

(1986) 05 DEL CK 0042

In the Delhi High Court

Case No : Letter Patent Appeal No. 57 of 1985

V.G. Patwardhan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Citation : (1986) 11 DRJ 190

Hon'ble Judges : D.K. Kapur, C.J

Bench : Single Bench

Advocate : P.O. Gokhale, A.K. Gupta and Anita Sachdeva, for the Appellant;

Judgement

D.K. Kanpur, C.J.

(1) This Letters Patent Appeal is directed against the judgment in Civil Writ No. 1372 of 1984, decided on 19th February, 1985, whereby the appellant's Writ Petition under Article 226 of the Constitution seeking a writ to strike down the promotion of Shri P.D. Gujarati, respondent No. 4, to the grade of Chief Surveyor of Works was dismissed.

(2) In order to understand the case of the appellant, it is necessary to set out a few introductory facts. The post of Chief Surveyor of Works is a selection post which is filled by promotion. This is provided by the Military Engineer Services (Surveyor Cadre) Recruitment Rules, 1975. Promotions are made from the post of Superintending Surveyor of Works and Superintendent Technical Examiner. The persons eligible are those who have had five years service on a regular basis. The selection is by a Departmental Promotion Committee. There was only one post of Chief Surveyor of Works. However, the Government of India had decided to set up another organisation, called the Chief Technical Examiner's Organisation some time in 1982. So, the Union Public Service Commission was informed that there were two vacancies and recommendations were sought from the Departmental Promotion Committee. The reason for the second vacancy was the establishment of the new Organisation. The two vacancies were

described as being one which would exist with effect from 16th June, 1982, and one which would arise on 1st September, 1983, on the retirement of Shri A. Mitra, who was at that time holding the post of Chief Surveyor of Works.

(3) As a result of the requisition to fill up two vacancies, there was a selection held by the Departmental Promotion Committee, which led to the selection of Shri P.D. Gujarati for the first post and the petitioner, Shri V.G. Patrdhan for the second post. According to the case of the petitioner, there was only one clear vacancy being the one in the newly created organisation, so there was an illegal selection resulting in the appointment of Shri Gujarati.

(4) Learned counsel for the appellant urged that the learned Single Judge was wrong in holding that the selection was in accordance with law. According to him, the selection had to be made in two stages. The selection for 1982 had to be made by considering the existing vacancy which arise in June, 1982, and there should have been a second selection for the vacancy which was to arise in September, 1983, on the retirement of Shri A. Mitra. Reliance is placed on the Ministry of Home Affairs O. M. No. 2011/3/76-Estt. (D) dated 24th December, 1980 It is submitted that only five persons had to be considered for each selection and Shri Gujarati, who was at No. 6 position in the seniority list could not have been considered for the first vacancy. He could only be considered after the first vacancy had been filled

(5) It may be mentioned here that the actual panel was prepared after the requisition had been made to the Union Public Service Commission some time in September, 1982 and announced on 18th February, 1983, by the Engineer-in-Chief's Branch, Army Headquarters. The Panel is stated in the following words:- "Panel for Promotion to the Grade of Chief Surveyor of Works in the MES. 1. The following Superintending Surveyor of works have been approved for officiating promotion to the grade of Chief Surveyor of Works :- a) Shri P.D. Gujarati b) Shri V.O. Patwardhan The above panel will be operative up to and including 31st November 1983 unless reviewed earlier by the Dpc or specifically extended beyond this date by the Competent Authority. The actual promotions in furtherance of this panel were on 21st January, 1984. To quote from this promotion order, it is sufficient to set out the following :- "Promotion Cum Posting :SSW To Csw 1. Promotion of the following Sews to the rank of offg. Csw has been approved. Their consequent posting as shown against each is also approved :-

SI. Name & Designation No. 1. MES-400284 Shri CTE'S Arbitrator In a new Pd Gujarati, Ssw Office (MES) appointment QMG's Br. Lucknow 2. MES-141030 Shri E-in-C's CTE's as by Cte Vg Patwardhan, Branch Office Ssw (E-S) QMG's Br.

(6) It is thus apparent that no promotions were made in 1982 or 1983, but they were actually made in 1984.

(7) In order to understand the appellant's submission, it is necessary to state that reliance is placed on the Office Memorandum containing the principles for

promotion to selection posts, which has already been referred to. This Memorandum was issued to set out some firm principles regarding how promotion to selection posts was to be made. It was laid down that the zone of consideration would depend on the number of available vacancies. It was pointed out that if the field of choice was too large, there might be excessive supersessions. There were cases of vacancies not being filled for long periods with the result that excessive number of persons were being selected at the same time. This bunching of vacancies resulted in a disturbance of the seniority.

(8) With a view to avoiding this, the Office Memorandum stated that the Departmental Promotion Committee should restrict the candidates with reference to the number of clear vacancies which arose in the year. It was also stated that if there was one vacancy, five candidates should be considered. If there were two vacancies, eight candidates. If there were three vacancies, ten candidates and if there were four or more vacancies, then three times the number of vacancies. The learned counsel contends that as there was one vacancy in 1982 resulting from the setting up of the new organisation, only five persons should have been considered for the post in the new organisation and the other selection for the post to be vacated by Shri Mitra in 1983, should have been the subject of a separate Departmental Promotion Committee.

(9) The argument is an interesting one, but it does not seem to be valid. The Office Memorandum could operate in the manner the learned counsel states if vacancies are to arise in future. In the present case, a new organisation was set up in June, 1982, but its personnel was not selected till much later. The Union Public Service Commission had to make the selection after September, 1982. As Shri Mitra was to retire on 1st September, 1983, it was clear that two vacancies were to arise within a year from 23rd September, 1982, when the Union Public Service Commission was informed that a panel was to be set up.

(10) The learned counsel's contention that the selection should be made for a calendar year seems to be unjustified. The panel is to operate turn one year, but it has to operate for one year from the date of selection. It is noteworthy that the order making the panel states that the panel is to operate till 23rd November, 1983. We see nothing wrong in all the available vacancies being filled at one and the same time through one Departmental Promotion Committee. It is sometimes very difficult and time consuming to have several meetings of the Departmental Promotion Committee for separate posts. The matter seems to be quite simple and straightforward and does not seem to give rise to any controversy at all. The Government made the requisition to the Union Public Service Commission on 23rd September, 1982. The Government was in the best position to know how many vacancies existed because the filling of the post depended on the volition of the Government itself. The Government thought that two posts would be vacant within a period of one year. One was the post created in June 1982, and one was the post which was to be vacated by Shri Mitra on 1st September, 1983. Thus the Government had to ask for two posts to be filled up. It may be remarked

here that in actual fact there was no post available on 23rd September, 1982. The reason for this is that Shri Mitra himself was holding the post on promotion in the absence of Shri S.R. Nair. Shri Nair had gone on deputation to Engineer Products (India) Ltd., from 1st October, 1980, and in that vacancy Shri A. Mitra had been promoted. There was every possibility of Shri Nair coming back from deputation in which case Shri Mitra would have to hold the post in the new organisation. Thus, there would be no vacancy. On the other hand, Shri Nair might not come back from Engineer Products (India Ltd.) and thus there would be one vacancy.. So, there was a distinct possibility of there being either no post till 1st September, 1983, or there being two posts by that date. According to the Government's stand-point as seen in September, 1982, there appeared to be two vacancies-one being the one in the new organisation and the other being the one to be vacated by Shri Mitra. We cannot say this vision is unjustified. As a result, the Government asked the two posts should be filled and the Union Public Service Commission acting in accordance with the Office Memorandum made the selection in the manner prescribed by the aforementioned office memorandum. It had to consider eight officers for two vacancies and thus Shri Gujarati came within the field of choice.

(11) We think, Therefore, that there is no substance in the appellant's challenge to the manner of selection. Even otherwise we fail to understand what the Departmental Promotion Committee can do when a requisition is received by it that there are two vacancies within the year, one already existing and one to arise on 1st September, 1983. The Departmental Promotion Committee cannot say that we will not make the selection, nor it can say that we will make the selection for one post. It had per force to make the selection for both the posts and had to consider eight persons.

(12) As the selection has been made on merit and Shri Gujarati has been placed above Shri Patwardhan, we fail to understand how the petitioner can have a grievance. There is a guarantee of equality under Articles 14 and 16 of the Constitution which applies equally to Shri Gujarati and Shri Patwardhan. We cannot see how Shri Gujarati can be debarred from selection in which he has been held to be more meritorious. The Constitution is not intended to defeat merit or to deny persons their legitimate rights.

(13) Learned counsel urges that the Office Memorandum issued in 1980 was intended to safeguard the position of senior officials. It was, Therefore, necessary that the selection should have been made separately in 1982 and separately in 1983. We think that the argument would result in an administrative chaos if applied in effect. There is one Union Public Service Commission and it cannot possibly be expected that it would go on meeting necessarily only in the beginning of each year. It can only consider the question of selection as and when asked to do so. The period of one year has to be calculated from the date on which the Departmental Promotion Committee actually meets. We do not think that the Office Memorandum can be applied so rigidly as learned counsel

wants us to do. It may be that there may be three selections in one year, or it may be that there may be one selection in three years. It depends on circumstances. The decision to fill up the post depends entirely on the Government. It may set up an organisation and never fill up the post for years on end. It may on the other hand require the post to be filled up immediately. For instance, in this very case, after having set up the new organisation, the Government may have called upon the Union Public Service Commission to make one selection, say, in July, 1982. In that case the post to be vacated on 1st September, 1983. could not have been considered because it would be beyond one year. In such a case, only one candidate would be selected. As the requisition was made on 23rd September, 1982. the Government was justified in calling upon a panel being prepared for two posts and the Union Public Service Commission had to direct the Departmental Promotion Committee to make a selection in accordance with the requisition.

(14) In our view the selection is entirely in accordance with law. We entirely agree with the learned Single Judge when he observed that the Government had to make the selection based on existing vacancies and anticipated vacancies arising within one year from the promulgation of the panel. In other words, the proper procedure in such cases is for the Government to fill in vacancies which already exist and vacancies which may arise or are likely to arise within one year. However, as indicated earlier, the Government could decide that only one of these vacancies may be filled up at a time.

(15) In our view this is not at all a case to which the provisions of Article 226 of the Constitution are attracted. There is no ground for the issue of a writ. The appeal is accordingly dismissed. As it is a service matter and the appellant has already retired, we leave the parties to bear their own costs.