

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 12th October, 2011
Judgment Pronounced on: 17th October, 2011

+ W.P.(C) 6233/2011

ANIL KUMAR SHARMA Petitioner
Through: Mr.Rakesh Kumar, Advocate

versus

UNION OF INDIA & ORS. ...Respondents
Through: Mr.Sunil Kumar, Advocate for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

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

PRADEEP NANDRAJOG, J.

1. Water Carriers, Barbers, Carpenters, Cooks, Painters etc. were called 'Followers' in BSF. They were tradesmen and used to render service commensurate with their skills. Barbers were engaged in the trade of hair cutting and shaving. Carpenters were engaged in the trade of carpentry, etc. etc. It is but obvious that they were needed at BSF Units for the reason, civilians were prohibited to enter the territory of the Units since security had to be maintained.

2. What promotional avenue can be made available to a barber?

3. During argument in the writ petition we repeatedly posed this question to learned counsel for the petitioner and indeed he gave no answer except to make a vague attempt to urge that a barber could become a 'hair-stylist'. Habib we presume!

4. In a heterogeneous society we may conceive of a hair-cutter with lesser skills being a barber and a hair-cutter with aesthetic skills being a hair-stylist. Whereas a barber would crop the hair of each and every customer in the same manner, unconscious of the facial features of the person and without blending the hair-style with the features of the face so as to enhance the personality of the customer, a hair-stylist would have the skill to so crop the hair of the customer that it blends with the facial features so as to enhance the personality of the customer.

5. But, in a Central Para Military Force i.e. BSF, everybody has a crew cut and not the hair-style of a Bollywood or a Hollywood hero, and thus tradesmen in the trade of hair-cutting i.e. barbers employed with BSF need not have the skills of a hair-stylist.

6. Let us take the example of a Water Carrier. He is a person who transports from a water source, water in small containers, such as buckets or jerry cans, and fills up receptacles. What skills of aesthetic qualities would be required by a Water Carrier? We think none.

7. A cadre contemplates a hierarchy of posts in a service with different level of responsibilities. Apart from educational or technical skills, experience chisels a person to achieve higher standards in the field of the service concerned. For example, a

stenographer who joins at a young age, with passage of time, due to experience, reaches levels where he is able to correct grammatical and syntax errors when dictation is given to him and this enhances not only the quality of his work but even helps the boss who gives dictations inasmuch as the boss has not to meticulously correct the first draft. This stenographer would then become eligible to be promoted as a senior stenographer and since he has acquired the skills in self correcting the drafts, he may be assigned to senior bosses in the organization. The difference between him as a new entrant and as an experienced hand would be the higher level of skill and application thereof to the stenography work and thus applying the criteria of qualitative and quantitative in the same kind of work, it would be logical to think of two posts of stenographer; one at the junior level and the other at the senior. Further, with passage of time, working as a senior stenographer with a boss at the higher hierarchical level, the person concerned learns the skill of record keeping and confidentiality. He may also, due to experience, be in a position to draft communications upon tips being given to him or general instructions being given to him by the boss. This stenographer would then become eligible for being appointed as a Private Secretary. Thus, logically one can think of a cadre having various posts at different levels in the field of stenography.

8. Thus, one can safely say that there may exist a concept of a single cadre post with no promotional avenue because the nature of the work is such that there can be no hierarchical structure as the work is monotonous and of the same kind where basic skill remaining stagnant throughout the career in relation to the work to be performed.

9. With the aforesaid backdrop, time to note the facts.

10. The post of Followers in BSF were a Group 'D' post. They had no promotional avenues save and except those who were otherwise qualified for higher level of jobs and for whom a Limited Departmental Quota was available, to compete as a departmental candidate and enhance the promotional prospect. But this was not on account of any experience gained as a 'Follower', but was due to the fact that the person concerned had another skill which made him useful for a different job.

11. With the implementation of the recommendation of the Sixth Central Pay Commission, all Group 'D' posts i.e. posts of Followers in Central Para Military Forces were abolished and converted into a Group 'C' post i.e. that of a Constable. Thus, Barbers became Constable (Barber). Waterman became Constable (Waterman), Cooks became Constable (Cook) and those in the trade of painting, plumbing and carpentry became Constable (Tradesman). They were placed in the higher pay-scale i.e. equivalent to that of Constable (General Duty) in the Central Para Military Forces.

12. New Recruitment Rules were framed. The only promotional avenue available to these persons is the Limited Departmental Competitive Examination which they can take to be promoted to a post in the General Duty cadre.

13. The grievance raised in the writ petition is that Followers who have now been placed in Group 'C' as Constable (Barber), Constable (Waterman), Constable (Tradesman), Constable (Cook) do not have a promotional avenue and thus a mandamus is sought that promotional avenues be created for them.

14. It is true that modern management and career planning lays emphasis on a system having promotions for the reason, an organization recruits a person not for a job but a career, and opportunity to advance one's career acts as an incentive for personal development which ultimately benefits an organization. But instances of a single cadre post having no promotional avenue was recognized by the Supreme Court in the decision reported as 2004 (9) SCC 65 State of Tripura & Ors. vs. K.K.Roy, wherein the Supreme Court directed the State of Tripura to introduce the 'Scheme of Assured Career Promotion' for the incumbent of the single cadre post, requiring the person to be placed in the next higher grade after 12 years service and further in the next higher scale of pay on completing 24 years service.

15. Recognizing that stagnation in the same pay-scale gives birth to discontent, after the Fifth Central Pay Commission's recommendations were recommended, in the year 1999 an 'Assured Career Progression' scheme was introduced by the Central Government as per which all those who had no promotional avenues, or due to insufficient promotional posts, being otherwise competent and fit, could not earn a promotion, it was put into place that upon completion of 12 years service they would be placed in the next higher pay-scale and upon completion of 24 years service would be placed in the next above pay-scale.

16. With the implementation of the recommendations of the Sixth Central Pay Commission, the 'Assured Career Progression Scheme' has been replaced by the 'Modified Assured Career Progression Scheme' which grants benefit of 3 higher pay-scale placement to those who are otherwise fit, but cannot earn a

promotion; first after 10 years service, second after 20 years service and third after 30 years service. These persons are placed in the next above higher pay-band or are granted the grade-pay in the next above grade pay scale.

17. It is not in dispute that Followers upon upgradation to Group 'C' posts as Constable (Cook), Constable (Waterman), Constable (Tradesman), Constable (Barber) are entitled to and are being granted the benefit of the 'Modified Assured Career Progression Scheme and thus we see no scope to interfere on a matter of policy and issue the mandamus sought for.

18. The writ petition is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

OCTOBER 17, 2011
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