

(2004) 10 AHC CK 0174
In the Allahabad High Court
Case No : Writ Petition No. 737 (S/B) of 2003

Union of India (UOI) and Another

APPELLANT

Vs

B.B. Biswas and Another

RESPONDENT

Date of Decision : 13-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 2 ESC 985

Hon'ble Judges : P.K. Chatterji, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : Syed Husain and S.C. Misra, for the Appellant; A.K. Shukla, A. Khan, Vikash Singh and U.K. Srivastava, for the Respondent

Judgement

Jagdish Bhalla, J.—This writ petition is directed against the judgment and order, dated 3.6.2003, passed by the Central Administrative Tribunal, Lucknow in O.A. No. 41 of 2003, whereby the petitioners have been directed to consider the respondent No. 1 for his appointment on the post of Deputy Director General Military Farms (hereinafter referred to as the DDGMF) holding him to be eligible and competent to hold the said post.

2. Brief facts, which are necessary for the disposal of the present writ petition, are stated herein below :

3. According to learned Counsel, the respondent No. 1 is an Officer belonging to civilian cadre and is presently posted as Director Military Farms, Headquarters Central Command, Lucknow. Initially the first respondent was appointed on the post of Group "B" Officer as Farm Officer in the Military Farm Organisation in the year 1974 after being selected through Union Public Service Commission. Thereafter the first respondent was promoted to the post of Deputy Assistant Director Military Farms (Group B) in the year 1981 and latter to the post of Assistant Director Military Farm (Group A) in the year 1986. Subsequently, the first respondent was promoted to the post of Deputy Director in the year 1994. In 1996, the post of Deputy Director was re-designated as Director Military

Farms and since then he is working on the said post as Director Military Farms.

4. On 20.5.1960, the Government of India took a policy decision to bifurcate Remount, Veterinary and Farms Directorate in two separate Directorates i.e. (1) Directorate of Remount and Veterinary and (2) Director of Military Farms. A perusal of Annexure-2 to the writ petition indicates that the new establishment was to be operative upto 15.6.1962 and it was also provided that same was to be reviewed and revised from time to time. It is also mentioned in the said document that the establishment at Headquarters Southern, Eastern and Western Commands were to be revised alongwith the general review, whenever due. The civil appointment for which pay scale do not exist were, however, directed not be filled until the scales have been prescribed.

5. By the order dated 5.1.1965, (Annexure-3) the Chief of the Army Staff was communicated, the sanction of the President regarding allocation of the Gazetted appointment between the service and civilian officers. The post of Director, Army Headquarters-one (II) Deputy Director at Command Headquarters-two, (III) Assistant Director-three, (IV) Deputy Assistant Director-six were to be filled by the Service Officers, namely Brigadier, Colonel, Lieutenant Colonel and Major respectively whereas, one post of Deputy Director, three posts of Assistant Director and four posts of Deputy Assistant Director etc. were allocated for the civilian officers.

6. Learned Counsel for the answering respondent has contended that by necessary implication, the Circular dated 20.5.1960, is still continuing as the sanctioned strength of the post of Director (re-designated as Deputy Director General, Military Farms) and the Deputy Director (designated as Director Military Farms) is still one and three respectively. Further, the Circular dated 20.5.1960, cannot be treated to have been superseded by the letter, dated 5.1.1965. If the version given by the petitioner to the effect that the post of Deputy Director Military Farms is to be offered to the person belonging to the Service Cadre is assumed to be correct, then the same is ultra vires to the Constitution as it is contrary to the provision of Article 14 of the Constitution.

7. Elaborating further, learned Counsel for the first respondent submitted that the Tribunal has passed the impugned judgment after taking into consideration all the relevant facts and material on record and there is no infirmity or illegality in the impugned judgment. The Tribunal after considering the Circular, dated 20.5.60, and the letter, dated 5.1.65, has directed for considering promotion of the contesting respondent on the post of Deputy Director General, Military Farms, treating him to be eligible for that post but did not quash the letter dated 5.1.1965.

8. Counsel for the answering respondent further asserted that there is no difference in performance, duties and nature of work attached to the post of Deputy Director, Military Farms (now re-designated as Director, Military Farms) and Director Military Farms (now re-designated as Deputy Director General

Military Farms) and there is no bar that the post of DDGMF is to be filled by only Service Officer. The petitioners have taken a wrong stand that the post of DDGMF is to be filled by only Service Officer whereas in the department like Military Engineering Services, Civilians are being designated equivalent to Brigadiers, Major General and Lieutenant General. Thus the action of the petitioners in denying promotion to answering respondent, is hit by the Articles 14 and 16 of the Constitution.

9. Relying upon A.K. Gupta v. State of U.P. and Ors. 2003(21) LCD 112; Col. A.S. Sangwan Vs. Union of India (UOI) and Others, and P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, , learned Counsel for the first respondent contended that in view of the proposition of law laid down in the aforesaid cases, the first respondent is entitled for promotion on the post of DDGMF.

10. We have perused the aforesaid judgments. In A.B. Sangwan's case (supra), the Hon'ble Supreme Court has laid emphasis that a policy can be altered or adjusted provided there are good and weighty reasons for doing so, and there should not be any impression for acting arbitrarily. In A.K. Gupta's case, the petitioner of that case was not having promotional avenue at all as such this Court observed that there must be reasonable promotional opportunities in every thing of public service. The provision for promotion increases efficiency of the Public Service while stagnation reduces efficiency and makes the service ineffective.

11. In P.V. Joshi's case, on which first respondent has placed reliance, the Hon'ble Supreme Court has held in clear words as under :

"there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired, or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules."

12. In the present, it cannot be said that the petitioner is stagnating on one post, and there are no promotional avenues. As a matter of fact, first respondent entered into service in the year 1974 as Farm Officer in Military Farm Organisation. In the year 1981, the first respondent was promoted as Deputy Assistant Director Military Farms (Group B). Later on he was promoted to the post of Assistant Director Military Farm (Group A) in the year 1986. Ultimately in the year 1994, he was promoted as Deputy Director Military Farms. The said post has been re-designated and is known as "Director Military Farms."

13. The claim of the first respondent for promotion is to be examined in light of the order, dated 20.5.1960 and 5.1.1965 and the relevant Rules framed by the Central Government. In the year 1960, as stated above, the Remount Veterinary and Farms Directorate was bifurcated in two district Directorates, namely,

Directorate of Remount and Veterinary and Directorate of Military Farms. The paragraph 3 of the order, dated 20.5.1960, provides that the new establishments sanctioned in appendix "A" to "C" will be operative upto 15th June, 1962 and was to be reviewed and revised from time to time.

14. On 5th January, 1985 the Ministry of Defence, Government of India, after sanction of the President, communicated to the Chief of Army Staff the revised allocation between Service and Civilian Officer of the Military Farms. Perusal of this communique reveals that the post of. Director Army Headquarters is to be filled by a Service Officer of the rank of Brigadier, whereas the highest post to be filled by Civilian officer is of Deputy Director, Furthermore, the Central Government, in the year 1996 replaced the "Military Farm (Group A and B Civilian Posts) Recruitment Rules, 1977, and Military Farm (Assistant Director Military Farm) Recruitment Rules, 1983, and framed a new set of Recruitment Rules known as Military Farms (Civilian Group "A" and Group "B" Posts) Recruitment Rules, 1996 (hereinafter referred to 1996 Rules). These 1996 Rules lay down the mode of recruitment, procedure for recruitment and regulate the services of the employees and officers of civilian cadre comprising of Group "A" and "B" posts in Military Farm. A perusal of these Rules reveals that in Military Farm services the highest posts that is available to the civilian cadre is Deputy Director Military Farm, which latter on was re-designated as Director, Military Farm. The post of Director, Military Farm, which the respondent No. 1 is holding, is the highest post in the hierarchy of the officer of civilian cadre.

15. We would like to add that during the pendency of the present writ petition, the opposite party No. 1 filed an Original Application No. 313 of 2003 before the Central Administrative Tribunal praying inter alia for a direction to the petitioners to decide the representations, dated 4.6.2003, 18.6.2003 and 25.6.2003. The Central Administrative Tribunal by its order dated 8.7.2003 disposed of the aforesaid O.A. No. 313 of 2003 with a direction to the petitioners to decide the representations of first respondent by giving reasons. The representations of the first respondent were considered by the Government of India (Ministry of Defence) and by a detailed order, dated 14.8.2003, contained in Annexure RA-3; the aforesaid representations of the opposite party No. 1 have been rejected. While rejecting the representations, the Government of India has stated in the bottom line at page 2 as under :

"The issue regarding seniority in Military Farm has been clarified in para 7 of the Government letter No. A/86590/QMG/MF-/2/234 [QS] dated 10.7.2003 (Annexure-B) that there is no system of inter-service seniority for Service and civilian officers and promotions are held strictly within their cadre for Service and civilian officers. Since the post of Deputy Director General Military Farm is tenable by a Service Officer only, the Quarter Master General Branch issued order on 17.6.2003 (Annexure-11) regarding the officiating Deputy Director General Military Farm."

16. Now, we revert to the order, dated 5.1.1965, by which a revised policy

decision was taken relating to establishment of sanction of the Directorate of Military Farm. By this order, two different cadres and ratio of posts, to be occupied by the Civilian, as well as Army Officers of the Military Farms, was prescribed. Thereafter the Government of India enacted Military Farm (Group "A" and "B" Civilian Posts) Recruitment Rules, 1977. Later on another set of Rules were enacted known as Military Farm (Assistant Director Military Farm) Recruitment Rules, 1983. The First set of Rules had prescribed the mode of recruitment to the post of Deputy Director Military Farms, Deputy Assistant Director of Military Farms and Farm Officers whereas the second set of Rules prescribed the mode of recruitment for the newly created post of Assistant Director Military Farm in the Military Farm Organisation. In the year 1996 a new set of Rules known as Military Farm (Civilian Group "A" and "B" Posts) Recruitment Rules, 1996, which came into force on 24.5.1996. The Recruitment Rules, 1996 have replaced all existing Rules made earlier.

17. A perusal of aforesaid Recruitment Rules, 1996 clearly reveals that Officers belonging to the Civilian cadre of the Military Farms have a separate cadre having their own channel of promotions and the highest post, which is available to a civilian is Deputy Director Military Farm, subsequently re-designated as Director Military Farm. Non-inclusion of Deputy Director General Military Farm post in the Recruitment Rules, 1996, or any mention regarding eligibility of the Civilian Officers of the Military Farm for the post of Deputy Director General Military Farm, clearly suggests that the Civilian Officers are not eligible for appointment by promotion on the post of Deputy Director General Military Farm. On the other hand, the order, dated 5.1.1965, clearly prescribes that the said post is to be filled by a Service Officer of the rank of Brigadier. Therefore, the claim of first respondent, being an Officer of Civilian Cadre, for promotion on the post of Deputy Director General Military Farm is misconceived.

18. Thus, the Tribunal erred in observing that the organisation letter, dated 20.5.1960, indicates that the post in question was also available to the Civilian Officer. The Tribunal while making this observation lost sight of the fact that the life of the said letter, dated 20.5.1960, was only upto 15th June, 1962 and was to be reviewed and revised from time to time and the first respondent has failed to bring on record any notification of the Ministry of Defence extending the life of the letter, dated 20.5.1960. The Tribunal has also committed an error in holding that the letter, dated 5.1.1965, is not a policy decision whereas perusal of Annexure-3 to the writ petition reveals that the Ministry of Defence has allocated Gazetted appointments in Military Farm after the sanction of the President and the same was communicated to the Chief of the Army Staff by the Ministry of Defence vide communique dated 5th January, 1965. Thus, the order, dated 5.1.1965, being a subsequent order, would prevail upon the Government Order, dated 20.5.1960, and no benefit can be derived from the order, dated 20.5.1960, after coming into existence of the order dated 5.1.1965, which was issued after due sanction of the President and further the earlier policy decision, dated 20.5.1960, was operative only upto the date specified in the order itself.

19. It would also be relevant to mention that the question relating to constitution, nomenclature of post, cadre, prescription of qualification and terms and conditions of service, promotional avenues and the criteria for filling-up the post etc. are exclusively related to administrative field and the Court cannot insist for including any post in the promotion cadre, or the procedure which should be adopted by the employer. The State Government, or the Central Government, as the case may be, is competent to amend, or alter/change rules relating to the service for any post provided it is not in conflict with any provisions of Constitution or Statutory rules.

20. For the reasons aforesaid, we are not in agreement with the finding recorded by the Central Administrative Tribunal and the judgment and order, dated 3.6.2003, passed in O.A. No. 41 of 2003, contained in Annexure-1 to the writ petition, is liable to be set-aside.

21. Accordingly, the writ petition is allowed and a writ in the nature of certiorari is issued setting-aside the judgment and order, dated 3.6.2003 passed by the Central Administrative Tribunal, Lucknow.

22. Parties will bear their own costs.