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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: January 19, 2010

+ W.P.(C) No. 8192/2009

LALIT KUMAR JAIN Petitioner
Through Mr. A.K. Behera, Adv. with Mr. S.K. Sinha, Adv.

versus

UOI & ORS. Respondent
Through Ms. Barkha Babbar, Adv. for UOI.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | YES |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

VIPIN SANGH, J (Oral)

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1. The short question that arises for consideration in this writ petition is whether the petitioner is eligible for being considered for promotion to the post of Executive Engineer (Electrical)/Second-in-Command in the Border Security Force (BSF).
2. The petitioner was appointed as Assistant Engineer (Electrical) on 1st June, 1994 with the UP State Electricity Board in the pay scale of Rs.2600-4000 (pre-revised) which stood revised to Rs.8550-13500. The Border Security Force ('BSF' hereafter) respondent no.2 herein issued an advertisement dated 20th

December, 2000 inviting applications from eligible candidates for appointment on deputation/absorption basis to the post of Executive Engineer (Electrical)/Deputy Commandant in BSF. The petitioner responded to the said advertisement and was selected. The petitioner accordingly joined the BSF on the aforesaid post on 12th July, 2001. While on deputation with the BSF, the petitioner was promoted in his parent department to the post of Executive Engineer (Electrical) on 28th August, 2003. On 1st March, 2004, the petitioner was absorbed in the BSF as an Executive Engineer (Electrical)/Deputy Commandant.

3. Though the post of Executive Engineer (Electrical)/Second in Command was created in the BSF in April, 2004, the recruitment rules for the said post were notified only on 31st October, 2007. As per the said recruitment rules, the eligibility criteria for promotion to the said post of Executive Engineer (Electrical)/Second in Command, was stated as follows:-

“10 (i) Second-in-Command (Electrical)

xxx xxx xxx xxx

(xi) By promotion failing which by deputation

12(1) Promotion:

Deputy Commandant (Electrical) with eleven years Group `A' service or sixteen years combined Group `A' and Group `B' Gazetted service out of which at least two years regular service in the grade of Deputy Commandant (Electrical).”

4. Admittedly, if the petitioner's service with the U.P. State Electricity Board (which was incorporated as the U.P. Power Corporation Ltd., a company under

the Companies Act, 1956, on the 1st of June, 1994 were to be counted as qualifying service, he became eligible for being considered for promotion to the post of Executive Engineer (Elect.)/Second-in-Command when the said recruitment rules were framed in the year 2007.

5. The case of the petitioner was, however, not considered for promotion to the said post by the respondents. The reason given by the respondents, which is also the defence taken in their counter affidavit, was that the petitioner was appointed as Assistant Engineer (Electrical)/Mech) in UP State Electricity Board w.e.f.1st June, 1994 in the pay scale of Rs.2600-4000 which was a higher pay scale in comparison to the pay scale of an Assistant Commandant in BSF. Therefore, his case was taken up with the Ministry of Home Affairs to clarify whether the service rendered by the petitioner in his parent cadre could be treated as Group 'A' service, and whether the service could be counted towards qualifying service for promotion. In response to this query the DOP&T has ruled that the service rendered by the petitioner in his parent organisation cannot be treated as Group 'A' service. The DOPT has further clarified that classification of the posts as Group 'A', 'B', 'C' & 'D' is done only in respect of only government servants who are in the pay scale of Rs.8550-13500 in posts covered by General Central Service are considered to be holders of Group 'A' post; that such classification of posts into Group 'A', 'B', 'C' & 'D' is based on the CCS(CCA) Rules, 1965 and that these rules are not applicable to PSUs. According to the respondents since the service rendered by the petitioner with the UP State Electricity Board/UP Power Corporation Ltd. could not be

considered as service rendered with the Central Government or the State Government, the petitioner could not be said to have occupied a Group 'A' post, even though the pay scale that he was granted was higher than the pay scale admissible to a Group 'A' post under the Central Government/State Government. The respondents, therefore, have excluded the service rendered by the petitioner as Assistant Engineer (Elect.) with U.P. State Electricity Board/U.P. Power Corporation Ltd. between 1st June, 1994 and 12th July, 2001 from being considered as qualifying service for the purpose of determining the petitioner's eligibility for promotion to the post of Executive Engineer (Elect.)/Second-in-Command in the BSF.

6. Mr. Behera, learned counsel for the petitioner has submitted that the aforesaid reasoning of the respondents and the DOP&T is erroneous and cannot be sustained for the reason that while serving as Assistant Engineer (Elect.) with the said Board/Power Corporation, the petitioner was drawing a pay scale even higher to the pay scale admissible to a Group 'A' post. It is pointed out that pay scale then drawn by him was even higher than that admissible to an Assistant Commandant in the BSF. Learned Counsel places reliance on the decision of the Supreme Court in **(1987) 4 SCC 566 K. Madhavan & Anr. Vs. UOI & Ors.** and that of this court in **UOI & Ors. Vs. D.K. Mohapatra** being WP (C) No.7470/2007 decided on 10th October, 2007. He submits that the Special Leave Petition challenging the said decision has also been dismissed.

7. Learned counsel for the respondents on the other hand argues that when

the petitioner had applied for deputation/absorption in response to the advertisement dated 20th November, 2000, he was not eligible for the same and that deputation/absorption could have been made only in respect of officers from Central/State Government/Border Security Force.

8. Having considered the rival submissions, we are of the view that there is merit in the petitioner's submissions and that the petitioner is eligible for being considered for promotion to the post of Executive Engineer (Elec.)/Second in Command, since the service rendered by him as Assistant Engineer (Electrical) with the UP State Electricity Board/UP Power Corporation Ltd. has to be considered as a Group 'A' service for the purpose of considering the petitioners eligibility for promotion to the post of Ex. Engineer (Elec)/Second-in-Command.

9. Pertinently, it is not in dispute that Executive Engineer (Elec)/Commandants (Elec) in BSF, who have throughout served in the BSF, are considered eligible for promotion to the post of Executive Engineer (Elec)/Second-in-Command. That being so, the respondent having considered the post of Asst. Engineer (Elec) with the U.P. State Electricity Board as equivalent to the post of Deputy Commandant (Elec), in BSF at the time of his deputation/absorption, cannot now take a somersault to the petitioner's disadvantage. The UP Power Corporation Limited was constituted by virtue of Section 13 of the Uttar Pradesh Electricity Reforms Act, 1999. That Act mandated that the said corporation be registered as a successor to the UP State Electricity Board under the Companies Act, 1956.

10. We may note that the classification of Groups is based on the pay scale attached to a post. When the recruitment rules make a reference to a Group 'A' or Group 'B' service, it does not mean that the candidate should have necessarily served either with the Central or the State Government. The reference to Group 'A' or Group 'B' service in the Recruitment Rule, in our view, is for the purpose of conveying that the candidate should have earlier served in a post (in the relevant field) of a particular standing i.e. a post which has powers and responsibilities which would be handled by a Group 'A' or Group 'B' officer who serves the Central or the State Government. The service earlier rendered by the petitioner was not with a wholly private enterprise. It was with the UP State Electricity Board, which was corporatised as the U.P. Power Corporation Ltd. The scale of pay drawn by the petitioner as Assistant Engineer (Elect.), under the U.P. State Electricity Board was, therefore, relevant to determine the classification of the service in which he served.

11. We also find support for our aforesaid view from the judgment of the Supreme Court in **K. Madhavan & Ors. (supra)**. Under the Special Police Establishment (Executive Staff) Recruitment Rules, 1963, for appointment of deputation to the post of SP in the Central Bureau of Investigation (CBI), the minimum qualification required was DSP in the Special Police Establishment with at least 8 years service in the grade, out of which 2 years should have been probationary period in the CBI. The petitioner had contended that the expression "in the grade" should be understood to mean as service in the grade of SP in the CBI. The respondent no.5, who was earlier serving as an

officer on the post of DSP in the Rajasthan State Police, came on deputation to the CBI as a DSP. For the purpose of computing the seniority of respondent no.5, his service rendered in the grade of DSP under the Rajasthan State Police was also taken into account after he had been absorbed in the CBI.

The contention of the petitioner was that respondent no.5 should have rendered 8 years service in the CBI as a DSP before he could become eligible for appointment to the post of SP in CBI. In other words, the service rendered in the grade of DSP under the State Government by respondent no.5 according to the petitioner Sh. K. Madhavan should have been excluded from consideration. The Supreme Court rejected this submission of the petitioner and held that "8 years service in the grade" would mean 8 years service in the grade of DSP and that 1963 Rules do not provide that the period of 8 years should be computed from the date of deputation to the CBI as DSP. The Supreme Court observed as follows:

"In the absence of any such expression, it must be held that the period during which one held the post of DSP in the State Police Service should also be taken into account for computing the period of eight years. The 1963 Rules provide that two years must be spent on probation as DSP in the CBI. The position, therefore, comes to this that of the total period of eight years, two years must be on probation basis in the CBI. An officer may have been in the State Police as DSP for a period of six years and, thereafter, if he joins the CBI on deputation and spends two years on probation, he would be eligible for consideration for appointment to the post of SP. If this view is not taken, no officer would be available to join the CBI on deputation. It has already been noticed that the CBI requires efficient and experienced public officers and if the period spent by police officers in the State Police Service is not taken into account for the purpose of computing the period of eight years, it would be doing injustice to such police officers who join the CBI on

deputation. In our view, therefore, there is no substance in the contention of the petitioners that in order to be eligible for appointment to the post of SP in the CBI, one should be in the rank of DSP in the CBI for a period of eight years including a period of two years on probation. Respondent 5 having held the post of DSP for five years in the Rajasthan State Police and more than three years in the CBI, that is to say, over eight years, he was quite eligible for appointment to the post of SP”.

12. In **UOI vs.D.K. Mohapatra (supra)**, the Central Administrative Tribunal had allowed the original application preferred by the respondent, wherein he had claimed that Group A service rendered by him in Border Road Development Board prior to his direct recruitment as Executive Engineer (Civil) in the Ministry of Shipping, Road Transport and Highways, at the time of his lateral entry be counted for promotion to higher grades. The decision of the Tribunal was challenged by the Union of India before the Division Bench. The Division Bench dismissed the writ petition placing reliance on an Office Memorandum dated 1st of September, 1998 issued by the DoPT. The Division Bench also relied on the decision of the Supreme Court in **K. Madhavan (supra)** and held that the previous Group A service is to be counted as qualifying service for promotion to the higher grade though the past service may not be counted for seniority in the new organization. The Division Bench, therefore, dismissed the writ petition preferred by the Union of India. The Supreme Court has dismissed the Special Leave Petition arising from the said decision in limine.

13. The petitioner, when appointed to on 1st of June, 1994 as Assistant Engineer (Elec), was appointed to the U.P. State Electricity Board, which was an instrumentality/department of the U.P. State. Merely because the U.P. State

Electricity Board was corporatised in 1999 (on account of a legislative action), over which the petitioner had no control, the petitioner cannot be made to suffer, and his status as a Grade 'A' post holder since 1994 cannot be taken away. Since the petitioner was drawing a salary from the UP State Electricity Board in the scale Rs.2600-4000 (pre-revised), which was revised to Rs.8550-13500, and which is admittedly even higher than the pay scale admissible to a Group 'A' post (which pre-revised was Rs.2200-4000 and was revised to Rs.8000-13500), the petitioner is entitled to be considered to have rendered service in a Group 'A' post as an Assistant Engineer (Electrical) with the UP State Electricity Board/U.P. Power Corporation Ltd. for the purpose of the aforesaid recruitment rule.

14. The stand taken by the respondents is also not supported by the recruitment rules. The recruitment rules as extracted above, do not restrict the promotion to only those persons who have rendered Group 'A' service either with the State Government or with the Central Government. It is well settled that the recruitment rules would prevail over any administrative decision that the respondents may have taken.

15. It is not open to the respondents at this late stage to claim that the petitioner was not even eligible to be appointed on deputation or to be subsequently absorbed, as he did not come from the Central or State Government or the Border Security Force. If that were so, the respondents should have rejected the petitioner's application at the threshold. After he has rendered service with the respondents since 2001 and came to be absorbed in

2004, the respondents are estopped from taking such a stand. The petitioner was not put to notice at the time of his absorption that he would suffer the handicap of his past service with UP State Electricity Board/UP Power Corporation Ltd. not being counted as a Group 'A' service for the purposes of his promotion. If the petitioner would have been informed of the disadvantage to which he would be put if he opted to get absorbed, the petitioner may not have opted for his absorption, and may have reverted to his parent organisation.

16. For the foregoing reasons, we allow the writ petition and hold that the petitioner's service rendered as Assistant Engineer (Electrical) with the UP State Electricity Board/UP Power Corporation Ltd. was a Group 'A' service under the recruitment rules aforesaid for the purpose of consideration of his case for promotion to the post of Executive Engineer (Electrical)/Second in Command in the respondent organisation. The respondents are accordingly directed to consider the candidature of the petitioner in the light of the view we have taken within a period of three months from today and communicate the order, which is passed, to the petitioner.

Dasti to parties.

VIPIN SANGHI, J

GITA MITTAL, J

JANUARY 19, 2010

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