding he joining service as Senior Scientific Officer-II on April 29, 1981 and promoted as a Senior Scientific Officer-I on July 31, 1987 and notwithstanding U.V. Dasgupta and Anil Garg being direct recruits as Senior Scientific Officer-I on November 29, 1990 and September 23, 1991 i.e. dates 3 and 4 years after he was promoted as a Senior Scientific Officer-I, the two were treated senior to him on the fortuitous circumstance of the date when they joined duties, on being promoted, as Principal Scientific Officer and he lost out on the date of joining on account of he not being released from the place of his posting to join the place where he was sent on being promoted. He challenged the seniority list before the Central Administrative Tribunal.

10. The stand of the writ petitioner before the Tribunal was that as per Rule 6(3) (b) promotions to the post of Director Grade-I have to be made discipline wise.

11. The view taken by the Tribunal as per the impugned decision dated September 07, 2011 is that the applicable rules envisaged a promotion to the post of Director Grade-I irrespective of the discipline, based on a seniority list of Principal Scientific Officers and date of joining as a Principal Scientific Officer was not the relevant criteria.

12. The view taken by the Tribunal is in challenge before us.

13. Let us note relevant part of Rule 6 of the Defence Quality Assurance Rules, 1979. It reads as under:-

Future maintenance of the service:-

(1) The vacant duty posts in any of the grades of the service, on and after commencement of these rules, shall be filled in the manner provided in Schedule-I.

(2)(a) For the purpose of promotion to various grades of the service, the select list shall be prepared discipline wise in accordance with the general orders or instructions issued by the government from time to time. The composition of the Departmental Promotion Committee for considering promotion shall be as specified in Schedule-II.

Note: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period, for promotion to the next higher grade, along with their juniors who have already completed such qualifying/eligibility service.

(b) The appointment to the posts of Principal Scientific Officer (Non Functional Selection Grade) shall be made discipline-wise on the basis of the commendations of the Screening Committee the composition of which shall be as specified in Schedule II.

(3)(a) The quotas for direct recruitment and departmental promotion shall be worked out discipline-wise.

(b) The posts in the grade of Director Grade-I shall be distributed to distinct groups of disciplines, as may be decided by the Government from time to time, and promotion to these posts shall accordingly be made from amongst eligible officers of the concerned group.

Note: The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service and with due regard to the inter-se seniority in the respective disciplines.

(4)

(5)

(6)

(7)

14. Let us also make a reference to Schedule I to the Rules, where the number and scale of pay of the post, method of recruitment and eligibility conditions have been stipulated; and we do so for the posts of Director Grade-I. As per the Schedule, the manner of appointment to the post is by promotion on basis of selection. As per the Schedule the eligibility condition is eight years regular service as a Principal Scientific Officer.

15. There is an apparent hiatus between Rule 6(3)(b), the Note thereunder and the Schedule. Rule 6(3)(b) clearly envisages posts in the grade of Director Grade-I to be distributed to distinct groups of discipline, meaning thereby the posts of Director Grade-I have to be allocated to the different disciplines. And if this be so, there would be no occasion to integrate the seniority of all Principal Scientific Officers. And yet the Note under Rule (3)(b), which Rule requires distribution of the posts in the different disciplines, talks about the eligibility list for promotion with due regard to the inter-se seniority in the respective discipline.

16. Now, on the one hand we have Rule 6(3)(b) which requires the post of Director Grade-I to be distributed to the distinct groups of the disciplines and yet we have a Note beneath the Rule which requires the eligibility list for promotion to be prepared with reference to the date of qualified service and with due regard to the inter-se seniority in the respective discipline. The contradiction is writ large. Either the post of Director Grade-I have to be distributed discipline wise, and if so done, the question of preparing any integrated seniority list does not arise. Or, the post has to be filled up from amongst the eligible officers as per the integrated seniority list by integrating the officers from the different disciplines.

17. The ambiguity in the rule which has been created by the note beneath Rule 6(3)(b) has to be resolved, and if we look at Schedule-I, we find that the posts of Director Grade-I have to be filled up from all eligible Principal Scientific Officers; and this means irrespective of the discipline requiring at said level an integrated seniority list to be maintained.

18. Deciding a batch of writ petitions decided on September 06, 2011 lead matter being WP(C) 799/2008 Dr. H.L. Raskaran v. UOI & Ors. the problem i.e. seniority pertaining to integration of cadres of Doctors coming from different streams was opined to be arbitrary if in the different streams officers reach different levels of posts on the fortuitous circumstance of DPCs being held on different dates or persons joining on different dates upon being promoted due to the reason the place where they were working did not relieve them to join the new place of posting upon promotion.

19. Accordingly, we dispose of the writ petition holding that the view taken by the Tribunal is correct. Promotions to the post of Director Grade-I have to be from amongst the integrated list of Principal Scientific Officer from all the disciplines and for which the common seniority list would have to be prepared in a manner where the fortuitous circumstance of a person in a particular discipline earning a promotion on the fortuitous circumstance of the DPC pertaining to his discipline being held earlier and that of the other discipline a little later does not become determinative of the inter-se seniority, likewise the fortuitous circumstance of somebody being promoted and posted in the same office and hence being relieved and joining the same date but somebody else on being promoted and posted in a different office and not being relieved by the parent office to join the office where he was promoted and thereby date of joining being determinative of the seniority does not become determinative of the inter-se seniority. Alternatively, if the department reads the Rules as entitling them to allocate the post of Director Grade-I in different disciplines, we see no cause to integrate the seniority list of Principal Scientific Officers in the different disciplines. No costs.