
(1996) 10 SC CK 0216

In the Supreme Court Of India

Case No : Civil Appeal No. 2193 of 1993

Union of India (UOI) and Others

APPELLANT

Vs

Uma Kant Misra

RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

Citation : (2001) 9 SCC 226

Hon'ble Judges : S. Saghir Ahmad, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kuldip Singh and; S. Saghir Ahmad, JJ.-Uma Kant Misra, respondent in the appeal herein was selected by the Union Public Service Commission as Senior Scientific Officer Grade I in the year 1985 as a direct recruit. Because of the ban on recruitment during the period from 1985 to 1987, the offer of appointment was not issued to the respondent. It was only on 25-7-1988 that the respondent was appointed to the post he was selected for. It is not disputed that for promotion to the post of Principal Scientific Officer, a person must have 5 years" service as Senior Scientific Officer Grade I. The DPC sat in the year 1989 to consider promotions to the cadre of Principal Scientific Officer. Since the respondent had not completed 5 years" service in the cadre to which he was recruited, he was not eligible under the Rules to be considered by the DPC. The respondent challenged the action of the Government before the Central Administrative Tribunal, Jabalpur Bench. Relying on Rule 8(2) of the Defence Quality Assurance Rules, 1979, the Tribunal allowed the application and directed the Department to constitute a fresh DPC and consider the respondent with retrospective effect. This appeal by the Union of India is against the judgment of the Tribunal. Rule 8(2) of the Rules is as under:

"8. (2) If any junior person is eligible and is considered for appointment on promotion against vacancies in any of the grades, all persons senior to him shall also be so considered notwithstanding the fact that they may not have rendered

prescribed minimum service in the grade."

2. A plain reading of the Rule shows that where a junior person is eligible and is considered for appointment by promotion, then any person senior in the seniority list shall also be considered even though he has not rendered the prescribed minimum service in the grade. As stated above, the respondent was appointed in the year 1988. The seniority list had been circulated some time in the year 1986. There was no question of the respondent's name being included in the seniority list which was framed and circulated two years before his appointment. The fact remains that on the date of appointment in the year 1988, and also on the date when the DPC was constituted, the seniority of the respondent had not been determined. Rule 8(2) quoted above could have only been attracted had the seniority position of the respondent vis-?-vis his other members of the cadre were available. The respondent's seniority was not protected in the case. We are, therefore, of the view that the Tribunal fell into patent error in directing that the respondent be considered for promotion in view of Rule 8(2) of the Rules.

3. Before parting with this order, in fairness to Mr V.C. Mahajan, learned counsel appearing on behalf of the Union of India, we may mention that Mr Mahajan has vehemently contended that because of the ban on direct recruitment for a period of 3 years, the quota rule had been struck down. This is a matter which has to be determined by the authorities. There is no material before this Court to come to a conclusion either way.

4. We, therefore, allow this appeal and set aside the impugned judgment of the Tribunal and dismiss the application filed by the respondent before the Tribunal. We, however, direct the Union of India to determine the seniority of the respondent. No costs.