

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7506 of 1999

Prabhu Nath Singh @ Prabhu Nath Pd. Singh son of Late Sukhdeo Narain Singh, Assistant Marine Engineer, Inland Waterways Authority of India, Biscomaun Bhawan, P.S. Gandhi Maidan, District-Patna.

.... Petitioner/s

Versus

1. The Union of India through the Chairman, The Inland Waterways Authority of India, B/109-112, Commercial Complex Sector-18, Noida, P.S. Noida, District-Ghaziabad (U.P.)
2. The Chairman, the Inland Waterways Authority of India, B/109-112, Commercial Complex, Sector-18 Noida P.S. Noida, District-Ghaziabad (U.P).
3. The Deputy Director, Inland Waterways Authority of India, Biscomaun Bhawan, P.S. Gandhi Maidan, District-Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Amresh Kumar Singh
With Mr. Sushil Kumar Ray
For Union of India : Mr. S.D. Sanjay, Add. SCGI
For IWAI : Dr. Anshuman, Standing Counsel

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 10-07-2015

1. This writ application has been filed seeking quashing of an order dated 04.03.1999 passed by the Chairman, Inland Waterways Authority of India, Ghaziabad (UP), whereby, the petitioner's claim for promotion to the post of Deputy Director has been rejected. The petitioner has also sought for a direction from this Court to the Respondents to grant him promotion to the post of Deputy Director, in the authority with retrospective effect from the date the post of Deputy Director became vacant.



2. Before I refer to other facts, I consider it apt to mention here itself that during the pendency of the present writ application, the petitioner has been granted promotion to the post of Deputy Director vide an office order dated 26.04.2001 issued by the Inland Waterways Authority of India (hereinafter referred to as the Authority), which has been brought on record by way of Annexure to a supplementary affidavit filed on behalf of the petitioner on 07.04.2015. It has, however, been contended on behalf of the petitioner, in course of argument, referring to the pleadings in the writ application and reply to the counter affidavit that the petitioner is entitled for promotion with effect from a retrospective date. The petitioner has retired from service with effect from 31.05.2005 on attaining the age of superannuation.

3. The office order dated 04.03.1999 which is impugned in the present writ application was passed in compliance of an order of the High Court of Calcutta in CC No. 23144(W) of 1995 (Prabhu Nath Prasad Singh Vs. Union of India & ors.). From the order of the Calcutta High Court, which has been brought on record by way of Annexure-2 to the writ application, it would appear that following was the relief sought for by him before Calcutta High Court in that writ proceeding:-

“(a) A writ in the nature of Mandamus commanding the respondents to amend and/or correct the

second amendment for the Inland Waterways Authority of India, Recruitment, Seniority and promotion (Second Amendment) Regulation, 1993, Gazette on the 15 th July, 1993, relating to the post of Deputy Director by replacing the words Assistant Mechanical Engineer to Assistant Marine Engineer, which post is held by you petitioner;

(b) A further writ in the nature of mandamus commanding the respondents to promote your petitioner from the post of Assistant Marine Engineer to the post of Deputy Director of Inland Waterways Authority of India with all monetary bonafide with effect from November, 1988, forthwith and further commanding the respondents to place your petitioner at par with other incumbents junior to your petitioner in regard to such promotional post of Deputy Director.”

4. The High Court disposed of the writ application by an order dated 17.11.1998 with the following direction:-

“Keeping in view the facts and circumstances of this case, this application is disposed of with a direction upon the respondents to consider the case of the petitioner for his promotion from the post of Assistant Marine Engineer to the post of Deputy Director along with other eligible candidates, if any, at an early date and not later than twelve weeks from the date of communication of this order. As the rules stood amended with effect from 25.6.1993, the respondents may also consider the desirability of granting a notional promotion to the petitioner and/or other persons similarly situated with retrospective effect.”

5. With the qualification of Diploma in Mechanical

Engineering, the petitioner was appointed as an Overseer (Mechanical) in the erstwhile Inland Waterways Directorate in the Ministry of Shipping and Transport, Government of India in the year 1971. He was subsequently, appointed as Assistant Marine Engineer (AME) in November, 1981 (wrongly mentioned in the petition as 1987).

6. Inland Waterways Authority of India Act, 1985 came to be enacted and services of all staff of the Directorate stood transferred to the authority on 27.10.1986. It is the case of the petitioner that his service was absorbed under the authority with effect from 23.8.1991. It is his further case that among the officers in his cadre, he ranked sixth. The first person A. Sarkar was working as Director, whereas the second man was in the rank of Deputy Director who had subsequently resigned. It is accordingly his case that against the sanctioned posts of Assistant Director, the petitioner could have been promoted. It is the stand of the petitioner that one R.B. who had joined in the same cadre after the petitioner had joined got promotion to the post of Assistant Director and was placed above him. It is his stand that he had represented before the authorities claiming his right of consideration for promotion to the rank of Deputy Director and when he did not receive any response, he approached Calcutta High Court by filing writ petition being CC 23144(W) of 1995. In the light

of the direction issued by the High Court for considering petitioner's representation, the competent authority i.e. the Chairman passed an order rejecting his claim for promotion to the post of Deputy Director on the ground, inter alia, that the post in the rank of Deputy Director was not vacant against which the petitioner's case could be considered for promotion.

7. Mr. Amresh Kumar Singh, learned counsel appearing on behalf of the petitioner has assailed the impugned order dated 04.03.1999 mainly on the ground that the reasons assigned in the impugned order that there was no vacant post against which the petitioner could be considered for promotion is incorrect and unsustainable, in view of the averments made in the writ application. He had laid great emphasis on the fact that one N. Sivaraman, who was junior to the petitioner in the cadre was granted promotion to the rank of Deputy Director, overlooking the petitioner's claim.

8. Learned counsel for the petitioner, however, has not shown to me any statutory provision or policy in order to claim that the petitioner was entitled to get promotion to the post of Deputy Director with effect from a particular date or from the date vacancy to the said rank arose. This is also to be noted that though the petitioner has claimed that N. Sivaraman was granted promotion to the rank of Deputy Director, ignoring petitioner's claim, the said N. Sivaraman

has not been impleaded as party in the present writ application.

9. Upon perusal of the impugned order, it appears that, as a matter of fact, the petitioner's representation filed in the year 1994 claiming promotion to the rank of Deputy Director was considered and reply to representation was given to him vide letter dated 25.11.1994 informing him that as on that date, there was no vacant post of Deputy Director in the authority and it was also mentioned that his request could be considered on merits on availability of first suitable post. It has also been mentioned in the order that in response to the said reply dated 25.11.1994, the petitioner has submitted another representation dated 26.12.1994, requesting that he be awarded the monetary benefits as Special pay and allowances with effect from November, 1988 till his promotion to the post of Deputy Director; or to allow him to officiate as Deputy Director with monetary benefits with immediate effect.

10. A counter affidavit has been filed on behalf of the respondent-Authority denying the assertions made in the writ application that R.B. Lal, though junior to the petitioner was promoted to the post of Assistant Director. It has been stated in the counter affidavit that the said R.B. Lal, pursuant to an advertisement issued by the Authority had applied for direct recruitments to the post of Assistant Director. The petitioner had also applied for the post but

since he was not found suitable, he was not selected. As regards S.Bhatia with respect to whom, there is allegation that though he was junior to the petitioner, he was granted promotion to the post of Deputy Director (Marine), it has been stated in the counter affidavit that said S.Bhatia was appointed directly on the post of Deputy Director pursuant to an open advertisement inviting applications for the said post published in the Newspaper.

11. In view of the submissions made on behalf of the petitioner that though N. Sivaraman was junior to the petitioner, he was granted promotion to the post of Deputy Director, ignoring the petitioner's claim, this Court vide order dated 05.05.2015 had directed the respondent authority to file an affidavit as regards the procedure for grant of promotion to the post of Deputy Director which existed prior to 29.03.1993, when N. Sivaraman came to be promoted with effect from 07.03.1993. The Respondents were directed to satisfy the Court as to how the petitioner was not entitled for consideration for promotion to the post of Deputy Director as on 07.03.1993.

12. In compliance of the said order of this Court, the respondents have filed supplementary counter affidavit in which a comparative chart has been furnished as regard qualification, date of entry in the Authority and the scale which the petitioner and the said

N. Sivaraman were getting as on 23.8.1991. It has been stated that the petitioner was working against the post of Assistant Marine Engineer as on 23.8.1991 in the pay scale of Rs. 2000-3500/- whereas said N. Sivaraman was in the scale of Rs. 2200-4000/- as on 23.8.1991 and he was working on the post of Assistant Director. It is accordingly, the plea of the respondents that the petitioner cannot claim parity with the said N. Sivaraman, particularly in view of the extant service Regulations in force, as on the date when said N. Sivaraman was granted promotion to the post of Deputy Director on 7.3.1993. It is the case of the respondents that as per the Service Regulations framed under Section 36 of the Act of 1985, an officer in the rank of Assistant Director with 5 years experience in the cadre was eligible for promotion to the post of Deputy Director and based on that criteria, N. Sivaraman was granted promotion to the said rank with effect from 7.3.1993. The petitioner, on the other hand, did not hold the post of Assistant Director and possess requisite experience/qualification for promotion to the post of Deputy Director as per the said Regulations, till the amendments in the Regulations with effect from 25.6.1993. It is their case that the Officers holding the rank of Assistant Marine Engineer became eligible for promotion to the post of Deputy Director only after amendment came to be introduced in the said Regulation by notification dated 9.7.1993,



which came into force with effect from 25.6.1993. Though in the said amendment dated 9.7.1993, Assistant Marine Engineer was not initially mentioned as the feeder cadre for promotion to the post of Deputy Director, but subsequently; finding it to be a clerical error, it was modified by substituting “Assistant Marine Engineer” in place of “Assistant Mechanical Engineering”. The said correction was given retrospective effect i.e. date from which the notification dated 9.7.1993 came into force.

13. Mr. S.D. Sanjay, learned Additional Solicitor General, appearing on behalf of the Respondents, referring to the notification dated 9.7.1993, which has been brought on record by way of Annexure-X of the supplementary counter affidavit read with the subsequent correction made in the said notification, has contended that persons holding the post of Assistant Marine Engineer for the first time became eligible to be considered for promotion to the post of Deputy Director, with effect from 25.6.1993. Prior to the said date and from the date with effect from which the amendment in 1992 Regulations came into force, there was no provision for grant of promotion to the rank of Deputy Director in the authority from the post of Assistant Marine Engineer, though it provided for promotion of Assistant Director to the said rank.

14. This submission made on behalf of the respondents

has been countered by Mr. Amresh Kumar Singh, learned counsel appearing on behalf of the petitioner that there was no bar under Regulations, as is existed prior to 25.6.1993 for grant of promotion to the officers holding the post of Assistant Marine Engineer to the post of Deputy Director.

15. The fact remains that the petitioner has been granted promotion with effect from 26.4.2001 to the rank of Deputy Director. Promotions become effective from the date of the order granting promotion is the normal rule. However, in exceptional circumstance, retrospective promotion can be granted in a given situation e.g. when the statutory provision regulating service condition themselves provide for grant of promotion with effect from a particular date (crucial date) or from the date of occurrence of the vacancy. A promotion can be granted with retrospective effect also in circumstance where the claimant is in a position to demonstrate that a person junior to him has been granted such promotion, ignoring his claim. In the present case, I find that the respondents have been able to distinguish the case of the petitioner with the case of N. Sivaraman who was granted promotion to the rank of Deputy Director with effect from 7.3.1993. Learned counsel for the petitioner has not been able to satisfy this Court that prior to coming into force of the amending provision with effect from 25.6.1993, persons holding the post of

Assistant Marine Engineer were eligible for promotion to the rank of Deputy Director.

16. In any view of the matter, the petitioner cannot claim his superiority over the case of N. Sivaraman in the present facts and circumstances of the case, particularly when N. Sivaraman has not been impleaded as a party respondent.

17. Mr. Amresh Kumar Singh, learned counsel appearing on behalf of the petitioner has tried to convince this Court, referring to 1992 Regulations as they existed, prior to the amendment came into force with effect from 25.6.1993, that the petitioner was eligible for promotion to the post of Deputy Director and qualification of Bachelor degree in Engineering was not a mandatory qualification for promotion. He has referred to Item 26 of Schedule to the said Regulation which according to him did not prescribe that for the purpose of grant of promotion to the rank of Deputy Director, one must have the qualification required for direct recruitment to the post. The argument is not convincing to me for the reason that in the Regulation, as it existed prior to 25.6.1993 there is no provision of grant of promotion to the persons holding the post of Assistant Marine Engineer to the post of Deputy Director. The said Item, for the purpose of promotion to the said post refers to Assistant Director with 5 years of service in the grade as eligibility for promotion.



18. From the discussion as above, I do not find any merit in the present writ application. The petitioner has already been granted promotion to the rank of Deputy Director with effect from 26.4.2001 and he has retired with effect from 31.5.2005. He has not been able to demonstrate that any person junior in rank having same qualification and experience has stolen march over him in the matter of promotion ignoring his claim. The plea that the petitioner should have been granted promotion with effect from the date when the post became vacant is not at all acceptable to this Court as in the absence of any statutory provision in this regard.

19. I do not find much substance in the submission made on behalf of the petitioner that his representation has been rejected on erroneous ground of absence of vacancy. I have perused the impugned order dated 04.03.1999 from which it appears that the Chairman of the Authority has considered various points, taken by the petitioner before him in his representation, including the point that the vacancies existed. He has dealt that aspect also, in addition to the aspect that the petitioner did not have the qualification for promotion to the post of Deputy Director from the date with effect from which the said N. Sivaraman was promoted. It is true that the validity of an order is to be tested on the basis of reasons assigned therein. I find that sufficient reasons have been assigned in the order dated

04.03.1999, while rejecting the petitioner’s claim for promotion with effect from retrospective date. I also find that the petitioner’s grievance has substantially been redressed inasmuch as, he has been granted promotion with effect from 26.4.2001.

20. No further relief can be granted in the present proceeding under Article 226 of the Constitution of India. This application is accordingly, dismissed.

21. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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