
(2007) 01 DEL CK 0081
In the Delhi High Court
Case No : W.P (C) No. 20812 of 2005

Union of India (UOI)	Vs	APPELLANT
Rajendra Roy and Others		RESPONDENT

Date of Decision : 12-01-2007

Acts Referred:

Citation : (2007) 1 ILR Delhi 378 : (2007) 1 ILR Delhi 362

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : J.P.Sharma, for the Appellant; In person, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—Union of India challenges the order dated 8.7.2005 passed by the Central Administrative Tribunal, Principal Bench, New

Delhi (for short the "Tribunal") in O.A. No. 192/05 filed by the respondent. Tribunal, by the impugned order, gave a direction to the petitioner

herein to consider the respondent for promotion to the post of Junior Administrative Grade (JAG) from the date on which the vacancy in JAG

occurs on his turn, if it is prior to 31.1.2005 (the date of super annuation of the respondent) on notional basis if the applicant's name figures in the

select list recommended by the DPC/Review DPC which is approved by the Competent Authority and acted upon. It is further directed that in

case the respondent's turn for promotion to the post of JAG comes against a vacancy which has arisen on a date prior to the date of his super

annuation, he shall be promoted notionally with all consequential benefits of pay and allowances and for fixation of his pension and other retiral and

pensionary benefits as per rules.

2. The short question which arises for consideration in this petition is whether the respondent who had superannuated before the consideration of his case for promotion by the DPC, could be granted promotion on a notional basis, by requiring his case to be considered by the DPC, as and when it is held, and in the event of his being empanelled by the DPC, from the date the vacancy against which he could be promoted becomes available. The Tribunal has answered this question in favor of the respondent and that is how the Union of India is before us in this writ petition to challenge the said direction issued by the respondent.

3. Respondent No. 1 was initially a junior grade officer of the Indian Information Service (IIS) Group "A" which is the junior time scale in the service. On 29.1.1997, he was promoted to the Senior Grade on a regular basis. This is the feeder post for promotion to the post of JAG.

Petitioner did not hold the Departmental Promotion Committee Meetings over the years with the result that the respondent was denied

consideration for promotion. He was due to retire on 31.1.2005.

4. In these circumstances, he approached the Tribunal in 2005. He claimed that there were 55 clear vacancies in the promotional post during the

past three years i.e. 2002, 2003 and 2005. These posts were being filled only by granting ad hoc promotions. 50% of the posts in the grade of

JAG were to be filled by promotion while the remaining 50% were to be filled by direct recruitment through UPSC. Petitioner was making direct

recruitment regularly but the exercise of holding the DPC meeting for consideration of cases for promotion were being held rarely leading to

stagnation of persons like the respondent. He also claimed that he was senior to one Monideepa Mukherjee who had already been promoted to

the grade of JAG on 10.7.2002.

5. So far as the claim of the respondent with regard to Miss Monideepa Mukherjee being junior to her was concerned, the same was disputed by

the respondent. It was stated that Monideepa was in fact senior to the respondent. She was included in the panel for promotion for vacancies for

the year 2001-02 and was promoted to JAG in July 2002 and at that stage the respondent could not be promoted for want of adequate number of

vacancies. The promotions made in July 2002 were subject to certain pending litigations which were disposed of with a direction to the petitioner

to draw up a revised seniority list of IIS Group `A" as on 31.3.2000 after inviting objections.

6. Petitioner explained that in compliance with these orders the fresh seniority list in the junior grade of IIS Group A was prepared and circulated

on 20.2.2004. The respondent figured at Serial No. 344 while Monideepa figured at Serial No. 345. The seniority list of senior grade of IIS

Group `A" was thereafter prepared by holding review DPCs. It was circulated on 22.7.2004 and according to this list Monideepa was at Serial

No. 95 while the respondent was at Serial No. 106. Since the feeder post for consideration of promotion to the grade of JAG was senior grade of

IIS Group A, Monideepa was clearly senior to the respondent. It appears that the respondent never challenged this seniority list of senior grade of

IIS Group "A".

7. Petitioner also explained that a proposal had been sent to UPSC for convening of review DPC for consideration of promotion to the grade of

JAG for the years 1998-99, 2000-01 and 2001-02 and also to recommend panels for promotion to JAG for vacancies for the years 2002-03,

2003-04 and 2004-05. However, the DPC could not be convened due to non-compliance of ACRs in respect of certain officers in the zone of

consideration.

8. The petitioner also stated that the case of the respondent was entitled to be considered for promotion to JAG against the vacancies which had

occurred during the year 2004-05. However, in view of the super annuation of the respondent before the convening of the DPC, his case could

not be considered by the DPC, and he cannot be granted promotion on actual or notional basis. On the other hand, the respondent claimed that his

case should be considered by the DPC for the vacancies pertaining to the year 2004-05 up to the date of his retirement i.e. 31.1.2005 and that he

should be granted notional promotion if he is empanelled by the DPC.

9. The Tribunal posed the query ""The question is whether the applicant shall not be entitled to promotion from a date prior to the date of his super

annuation on 31.1.2005 even if he is empanelled by the DPC and his claim for promotion is considered against a vacancy which has arisen prior to

31.1.2005 even notionally?"" and decided it in favor of the respondent by placing reliance on Union of India and Ors. v. N.R. Banerjee and Ors.

1997 (1) SLR 751 and DOP & T O.M. No. 22011/4/08/Estt.(DS) dated 12.10.1998.

10. Before us, the learned Counsel for the petitioner contended that promotion cannot be given from the date of the occurrence of a vacancy. It

could only be granted from the actual date after the panel had been prepared and approved by the Competent Authority. It was also contended that

it would lead to an anomalous situation that a retired person is given promotion from the date of occurrence of vacancy, while a serving person is

given promotion from the date of his actual promotion following the approval of the panel. Learned Counsel for the petitioner also relied upon two

decisions of the Hon"ble Supreme Court reported as Union of India and Others Vs. K.K. Vadera and others, and Baij Nath Sharma v. Hon"ble

Rajasthan High Court at Jodhpur and Anr. 1988 SCC 1754.

11. On the other hand the respondent who appears in person, supports the decision of the Tribunal. He states that the petitioner itself has issued

order No. 71/05-IIS dated 13.6.2005, filed by him as Annexure R-1 with his counter affidavit whereby they have given notional promotion to a

large number of similarly situated colleagues of the respondent who had also retired before the date of issuance of the promotion orders. The

petitioner could not treat the respondent differently and their conduct is discriminatory. He also relies on the decision of the Hon"ble Supreme

Court in Karam Singh v. Union of India and Ors. 1988 1 SLR 316 and of the Division Bench of the Punjab and Haryana High Court in Hamesh

Mahajan v. Haryana Vidyut Prasaran Nigam Ltd. and Ors. 2004 (5) SLR 276 wherein the Courts had directed grant of notional promotion to

those who had retired from service.

12. The feeder post for promotion to the post of JAG is Senior Grade of IIS Group "A". The seniority list of Senior Grade of IIS Group "A" as

revised on 22.7.2004 is final and binding since the respondent though ranked junior to Ms. Monideepa Mukherjee did not challenge the same. He

is ranked at Sl. No. 106 as against Monideepa's ranking at Sl. No. 95. It is not the claim of the respondent that any other person, ranked lower to

him in seniority as per the seniority list of 22.7.2004 has been promoted to the grade of JAG, while he has been ignored.

13. The question arising before us is already settled by the Hon"ble Supreme

Court in K.K. Vadera (supra) and Baijnath Sharma (supra). In K.K.

Vadera, the Tribunal had directed that promotions should be granted to the respondents with effect from the date on which the promotional posts

were created. The Supreme Court set aside this direction of the Tribunal while holding as follows:

We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post

falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which

such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment

Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from

the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and

assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.

14. In Baijnath Sharma (supra), the appellant was a judicial officer of the Rajasthan Judicial Service. While he was in service, Rajasthan High

Court took an administrative decision not to make further promotions to the Rajasthan Higher Judicial Service till recruitment from the bar was

made, as otherwise, it would lead to imbalance between the strength of promotees and the direct recruits. He retired on superannuation on

1.6.1996. His grievance was that before his retirement there were vacancies in promotion quota against which he could be considered for

promotion to Rajasthan Higher Judicial Service. He claimed promotion from the date of the vacancies arose against promotion quota.

15. It was found as a matter of fact that no Judicial Officer junior to the appellant was promoted before his superannuation. The appellant sought

notional promotion from the date of occurrence of vacancy against which he could be promoted.

16. The Hon"ble Supreme Court held that the appellant would certainly have a grievance if any of his juniors had been given promotion from a

date prior to his superannuation which was not the case before the Court. The Court also noticed that there was no rule under which promotion

could be granted from the date of occurrence of the vacancy. The Court relied upon its earlier decision in K.K. Vadera (supra) and dismissed the appeal of Baijnath Sharma. This decision in our view, seals the fate of the respondent. No doubt, the Hon''ble Supreme Court regretted the inaction on the part of the High Court to make timely promotions since delays and inaction, resulted in deprivation of promotion to the deserving candidates without any fault of theirs. The Supreme Court also expressed the desire that such occurrences should not recur. But that by itself cannot be give a right to the respondent to go against the jurisprudence evolved in the main part of the judgment.

17. The Tribunal placed reliance on the decision of the Hon''ble Supreme Court in Union of India and others Vs. N.R. Banerjee and others, . In the facts of this case, this appears to be misplaced.

18. In N.R. Bannerjee, the main issue before the Hon''ble Supreme Court was whether the direction issued by the Tribunal to the Government to ignore the ACRs of the later year i.e. 1994 for consideration of candidates eligible up to March, 1993 was correct or not. The Hon''ble Supreme Court while going through the procedure laid down by the Ministry of Personnel and Training undoubtedly laid down the guidelines and procedure that should normally to be followed with punctuality with a view to avoid situations like the present. However, there is nothing in the said judgment which can lead to the conclusion that the respondent should be granted notional promotion from the date he might be empanelled by the DPC and the panel is operated upon, even after his superannuation.

19. Reliance placed by the Tribunal on OM No. 22011/4/08/Estt. (DS) dated 12.10.1998 issued by the DOP & T also appears to be misplaced.

The Tribunal has read words into the language used in the said office memorandum which presumably was issued after the judgment of the Supreme Court in the case of Baijnath Sharma (supra). The relevant extract of the said office memorandum reads as follows:

according to the legal opinion it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are also considered while preparing year wise, zone of consideration/panel, and consequently, their juniors to consider (in their places), who would not have been

in the zone of consideration if the DPC(s) had been held in time.

This is considered imperative to identify the correct zone of consideration for relevant year(s)

This part of the office memorandum is in consonance with the judgment of the Supreme Court in Baijnath Sharma (supra) since it provides that the

superannuated employees should not be considered by the DPC, which is being held after their superannuation and in their place juniors, who are

otherwise eligible should be brought into the zone of consideration.

20. However, we notice that, curiously, the next two sentences used in the same office memorandum go contrary to the earlier part. It goes on to

say ""names of the retired officials may also be included in the panel(s) such retired officials would, however, have no right for actual promotion"".

21. While as per the earlier part the superannuated employees are not to be placed in the zone of consideration/panel, contradicting the said

statement, the later part states that names of the retired officials may also be included in the panel. The use of the expression ""actual promotion"" in

the following sentence gives the impression that the same has been used in contradistinction with ""notional promotion"". It appears that the Tribunal

was influenced by the latter portion of the said OM and, Therefore, construed it in favor of the respondent.

22. We feel that the Tribunal erred on this count as well. The thrust of the OM, which was issued soon after the decision of the Hon''ble Supreme

Court in Baijnath Sharma (supra) is to clarify that the superannuated employees should not be considered for promotion where the DPC is being

held after their superannuation. The later part of the OM, which is contradictory to the dictum of the Hon''ble Supreme Court in Baijnath Sharma

(supra) obviously cannot be given effect to. Pertinently even the said OM does not in clear terms say that the retired/superannuated employees, if

considered and recommended by the DPC would be granted notional promotion from a back date. However, the Tribunal has read this aspect

into the OM which, in any event, it could not have done.

23. In view of the aforesaid, we find that the decision of the Tribunal is erroneous and the directions given therein are contrary to the judgments of

the Hon''ble Supreme Court in K.K. Vadera (supra) as well as Baijnath Sharma (supra).

24. It is also contended by the respondent that similar directions have been given by the Hon''ble Supreme Court in Karam Singh (supra). We cannot accept this contention of the respondent for the simple reason that the short order passed by the Supreme Court in Karam Singh does not deal with this issue. It appears that no such issue was raised before the Hon''ble Supreme Court in that case and no arguments were advanced in this regard. The Hon''ble Supreme Court also did not consider the legal issue while issuing the said direction. It cannot be cited as an authority on the propositions under consideration. The other case relied upon by the respondent i.e. Hamesh Mahajan (supra) is not applicable to the facts of the present case. In that case on a subsequent revision of seniority the petitioner ranked senior to one Mr. Ramesh Chand Sehgal, who had apparently been promoted. In these circumstances, the High Court rejected the defense of the respondents that the petitioner could not be granted benefits of selection grade and notional promotion with retrospective effect since he had already retired on 31.5.1999. As noticed hereinabove, the respondent has not made out a case of his being superseded by any of his juniors. He had claimed that Ms. Monideepa Bannerjee had superseded him. However, that claim is not correct since Monideepa Bannerjee ranked higher to the respondent in the senior grade of IIS Group "A".

25. Coming to the charge of discrimination against him by the petitioner, on the basis of that, the petitioner had promoted a large number of Sr.

Grade officers of IIS Group "A" to JAG notionally w.e.f 10.7.2002 and on actual basis w.e.f. from the date of the taking over a charge, many of

whom in the meantime had retired. We find even this claim to be misplaced. He claims that four of his colleagues, who retired like him in the Sr.

Grade of IIS Group "A" have been given notional promotion to Junior Administrative Grade from retrospective date i.e. 7.2.2002. However, what

is being missed by the respondent is that all the persons promoted retrospectively notionally w.e.f. 10.7.2002 to the Junior Administrative Grade of

the service were senior to the respondent as per the revised seniority list as on 31.3.2000. Had a junior of the respondent been promoted to the

Junior Administrative Grade, certainly the respondent would have had a valid and enforcement claim to seek notional promotion from retrospective

date i.e. from the date on which the junior was promoted. But this is not his case.

26. In view of the aforesaid, we set aside the impugned order passed by the Tribunal in OA No. 192/2005 dated 8.7.2005 and allow the present writ petition leaving the parties to bear their respective costs.