

(2000) 03 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 263 of 2000

Union of India and another

APPELLANT

Vs

Shri Gopal Kar and others

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227

Citation : (2001) ILR (MP) 1646 : (2001) 2 MPHT 37 : (2001) 1 MPJR 249

Hon'ble Judges : Mr. Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Shri Rohit Arya, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

Union of India has filed the present writ petition against an order passed by the Central Administrative Tribunal, Jabalpur. The Tribunal relying upon the decision of the Supreme Court in case of Union of India and others Vs. Shri Purnendu Mukhopadhyay and others, has ordered fixation of notional seniority and other benefits to the respondent Nos. 1 to 4 as Chargeman Grade II. Respondent Nos. 1 to 4 had appeared in the examination for Chargeman Grade II as they obtained 5% less marks in the aggregate. They were graded as Supervisor Grade A and were subsequently promoted as Chargeman Grade II on passing of the examination.

It may be seen that all the respondents had obtained in the initial examination 5% less marks in the aggregate than prescribed for valuation as Chargeman Grade II. Hence, they were not classified as Chargeman Grade II and graded as Supervisor Grade A. Similar dispute arose in case of Shri Purnendu Mukhopadhyay (supra). In the said case, the application was filed before the Central Administrative Tribunal, Calcutta Bench. There were 95 applicants in the said case. The factual matrix in the said case came to be filed indicates that an

apprenticeship training scheme was introduced in the year 1950 by the Union of India with a view to fill up various supervisory posts which would fall vacant in different Ordnance Factories and to appoint departmentally trained personnel to the vacant supervisory posts in different technologies for efficient work and better supervision. In 1965, the aforesaid scheme of 1950 was amended. Para 11 of the amended scheme provided that on satisfactory completion of the apprenticeship course, the apprentices will be graded by the Director General, Ordnance Factories as fit for appointment to the grades of Chargeman Grade I or II or Supervisors Grade "A" or equivalent grades of Sr. Draughtsman, Sr. Planner, Sr. Rate Fixer and Sr. Estimators or unfit. Recruitment was to be made after a written test, interview, psychological test and medical examination. Subsequently, by a corrigendum dated 23-10-67, the aforesaid scheme was further modified by introducing the following provisions in Paragraph 11 thereof:--

"(d) The Supervisory Apprentices who secure 5% marks less in the aggregate than prescribed by the Central Selection Board for gradation as Chargeman Grade II in a particular gradation examination will be graded as Supervisor Grade A or equivalent but will be allowed to take another chance at the next gradation examination and on the basis of their performance may be graded by the D.G.O.P. as fit for appointment as Chargeman Grade II and appointed as such with effect from a date after they are so graded in the subsequent gradation examination.

(2) This will have retrospective effect to cover the past cases in which the D.G.O.F. has already allowed the Supervisory Apprentices another chance to appear in the gradation."

The applicants before the Calcutta Bench of the Central Administrative Tribunal were appointed to the post of Supervisor Grade A. The promotional Channel is Chargeman Grade II and then Chargeman Grade I and thereafter Assistant Foreman, Foreman and upward. The applicants therein were placed as Chargeman I or Assistant Foreman. In January, 1980, it was informed that an examination would be held for determining the notional seniority of Ex-Supervisory Apprentices who have been graded as Supervisor "A" due to marginal deficiency of marks and such of the Ex-Supervisory Apprentices who secured 5% less marks should be given another chance to appear at a gradation examination. The applicants were informed after a long lapse of time that they had secured 5% less marks but this fact was not intimated to them earlier in spite of repeated representations. It was a prayer made to restrain the respondent authorities from holding any examination and direction to the official respondents to grant the applicants seniority, promotion and all other benefits including financial benefits with effect from date immediately at the end of six months from the date of their original gradation considering the said date as the date of their appointment as Chargeman Grade II. The Central Administrative Tribunal, Calcutta Bench granted them notional seniority. The matter was taken to the Supreme Court by the Union of India in Civil Appeal No. 2322 of 1991

(Union of India and others Vs. Shri Purnendu Mukhopadhyay and others).

The Supreme Court in the said case of Union of India Vs. Purnendu Mukhopadhyay, on 5-8-93 decided the matter. The question for consideration before the Supreme Court was whether the Tribunal committed any error of law in directing the appellants to re-fix the notional seniority of Supervisors Grade A in ordinance factories, and fix their pay scale and all benefit attached thereto as per rule on the basis that all the applicants came out successful in the selection tests for promotion to the post of Chargeman Grade II from their respective dates of examination. The Supreme Court took note of the scheme as amended in 1965 which introduced the portion as reproduced hereinabove and further took note of the event that although formal instructions were issued in 1967 the Director General permitted some of the apprentices graded as Supervisor Grade A to appear in the examination in 1966, in which many succeeded and were appointed as Chargeman Grade II. Some of the Supervisors Grade A who were working from before and satisfied the eligibility criteria and others who were denied similar opportunity even though they had secured 5% less in the aggregate approached the Supreme Court by way of writ petition and claimed that they too should have been given another opportunity to improve their gradation as was done in case of others. The Supreme Court did not directly interfere initially in the matter. Then the matter came to Delhi High Court. Initially, Delhi High Court had directed to conduct another examination for those who secured 5% less marks in the aggregate than prescribed by the Central Selection Board for gradation as Chargeman Grade II. This direction was not carried out and no workable solution was arrived. The incumbents in whose case the direction was issued by Delhi High Court approached the Calcutta High Court for a direction to the Union of India to grant them the same benefit and determine their seniority as Chargeman Grade II six months from the date of the examination, after which they were graded as Supervisor Grade A. The matter was transferred to the Central Administrative Tribunal on its establishment on 9th July, 1990. The post of Supervisor Grade A was abolished in the year 1980, therefore there was no question of holding the examination as directed by the Delhi High Court and delay was taken to be the ground to contest the matter by the Union of India. Direction was issued to the authorities to re-fix the notional seniority of the applicants by the Tribunal and fix their pay-scale and all benefits attached thereto as per rule on the basis that all the applicants came out successful in the selection tests for the post of Chargeman Grade II.

The Supreme Court expressed the inability to appreciate the attitude of the Union of India of delaying the matter. Once it was admitted that no examination could be held and further that all those persons who were working as Supervisor Grade A have become Chargeman Grade II where was the difficulty in determining the notional seniority of these persons in accordance with the directions issued by the High Court. Needless to say that despite appointment of every Supervisor Grade "A" as Chargeman Grade II the discrimination which occurred due to enforcement of the modified scheme since 1965 permitting only

few Supervisors Grade A to appear in the next examination persisted so far as those Supervisor Grade A were concerned who were appointed prior to coming into force of this scheme and were denied similar opportunity even though they came in field of eligibility. The Supreme Court held that the injustice arose as if the policy of permitting Supervisors Grade A to improve their grade would not have been introduced then the seniority amongst the Supervisors would have remained the same and those appointed in one year would have remained senior to those appointed in later year. It was not the appointment of petitioners as Chargeman Grade II from 1980, but, also the determination of their seniority which was material as it is admitted that the higher posts are available for promotion on the basis of seniority-cum-merit and it was held that the Tribunal in directing the respondents to be granted notional appointment as Chargeman Grade II from the date of their first examination, in the peculiar circumstances of the case does not appear to have committed any error of law. It was held by Their Lordship "in our opinion this was the only possible manner in which the injustice could have been remedied."

A clarification was made while dismissing the appeal with costs by the Supreme Court to following effect : "It is, however, clarified that the placement of all those Supervisors Grade "A" who came in the field of eligibility namely of securing less than 5% marks in aggregate fixed for selection as Chargeman Grade II, should be fixed by directing that they were selected for that post six months from the date of their gradation examinations."

In the present case the applicants had obtained 5% less marks in the aggregate fixed for selection as Chargeman Grade II in the first examination though they had appeared in the second examination and were graded as Chargeman Grade II and subsequently had approached for grant of notional seniority from the first examination pursuant to the direction of the Supreme Court quoted above. The Tribunal relying upon the decision of the Supreme Court has held that pursuant to the decision of the Tribunal at Calcutta and Hon"ble the Supreme Court, the notional seniority and other benefits were given to only those who could not appear in the gradation examination but not to those who appeared again in regradation examination and were graded/promoted as Chargeman Grade II subsequently. Thus, they were put in disadvantageous position vis-a-vis those who could not appear in the examination for whatever reasons. It was held that the respondents could not be discriminated vis-a-vis those who got upgradation as a result of the order passed by Calcutta Bench and affirmed by the Supreme Court. The application was allowed in the similar manner.

Learned counsel Shri Rohit Arya appearing for Union of India has submitted that the case before the Tribunal at Calcutta was having different factual matrix. The difference being the applicants before the Tribunal at Calcutta were not afforded an opportunity to appear in the subsequent examination whereas the respondent Nos. 1 to 4 in the present case who were afforded opportunity for the second time, had qualified for Chargeman Grade II. Hence, their case is distinguishable.

In our opinion, the submission raised by learned counsel is devoid of substance and sans merits. The Supreme Court has clearly directed that all those Supervisors Grade A who came in the field of eligibility namely of securing 5% less marks in the aggregate fixed for selection as Chargeman Grade II should be granted seniority as Chargeman Grade II on lapse of six months from the date of their selection as Supervisor Grade A in the gradation examination. It is not in dispute that the applicants in the first examination fulfilled this criteria of securing 5% less marks in the aggregate fixed for selection as Chargeman Grade II. Thus, after six months from their date of selection in the gradation examination had they not appeared in the subsequent examination, they were entitled without appearing in examination for notional fixation of seniority. Thus, the apprentices who were classified as Grade A for the reason that they had obtained 5% less marks in eligibility criteria fixed for Chargeman Grade II would have been granted seniority as per the Supreme Court directions, but, for their fortuitous event of appearing again in the examination and qualifying the eligibility criteria subsequently which obviously cannot come in the way of respondent Nos. 1 to 4 and they were entitled to the similar treatment on the basis of the first gradation examination which they faced as has been afforded to the applicants in the said case and there can obviously be no difficulty with the Union of India as observed by the Supreme Court as gradation of Supervisor Grade A has been abolished. There can be no discrimination made in the matter of seniority in applying the eligibility criteria in between the persons who were not afforded opportunity and those who were afforded opportunity of appearing second time in the examination, if they had obtained the similar marks in the first gradation examination. They are entitled for similar treatment. They cannot be discriminated for the fixation of notional seniority as ordered by Supreme Court.

The petition is dismissed in limine.

Writ Petition dismissed.