

(2011) 09 DEL CK 0561

In the Delhi High Court

Case No : Writ Petition (C) No. 1505 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

L.R. Meena and Another

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Director General, Additional Director General and Deputy Director General of
Meteorology (Group A posts) Recruitment Rules, 1994 — Rule 5, 9(3)
Industrial Disputes Act, 1947 — Section 33B

Citation : (2011) 09 DEL CK 0561

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : R.V. Sinha and Sangita Rai, for the Appellant; Shrigopal Aggarwal and Naresh Kaushik, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, C.J.—Calling in question the legal defensibility of the order dated 14th December, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the tribunal") in OA No. 718/2010, the Union of India and its functionaries have invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and prayed for issue of a writ of certiorari for quashment of the same.

2. The facts which are necessary to be stated for the purpose of adjudication of this writ petition are that the first Respondent approached the tribunal in OA No. 2846/2009 for issuance of a direction to the Respondents therein to take action on the recommendations of the Departmental Promotion Committee (DPC) and the tribunal vide order dated 12th October, 2009 directed that the applicant therein was at least entitled to know the reasons why the recommendations made by duly constituted DPC had not been given effect to and, accordingly, directed the Respondents therein to deal with the representation dated 24.09.2009. After the said order, the present Petitioners, who were the

Respondents before the tribunal, gave the following information to the first Respondent herein:

Subject: Representation dated 24.9.2009 from Shri LR Meena, DDGM (ISSD) reg. promotion to the post of ADGM on implementation of DPC.

The undersigned is directed to refer to the subject mentioned above and in pursuance of order dated 12.10.2009 of Hon. CAT, Principal Bench in OA No. 2846/2009 and order dated 1.12.2009 in MA No. 2400/2009 in OA No. 2846/2009, the matter has been dealt with in accordance with law and the following information is passed on to the applicant:

2. The point wise information sought by Shri LR Meena in his representation dated 24.9.09 and the reply thereof is tabled below:

Sl.

No.

Point wise information sought by Shri LR Meena

Reply

2.

The recommendation of the duly constituted Departmental Promotion Committee approved by the DoPT/UPSC may kindly be made effective with the approval of competent authority, if required, in the light of existing recruitment rules.

Recommendation s of DPC are under process.

3.

Since he is holding the post of DDGM since 30.11.2005 and, therefore, he may be considered for promotion from his date of eligibility in the light of existing vacancies and recruitment rules for the post of ADGM as per the Supreme Court judgment dated 4.03.2.193 in Civil Appeal No.2954-55 and 2956-57 of 1980- Y.V. Rangelah and Ors. v. J. Sreenivasa Rao and Ors.

Action is underway to consider the DPC recommendation by competent authority.

4.

The Bio-data called for the post from DDGMs for the next promotion may be kept in abeyance till recruitment rules are approved by the competent authority and notified.

Promotions are considered as per extant RRs.

3. After the said information was furnished, the first Respondent preferred the OA No. 718/2010 for issue of a command to the Petitioners to take necessary action on the recommendations of the DPC and to accord the benefit of promotion to him from the date he is entitled to. It was asserted before the

tribunal by the applicant therein that he is in the cadre of Deputy Director General of Meteorology in Indian Meteorology Department (IMD) and a DPC for promotion to the post of Additional Director General Meteorology (ADGM) met in February, 2009 to fill up the existing two vacant posts, namely ADGM (Services) and ADGM (Sat. Com.) and two more posts as they fell vacant in the same cadre (due to retirement of two officers), but the departmental authorities did not act on the recommendations of the DPC despite the steps taken for filling up the promotional posts. It was urged that the department, instead of carrying out the recommendations of the DPC held in 2009, decided to hold a meeting of the Assessment Board by letter dated 16.9.2009 for considering the cases of eligible scientists in the cadre of Scientist D (Director) and Scientist E (DDGM) to the next grade. It was put forth before the tribunal that the Director General, Additional Director General and Deputy Director General of Meteorology (Group "A" posts) Recruitment Rules, 1994 (for short "the 1994 Rules") were still in force and promotions have to be regulated as per the said Rules. It was urged that the Respondents therein had admitted that the promotions have to be considered as per the recruitment rules till they are amended. It was contended that despite the post having fallen vacant and a DPC having been held as per the prescribed procedure, the department has not filled up the vacancies and a direction was required to give effect to the recommendations of the DPC. Reliance was placed on the decisions rendered in *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, and *Nirmal Chandra Bhattacharjee and Others Vs. Union of India (UOI) and Others*,

4. The stand put forth by the applicant before the tribunal was combated by the department contending, inter alia, that the amendment of the recruitment rules was underway and, therefore, the department and justified in withholding the result of the DPC. It was further set forth that the applicant had already been promoted to the grade of Scientist "E" and assumed the charge of that post.

5. A counter affidavit was filed by the Union Public Service Commission (UPSC) to the effect that DPC met on 25.2.2009 to consider the eligible officers for promotion to the grade of ADGM in the IMD for the vacancy year 2009-2010 for three vacancies and the applicant was considered by the DPC and assessed to be fit for the promotional post. 6. The tribunal referred to the decisions in *Nirmal Chandra Bhattacharjee (supra)* and *Nally Bharat (supra)* to highlight the concept of avoidance of injustice and hardship and proceeded to state as follows:

8. It is clear from the above facts of the case that the Respondents have acted most unjustly against the legitimate interests of the Applicant by withholding the result of the DPC for now nearly two years to thwart his promotion on the ground that the Recruitment Rules, which cannot be justified only on the ground that the extant Recruitment Rules are being amended. The action of the Respondents is not maintainable as it is in the teeth of the Recruitment Rules, which continue to hold the field till amended.

9. In the light of the above discussion, the OA succeeds. The Respondents are

directed to act on the recommendations of the DPC of 25.02.2009. The Respondents shall not take the plea that the panel has become inoperable due to the flux of time because in the first place the panel has illegally been suppressed and second, it has never been revealed. Since the fourth Respondent, UPSC, has already stated that the Applicant has been declared "fit" for promotion, he shall be promoted to the grade of Additional Director General Meteorology, subject to other administrative requirements. This direction would be complied with within one month of the receipt of a certified copy of this order. No. costs.

7. Assailing the aforesaid order, it is submitted by Mr. R.V. Sinha, learned Counsel for the Petitioner that the tribunal has fallen into error by issuing a direction for appointment of the first Respondent to the post in question despite the fact that by efflux of time, life of the select list had become extinct. It is also urged by him that the Respondent No. 1, in the meantime, has been extended the benefit under Flexible Complementing Scheme (FCS) and by virtue of that, he has been brought into the higher grade, that is, Scientist "F" and, therefore, the entire exercise has become futile. It is his further submission that when a conscious decision was taken not to fill up the post and to amend the rules, No. right had accrued in favour of the first Respondent and, therefore, the tribunal could not have issued a direction to promote him to the grade of ADGM. He has commended us to the decisions in, M.P. Electricity Board, through the Chief Engineer, M.P.E.B. Vs. Virendra Kumar Sharma, and Girdhar Kumar Dadhich and Another Vs. State of Rajasthan and Others,

8. Mr. Shrigopal Aggarwal, learned Counsel appearing for Respondent No. 1, countering the aforesaid submissions of Mr. Sinha, has contended that when the Respondent No. 1 was declared fit by the UPSC and the select list was alive, there was No. justification or warrant not to confer the benefit of promotion on him. It is canvassed by him that under the Flexible Complementing Scheme for promotion to the grade of Scientist "F", there is No. promotion to the grade of Scientist "F" as it is under a scheme and in any case, the said benefit was bestowed on 1st April, 2010, whereas he was found fit for promotion by the DPC on 1st February, 2010. The learned Counsel would further propound that the FCS is like ACP and has nothing to do with promotion and the promotional post in the category of ADGM, which is a higher post and, hence, the controversy has to be restricted to the selection and appointment to the promotional post and the submission put forth by the Petitioners that in view of the extension of benefit under the scheme, the grievance of the Respondent No. 1 has been mitigated and the whole endeavour becomes an exercise in futility is totally unacceptable. The learned Counsel has drawn inspiration from Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, and A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

9. To appreciate the rivalised submissions raised at the Bar, we have perused the order of the tribunal and the material brought on record. At the very outset, we would like to make it clear that the upgradation of the first Respondent under the

FCS has nothing to do with his promotion as the post of ADGM has been accepted to be a higher post. Thus, the issues that really deserve to be addressed are whether after the DPC had recommended the name of the first Respondent for the promotion to the higher post, whether the authorities were entitled not to give effect to the said recommendation on the ground that the amendment to the Rules were under consideration and a conscious decision was taken not to fill up the posts and further whether after expiry of two years, the tribunal could have directed to confer on the Respondent No. 1 the benefit of promotion. Be it noted, there is No. dispute as regards the factual score. The tribunal, as has been stated earlier, has proceeded on the ground of just and fair conduct by the employer. The tribunal has placed reliance in the case of Nirmal Chandra Bhattacharjee and Ors. (supra), wherein it has been held as follows:

Technically the Tribunal appears to be correct in its view that once in consequence of restructuring the Appellants were placed in class "C" they could not be selected against class "C" posts reserved for class "D". But practically it results in such glaring injustice that the benefit which the Petitioners got in consequence of restructuring made them worse off by depriving them of their chance of promotion to higher scale. The effect of the Tribunal's order has resulted in pushing down the Appellants from class "III" post and in some cases even from still higher post as they had been granted second promotion as well to the post which they held in 1983. The hardship which stares in the face is that the Appellants as a result of restructuring on which they had No. control were placed in class "C" but thereby they lost the chance of moving on the promotional ladder had they chosen to remain in class "D". In other words by upgradation and restructuring of posts the Appellants became worse off than what they would have been if they would have continued in class "D". Putting it differently the Appellants who by virtue of restructuring came in class "C" could not be promoted to the post of Ticket Collector which is in class "III". Whereas the Respondents who had been rejected in the selection along with the Appellants and could not come in 65 per cent quota of the "D" class when it was restructured, have chance of being promoted against 33 1/2 per cent in class "C" to the post of Ticket Collector and then further on. By this process the juniors and those who could not be selected, are likely to become senior and better placed than those who were placed in class "C". That indeed would be very unfair. No. rule or order which is meant to benefit employees should normally be construed in such a manner as to work hardship and injustice specially when its operation is automatic and if any injustice arises then the primary duty of the courts is to resolve it in such a manner that it may avoid any loss to one without giving undue advantage to other.

10. We have referred to the aforesaid passage to appreciate the factual scenario and how intervening circumstances cannot worsen benefit that has been already availed of. In our considered opinion, the principle laid down in the said decision is not attracted to the case at hand.

11. It is also noticeable that the tribunal has placed reliance on Management of M/s MS Nally Bharat Engineering Company Ltd. (supra), wherein emphasis has been laid on natural justice, fairness of procedure and fundamental principle of good administration showing that justice should not only be done but seen to have been done. The said decision was rendered while interpreting the scope of Section 33-B of the Industrial Disputes Act, 1947. On a perusal of the aforesaid decision, we have no trace of doubt that the ratio laid down therein in no way pertains to a list that has emerged in this case.

12. The thrust of the matter as we perceive is whether the authorities were justified in not giving effect to the recommendations of the DPC on the foundation that the Rules were sought to be amended and further whether the first Respondent had any ripened or fructified right. In the case of Girdhar Kumar Dadhich and Anr. (supra), it has been held as follows:

17. In State of Rajasthan and Others Vs. Jagdish Chopra, this Court held: (SCC pp. 164-65, paras 9 and 11)

9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In Ravishwar Manjhi and Others Vs. State of Jharkhand, this Court opined:

(SCC p.564, para 9)

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

It was further held: (Amrendra Kumar case, SCC p.565, para 13)

13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period."

* * * *

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See Shankarsan Dash Vs. Union of India, and Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others,

13. From the aforesaid decision, it is quite vivid that no right accrues in favour of a candidate because his name features in the select list. True it is, in the case

at hand, it was not a select list for the first appointment. It was a recommendation by the DPC. The authorities concerned have taken a conscious decision not to give effect to the recommendations of the DPC as the process was on to amend the Rules because of the conscious decision by the competent authorities of the department. The tribunal, as is manifest, has not taken note of the fact of conscious decision and also has been oblivious of the fact that the list which had a life span of one year had expired.

14. In this context, we may fruitfully refer to a passage from a three-Judge Bench decision in *Jatinder Kumar and Others Vs. State of Punjab and Others*, which is as follows:

The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission. The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same.

15. In *State of Orissa and Anr. v. Rajkishore Nanda and Ors.* 2010 (6) SCALE 126, it has been held thus:

14. A Constitution Bench of this Court in *Shankarsan Dash Vs. Union of India*, held that appearance of the name of a candidate in the select list does not give him a right of appointment. Mere inclusion of candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (see also *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, ; *Union of India Vs. S.S. Uppal and another*, ; *Bihar Public Service Commission and another Vs. State of Bihar and others*, *Simanchal Panda Vs. State of Orissa and Others*, *Punjab State Electricity Board and Others Vs. Malkiat Singh, Union of India (UOI) and Others Vs. Kali Dass Batish and Another*, *Divisional Forests Officers and Others Vs. M. Ramalinga Reddy*, ; *Subha B. Nair and Others Vs. State of Kerala and Others*, ; *Mukul Saikia and Others Vs. State of Assam and Others*, ; and *S.S. Balu and Another Vs. State of Kerala and Others*,

16. Recently, in *Deepak Agarwal and Another Vs. State of Uttar Pradesh and Others*, , wherein their Lordships referred to the decisions in *Dr. Ramulu and*

another, etc. Vs. Dr. S. Suryaprakash Rao and others, and Union of India and others Vs. K.V. Vijesh, and opined that for reasons germane to the decisions, the Government is entitled to take a decision not to fill up the existing vacancies on the relevant date. In Deepak Agarwal and Anr. (supra) it has also been held that a conscious decision can be taken in public interest. It is worth noting in paragraphs 31 and 32 their Lordships have held thus:

31. This Court in *Jai Singh Dalal and Others Vs. State of Haryana and Another*, has held as under: (SCC p.606, para 7)

7. It is clear from the above pleadings that in 1990 the State Government resolved to resort to special recruitment to the Haryana Civil Service (Executive Branch) invoking the proviso to Rule 5 of the Rules. Pursuant thereto, it issued the Notifications dated 20-12-1990 and 25-1-1991. The names of the candidates were forwarded by the State Government to the HPSC for selection. The HPSC commenced the selection process and interviewed certain candidates. In the meantime, on account of an undertaking given by the Advocate General to the High Court at the hearing of CWP No. 1201 of 1991 and allied writ petitions, the State Government was required to forward the names of the candidates belonging to two other departments of the State Government. Before it could do so, the new Government came into power and it reviewed the decision of the earlier Government and found the criteria evolved by the earlier Government unacceptable and also noticed certain infirmities in the matter of forwarding the names of eligible candidates. It, therefore, resolved to rescind the earlier Notifications of 20-12-1990 and 25-1-1991. It will thus be seen that at the time when the writ petition which has given rise to the present proceedings was filed, the State Government had withdrawn the aforesaid two notifications by the Notification dated 30-12-1991. The stage at which the last mentioned notification came to be issued was the stage when the HPSC was still in the process of selecting candidates for appointment by special recruitment. During the pendency of the present proceedings the State Government finalised the criteria for special recruitment by the Notification of 9-3-1992. Thus, the HPSC was still in the process of selecting candidates and had yet not completed and finalised the select list nor had it forwarded the same to the State Government for implementation. The candidates, therefore, did not have any right to appointment. There was, therefore, No. question of the High Court granting a mandamus or any other writ of the type sought by the Appellants. The law in this behalf appears to be well settled.

32. Similarly, this view has been reiterated by this Court in *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*, , *H.S. Grewal Vs. Union of India (UOI) and Others*, and *Rajasthan Public Service Commission Vs. Chanan Ram and Another*, This Court in *Rajasthan Public Service Commission* case¹¹ has held that it is the rules which are prevalent at the time when the consideration took place for promotion, which would be applicable. In SCC para 17, it has been held as follows: (SCC pp.218-19)

17. In *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*, a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ., had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In para 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously No. candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for the Respondent-writ Petitioner, stated that it is not his case that the writ Petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5-11-1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ Petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the Appellants and against the Respondent-writ Petitioner.

17. From the aforesaid pronouncement of law, it is graphically clear that there was No. vested or accrued right in favour of the first Respondent to be promoted solely because his name was recommended and he was found fit for promotion. The amendment to the Rules was underway. The tribunal has not addressed to the rationale in that regard. It has adopted an erroneous approach by relying on decisions which deal with concept of natural justice and fairness. In our considered opinion, the reasons on which the judgment is founded are wholly unsustainable and, accordingly, we conclude and hold that the decision rendered by the tribunal is sensitively susceptible and we quash the same.

18. Resultantly, the writ petition is allowed without any order as to costs.