

(2013) 04 DEL CK 0290

In the Delhi High Court

Case No : Writ Petition (C) 2361 of 2013

Union of India and Others

APPELLANT

Vs

Nakul Dev and Another

RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 04 DEL CK 0290

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

Bench : Division Bench

Advocate : Ruchir Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM Nos. 4458/2013, 4459/2013 (exemption)

Allowed subject to just exceptions.

CM No. 4460/2013 (condonation of delay)

Allowed.

W.P. (C) No. 2361/2013

1. Issue pertains to a Flexible Complementing Scheme, envisaging in-situ promotion of Scientists vis-?-vis Recruitment Rules notified on October 29, 1983 called "Central Soil and Materials Research Station, New Delhi (Group A) Posts Recruitment Rules 1983". Pertaining to the post of Joint Director, then in the pay scale Rs. 1800-2250, as per column No. 5 of the Recruitment Rules afore-noted, the post is a selection post to be filled up firstly by promotion, failing which by transfer on deputation including short term contract; and lastly by direct recruitment.

2. The Flexible Complementing Scheme in question was notified on November

09, 1998, when the Government of India issued an Office Memorandum based on the report of the 5th Central Pay Commission. Accepting the recommendations of the Pay Commission, the Office Memorandum records that the Flexible Complementing Scheme for promotion of Scientists would require a minimum residency period as follows:-

In order to give immediate effect to the decision contained in this para, an umbrella Notification has been issued vide GSR No. 660(E) dated November 09, 1998.

3. As per the Scheme, those who have the required minimum residency period as Scientist in a particular scale would become eligible to be considered for in-situ promotion and the same would be with reference to the achievements by Scientists, tested on the anvil of creditworthy demonstrable achievements or higher level of technical merit. The object of the Scheme stands highlighted in Annexure-1 (para iii) to the Scheme which reads as under:-

(iii) The scientific culture is characterised by a few salient aspects, namely the persons involved are highly qualified and skilled technical personnel involved in creative and innovative activity, they are willing to be judged on the basis of merit and competence rather than on the basis of seniority and a hierarchical structure.

4. Paragraph 6 of the Office Memorandum reads as under:-

6. It is requested that all the Ministries/Departments, where the Flexible Complementing Scheme is in operation, may initiate action for review of the provisions of the Flexible Complementing Scheme and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decisions/guidelines being conveyed vide this office Memorandum. Results of the review may also be conveyed to the Department of Science & Technology, the nodal department for operation of the Flexible Complementing Scheme. Action for extension of the Flexible Complementing Scheme to other scientific organizations, where the same is not in operation at present, may be taken in accordance with the decision contained in para 5 of this Office Memorandum.

5. Suffice would it be to highlight that the Flexible Complementing Scheme directs to amend relevant Recruitment Rules so that they are brought in conformity with the Office Memorandum. In other words, the Office Memorandum would be an Umbrella Notification requiring existing Recruitment Rules to be formally amended if they were contrary to the Office Memorandum or were silent with respect to the Office Memorandum. To put it pithily, any conflict between the Office Memorandum and the Rules would require the Rules to give way to the Office Memorandum.

6. It is in the aforesaid backdrop of facts and legal position that relief has been granted to the respondents by the Central Administrative Tribunal.

7. The admitted facts are that the respondents were appointed as Research

Officer (Engineering) in Central Soil and Material Research Station (CSMRS). The next higher post was that of a Senior Research Officer. They were promoted to the said post on January 10, 1994. They filed OA No. 1715-16/1995 and obtained an order in their favour on October 14, 1999 requiring petitioners to promote them as Senior Research Officer with effect from June 1990. Granting benefit of retrospective promotion, arrears of pay being denied, CP No. 681/2001 was filed, which was not required to be decided on merits because the petitioners granted arrears of pay as well to the respondents.

8. It needs to be highlighted that the decision of the Tribunal to grant promotion from a retrospective date was upheld by this Court when WP(C) No. 2456/2000 and WP(C) No. 12484/2000 were dismissed in limine. Petitions seeking Special Leave to Appeal No. 19111-12/2000 were also decided by the Supreme Court and the prayer for stay was dismissed vide order dated February 01, 2002. The Civil Appeal arising out of the said Petitions seeking Special Leave to Appeal came to be decided in favour of the Original Applicants vide order dated November 14, 2007. Thus, it is clear that the grant of promotion to the Original Applicants to the post of Senior Research Officer SRO with effect from the date of their eligibility i.e. June 19, 1990 attained finality having been upheld by the Supreme Court.

9. It is unfortunate to note that the relief granted to the Original Applicants by the aforesaid litigation did not yield consequential benefits to them due to the fact that further process of providing benefits of higher grades under the Flexible Complementing Scheme was not carried out by the concerned authorities. These Scientists were thus constrained to knock the door of the Court of Law yet again stating that they ought to have been granted the next higher grades of promotion, namely, Chief Research Officer and Joint Director as per the mandate of the Flexible Complementing Scheme.

10. The claim of the Original Applicants was again denied by the concerned authorities on the ground that they do not fulfill the requirement of five years of regular service in the grade which was necessary for next promotion. It was contended by the appellant herein that the applicants having been promoted to the post of CRO with effect from October 11, 2006 they were not eligible for promotion to the grade of CRO in 1995 and consequential promotion to the post of Joint Director on completion of requisite service in the grade of CRO. The Original Applicants had to file a contempt petition and it was only on account of initiation of contempt proceedings that the Original Applicants came to be promoted as CRO with effect from February/June 1995, vide order dated February 17, 2010.

11. Be it noted that as a consequence of grant of promotion in the grade of CRO with effect from February/June 1995, the Original Applicants became senior to Dr. Rajbal Singh and Mr. S.K. Babbar who were working as CROs and who had been promoted under Flexible Complementing Scheme in-situ promotion, to the grade of Joint Director with effect from February 12, 2007. The writ petitioners

i.e. the respondents before the Tribunal took the plea that the promotion to the post of CRO being notional, the Original Applicants would not be eligible for being appointed to the post of Joint Director as the eligibility criteria for promotion to the said post is five years of regular service. The contention was opposed by the counsel for the Original Applicants stating that non grant of promotion to the applicants with effect from the date of their juniors would not only violate Article 14 and 16 of the Constitution but would also render nugatory the orders and the judgments rendered by the Courts of Law in the earlier litigation. It was also urged that the delay in constituting/conducting an Assessment Board and denial of consequential promotion to the applicants cannot result in denial of justice to the applicants and they cannot be made to suffer on account of inaction/omission on behalf of the concerned authorities.

12. The Tribunal in the impugned judgment took specific note of the peculiar facts and circumstances of the case and observed that the Original Applicants had been allowed proper promotion to the grade of SRO and CRO after the judicial intervention. It was observed that the respondents i.e. the writ petitioners before us have granted in-situ promotion under the Flexible Complementing Scheme with retrospective dates on their own and as such it would not be open for them to contend that the said benefit would not accrue to respondents for grant of subsequent promotions to the post of CRO and Joint Director. It would be apt to extract the following portion of the order of the Tribunal which reads as under:-

10. As per the seniority list, there is no dispute to the fact that the applicants are senior to Shri Babbar in the rank of CRO as the applicants have been promoted in the year 1995 though after they succeeded in the OA before the Tribunal and though the order of their promotion order has been passed later but ultimately they have got their seniority w.e.f. 1995. Shri Babbar has been promoted in the year 2007 and was granted in-situ promotion in the rank of CRO in the year 1996. We also find from the Office Order dated 19.02.2007 that the respondents after conducting the proper assessment have granted in-situ promotion to the Joint Director posts under FCS to three officers from the rank of CRO, namely, Sh. N. Chandrasekaran, Dr. Rajbal Singh and Sh. S.K. Babbar and have been granted the pay scale of Rs. 14300-400-18300 w.e.f. 12.02.2007. It is further noticed from the Office Order dated 17.02.2010 that pursuant to the directions of the Tribunal dated 9.7.2009, the applicants were promoted from the date from which they were eligible to the rank of CRO in the year 1995 i.e. the 1st applicant was granted in-situ promotion as CRO w.e.f. 14.02.1995, 2nd applicant w.e.f. 5.06.1995 and 3rd applicant w.e.f. 28.06.1995. Considering their retrospective promotion their seniority would of course be fixed w.e.f. the dates they have been granted the rank of CRO. It is well settled position in law that once the retrospective promotion is granted, the seniority and regular service would be counted w.e.f. the date from which they are being granted retrospective in-situ promotion. Thus, in the present context, the period of five years, the applicants would be completing in the grade of CRO in February/June

2000.

13. Taking the aforesaid view the Tribunal observed that the case was unique having peculiar features and suggested alternative method to secure justice to the applicants who had been denied their due benefits on account of unexplained inaction on the part of the appellant. The Tribunal directed that the Assessment Board be held to conduct the process of consideration of the applicants for promotion with effect from the year in which they would be eligible to be considered for promotion as per the FCS for the post of Joint Director. The said was directed to be done on the basis of criteria of assessment based on the perusal of the ACRs. The said criteria has in fact been laid down as Annexure-2 to the Office Memorandum dated November 09, 1998 itself. The same may be extracted for the benefit of consideration of issue as under:-

CRITERIA FOR CONSIDERING PROMOTIONS UNDER FLEXIBLE COMPLEMENTING SCHEME

(a) All officers will be first screened on the basis of gradings in the Annual Confidential Reports (ACRs) for consideration for promotion; the ACRs should be assessed on a 10 point scale giving 10 marks for "outstanding", 8 marks for "very good", 6 marks for "good", 4 marks for "average" and 0 for "poor" and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened in.

Exceptionally meritorious candidates with all outstanding gradings may be granted relaxation in the residency period, the relaxation being not more than one year on any single occasion. Such a relaxation will be limited to a maximum of two occasions in their entire career.

(b) As the procedure adopted for assessment of CRs in various Scientific Departments differ at present, it has been decided that an external member, from Departments of Atomic Energy, Space or DRDO who have developed over the years a fine tuned system of screening in meritorious Scientists may be co-opted in the selection process, till such time a system gets established in other Scientific Departments. The position will, however, be reviewed after 5 years from the date of issue of this Office Memorandum.

(c) All officers who are screened-in will be called for an interview. The performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norm as in the above Table.

(d) Field experience in research and development and/or experience in implementation of such scientific projects is compulsory for promotion of scientists recruited to the posts in the Secretariat of the Scientific Ministries/ Departments to higher grades under FCS. Field experience of at least 2 years and 5 years respectively will be essential for promotion to Scientist F and Scientist G grades respectively. However, during the transitional period, committee may relax this requirement in case of meritorious candidate.

14. Before us the writ petitioners have raised the same plea that had been raised before the Tribunal. In a nutshell, the case of the writ petitioners before us is that the respondents herein (Original Applicants) do not fulfil the eligibility criteria since they have not rendered regular service as is required under the Rules.

15. We are unable to accept the said contention for two reasons. Firstly, it is not open to the writ petitioners to contend in respect of the eligibility of the respondents inasmuch as the writ petitioners themselves have allowed the benefit of regular promotion to the post of SRO and CRO with effect from the due dates. As such it cannot be accepted that the respondents (Original Applicants) do not have regular service of five years in each grade and do not fulfil the requirement of eligibility. The respondents have been allowed the benefit of regular promotion to the grade of SRO and CRO with effect from June 1990 and 1995 and therefore the writ petitioners cannot contend that the respondents do not possess the qualification of regular service in the said grades, particularly when the said benefit has been conferred on the respondents (Original Applicants) in enforcement/compliance of the orders/judgments of the Courts of Law in the earlier round of litigation. In our view the issue stood finally settled by the earlier round of litigation and cannot be allowed to be re-agitated in the same manner and on the same terms all over again. We find that the Tribunal has come to a right conclusion in respect of grant of benefit of promotion to the to the post of Joint Director by conducting Review Assessment Board to consider the case of the applicants as per the FCS and the relevant Recruitment Rules. The Tribunal has taken the due care to observe that the case of the respondents (Original Applicants) would not be treated as judicial precedent for any other case. We find no infirmity in the order of the Tribunal particularly when the benefit has been allowed to the respondents on the basis of the fact that three of their juniors, namely, N. Chandrasekaran, Dr. Rajbal Singh and S.K. Babbar have the benefit of promotions to the higher scales which stood denied to the respondents solely due to the inaction on the part of the writ petitioners.

16. The submissions of the counsel for the writ petitioners that the order of the Tribunal suffers from an error of law since the same results in grant of retrospective promotion is in our view fallacious inasmuch as the relief accrued to the respondents (Original Applicants) is based on the implementation of the orders/judgments in the earlier round of litigation which attained finality up to the Supreme Court and the relief which has been allowed to them by one hand cannot be taken away by the another hand in the manner which is being suggested by the conduct of the writ petitioners.

17. Accordingly, the writ petition is dismissed. No order as to costs.

CM No. 4457/2013 (stay)

Since the writ petition stands disposed of, instant application seeking ad-interim relief till disposal of the writ petition stands disposed of as infructuous.