

(2009) 07 DEL CK 0017

In the Delhi High Court

Case No : Writ Petition (C) No. 6420 of 2007

Union of India (UOI)

APPELLANT

Vs

Shri D.R. Gupta

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0017

Hon'ble Judges : V.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

V.K. Jain, J.—The respondent was empanelled in the year 2006-07 for appointment to the Higher Administrative Grade of Indian Railways, against the vacancies likely to arise up to 30.6.2007. The respondent was placed at serial No. 8 of the panel. However, he was not promoted to the Higher Administrative Grade of Indian Railways, on the ground that at the time of occurrence of vacancy in Higher Administrative Grade, on 20.02.2007, he had less than one year.s residual service left; his date of superannuation being 31.8.07, whereas Resolution dated 28.3.2000, issued by the Ministry of Railways stipulated minimum one year.s residual service for promotion to the Higher Administrative Grade. OA No. 991/07 was filed by the respondent, as his representation for being promoted to the Higher Administrative Grade was rejected. Vide order dated 10.8.07, the Tribunal directed the petitioner to promote the respondent to the Higher Administrative Grade. The order of the Tribunal has been assailed in this writ petition.

2. Resolution No. E(O) III 93/PM/50 Rail Bhawan, New Delhi - 110001 Dated 28.3.2000, to the extent it is relevant, provides as under:

RESOLUTION The Government of India have had under consideration the question of laying down principles and procedure for making appointment to the

posts in scale of Rs. 22,400-24,500/- in various Group "A. Railway Services under the Ministry of Railways . It has been decided that the method and eligibility criteria for the purpose of selection of officers for these posts will be as laid down hereunder:

3. Eligibility Criteria

(a) Officers to be considered for empanelment should have worked in Senior Administrative Grade for a minimum period of 5 years on regular basis and should be less than 59 years of age on the 1st July of the year for which the panel is made as referred to in Para 4 of this Resolution.

(b) Only such of the empanelled officers would be appointed to these posts who had a year or more of service left on the date of occurrence of vacancy falling in their turn.

5. Relaxation

Any of the above mentioned provisions may, if considered expedient in the public interest, be relaxed to the extent necessary, in consultation with the Department of Personnel & Training. Any such relaxation shall be specifically brought to the notice of the Appointments Committee of the Cabinet.

3. It is not in dispute that the above referred Resolution is applicable to the post in Higher Administrative Grade as their pay scale was 2200- 400-24-5000. It is also not in dispute that since the respondent was placed at serial No. 8 of the panel, he could have been promoted only against the vacancy which accrued on 20.2.2007. It is also not in dispute that the date of superannuation of the respondent was 31.8.2007. The respondent, therefore, had residual service of less than one year, on the date of accrual of the vacancy. Consequentially, he could not have been appointed against that vacancy. Clause 5 of the Resolution permits the competent authority to relax any of its provisions in public interests in consultation with DOP&T and in such a case the relaxation ought to be specifically brought to the notice of ACC (Appointment Committee of the Cabinet). A perusal of the impugned order of the Tribunal would show that the Tribunal has directed promotion of the respondent on the ground that vide OM dated 25.1.90, Govt of India had decided that in respect of appointment which fell within the purview of ACC, no Officer was to be promoted in his own line of promotion unless he would have service of minimum 3 years before retirement, but that decision was rescinded vide another OM dated 16.6.03. The OM dated 16.8.03 reads as under:

The undersigned is directed to say that in this Department.s O.M. No. 27(4)/EO/89-ACC dated 11.4.1989, as reiterated vide O.M. No. 22011/11/89 Estt (D) dated 25.1.1990, it was prescribed that in respect of appointments which fall within the purview of ACC, no officer should be promoted to a higher post in his own line of promotion unless he would have a minimum service of 3 months before retirement.

2. It has been decided to rescind the above decision with immediate effect. Secretary of the Department will be responsible for keeping the Cabinet Secretariat informed of any departure.

4. We are unable to agree with the Tribunal in this regard. OM dated 16.6.03 issued by the Department of Personnel and Training contained its decision to rescind its earlier decision contained in 2 earlier OMs - dated 11.4.89 and 22.1.90. It does not rescind and, in fact, could not have rescinded the resolution dated 28.3.2000 passed by the Railway Board. The respondent was denied promotion on account of restrictions contained in the Resolution of Railway Board dated 28.3.2000 and not on account of OM dated 11.4.1989 on 25.1.1990 issued by the DOP&T. So long as the Resolution dated 28.3.2000 passed by the Railway Board was in force, it was binding upon the petitioner and the respondent could not have been given promotion against the vacancy which accrued on 20.2.07.

5. In para 10 of its judgment, the Tribunal has observed that to the extent necessary, the petitioner could have relaxed the relevant revision in consultation with DOP&T and has noted that they were sure that had DOP&T been consulted, they would have advised Railway Board, the necessity for a positive approach. However, the fact remains that the Tribunal instead of directing the petitioner to consider relaxation in consultation with DOP&T, took up the responsibility upon itself and straightaway directed the petitioner to promote the respondent to Higher Administrative Grade. We cannot approve the course adopted by the Tribunal. If the Tribunal felt that it was a fit case for relaxation of relevant provisions of Resolution dated 28.3.2000, it could have directed the petitioner herein to consider the resolution but it could not have directed promotion of the respondent.

6. For the reasons given above, we cannot sustain the order passed by the Tribunal. The Writ Petition is allowed and the order dated passed by the Tribunal is set aside.