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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 3rd December, 2018

Decided on: 8th January, 2019

W.P.(C) 1034/2017

MANOJ KUMAR SINGH

.....Petitioner

Through: Mr. Vinod K. Tewari and Mr. Manindra
Dubey, Advocates.

versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr Jasmeet Singh, CGSC for UOI.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

08.01.2019

Dr. S. Muralidhar, J.:

1. The Petitioner, who was working as a Junior Engineer ('JE') (Civil) in the Border Roads Organization ('BRO') has approached the Court seeking directions to the Respondents to antedate his promotion "from the date when the first person who was junior to the Petitioner in obtaining the eligibility/fitness for the post was promoted".

2. The Petitioner joined the BRO as a Lower Division Clerk ('LDC') on 4th January, 1996. In 2001, he passed the departmental exam. In terms of the policy of the GREF, he was sent to the College of Military Engineering ('CME'), Pune for undergoing a diploma in Civil Engineering which was a requirement for promotion to the post of JE (Civil) under the 10%

Departmental Promotion Quota ('DPQ') for CME Diploma holders. It is stated that the nomination for the diploma programme at CME, Pune was based on passing the departmental exam. In the relevant years, only five employees in the order of merit in the departmental competitive exam, followed by the CME exam, were considered.

3. The Petitioner states that he passed the Diploma in Civil Engineering Course from CME, Pune and, therefore, was eligible for promotion to the post of JE (Civil). However, those who passed the exam in subsequent years were promoted earlier to the Petitioner. The examples of four such employees have been set out in a tabular form in the petition. This according to the Petitioner was on the basis of the dates of their initial joining and was contrary to the general policy regarding 'Eligibility and Seniority' contemplated in the Recruitment and Promotion ('R and P') Rules. It is stated that "an individual who is eligible/fit first shall have to be considered first for promotion." Reliance is placed on the communication dated 10th April, 2007 addressed by the Headquarters of the Directorate General (Border Roads) to the present Petitioner stating that the Petitioner would be considered for promotion to Superintendent (Grade-II) "as per his seniority subject to fulfilling promotional norms and availability of vacancies".

4. The Petitioner states that he was granted the first Assured Career Progression ('ACP') in January, 2008, since he was not promoted for the post of JE (Civil) in the year in which he became eligible i.e. 2004. After a delay of around four years, the Petitioner was granted promotion as JE (Civil) (earlier designated as 'BR-2) in the pay scale of 9,300 – 34,800 with

grade pay of Rs.4,200 with effect from 27th March, 2008. This was two months after the Compulsory Financial Upgradation on the completion of 12 years in service. According to the Petitioner, in terms of the Office Memorandum (OM) dated 19th May, 2009 issued by the Department of Personnel & Training ('DoPT'), the Petitioner should have been given the benefit of the Modified ACP ('MACP') after completion of 20 years (slab of 10/20/30 years).

5. After completion of 20 years of service, on 4th April 2016, the Petitioner made a representation to the Respondents for financial upgradation to the next grade of Rs.4,600/-. The said representation was rejected by the Directorate General, BRO by letter dated 27th May 2016, stating that the Petitioner would be eligible for the MACP after completion of 30 years of service. Another representation was made by the Petitioner on 27th June, 2016. A reminder was sent on 4th August, 2016. He also requested, by a representation dated 15th November 2016, for a personal interview. He submitted an RTI application on 22nd November, 2016 which was rejected by a letter dated 14th December, 2016. In the circumstances, the Petitioner approached this Court.

6. In reply to the present petition, it is explained by the Respondents that the four instances cited by the Petitioner, viz., the earlier promotion of Kukade Dhanraj, Rohtash Kumar and Nallasivan M and Ajit Kumar, who were all JE (Civil) was not because they acquired the CME Diploma in 2005 in different batches, later than the Petitioner. According to the Respondents, they were considered and promoted in the DPC earlier to the Petitioner since

they were senior to him in the Master Seniority List ('MSL') of Group-C employees. According to the Respondents, "as per the existing procedure, promotions to posts falling in the category of non selection posts are to be filled purely on the basis of seniority cum fitness."

7. The Respondents contend that though the Petitioner acquired diploma in 2004, he was too junior in the MSL in comparison to other CME diploma holders. Secondly, "sufficient vacancies did not exist in the succeeding DPCs held from 14th to 26th November 2005, 15th to 20th May 2006, 9th to 18th October 2006, and 19th to 26th March, 2007 in order to promote the Petitioner in these DPC's according to his MSL seniority." He was finally considered and promoted in the DPC held from 15th October to 6th November, 2007 according to his seniority position, which was at serial number 689 in the list of LDCs along with one Ajit Kumar, whose serial number was 504 in the list.

8. In the rejoinder filed by the Petitioner, he points out that the Respondent has a 10% promotion quota for CME diploma holders. This quota is not open even for the regular diploma/degree holders from elsewhere. The CME diploma can only be obtained in service from the CME, which is an establishment of the Ministry of Defence ('MoD') itself. It is pointed out that the CME diploma "is not just any other programme but a training specifically imparted to in-service personnel for specific purpose. The personnel of Army who undergo the said course are given the Rank/Post immediately after completion of the training/course whereas for GREF personnel (Petitioner) it is subject to occurrence of vacancy under the 10%

CME diploma holder quota.”

9. The Petitioner further points out that has been discriminated against as despite having cleared the CME diploma earlier than the other candidates mentioned before, they were promoted under the 10% promotion quota for CME diploma holders. It is pointed out that the MSL for Group-C employees is relevant only for determining the seniority for promotion in their respective promotion cadre i.e. LDC to UDC, Vehicle Mechanic to Charge Mechanic, L/Hand to NT-2 and so on but will not apply in the instant case since the JE (Civil) is not in the direct line of promotion for any Group-C, Non-Technical Cadre. Further, the 10% CME quota was specifically earmarked only for CME diploma holders who cleared the departmental exam on merit (irrespective of service seniority) and completed the CME diploma course thus forming a separate class of employees of GREF (i.e. CME Diploma holders) who become eligible for promotion to J.E. (Civil) posts under the specifically reserved quota of 10% for CME Diploma holders. Thus, according to the Petitioner, the application of MSL for different grades of Group-C employees in a mechanical manner to such unrelated promotion posts where the due process and merit has been specifically provided in the selection process was grossly incorrect.

10. Learned counsel for the Petitioner pointed out that it was the BRO which delayed the Promotion-cum-Posting Order (‘PCPO’) of the Petitioner from November, 2007 to February, 2008 and incorrectly counted that as a second ACP. This resulted in a loss of ten years service of the Petitioner. It is pointed out that the Petitioner should not suffer on account of

administrative lapse of the Respondent No.3. It is submitted that the Petitioner was granted second ACP after completion of 20 years as per paragraph 28 (B) of the DoPT's OM dated 19th May, 2009. Reliance is placed on behalf of the Petitioner on the decision of the Supreme Court in *Shailendra Dania v S.P. Dubey (2007) 5 SCC 535* wherein in similar circumstances, it was observed as under:

“The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.”

11. This Court has considered the submissions of the parties. The Court finds merit in the contention of the Petitioner that the way the MACP works is that if a Government servant (LDC) in Pay Band-1 in the Grade Pay of Rs.1900/- is granted 1st financial upgradation under the MACPS on completion of 10 years of service in the Pay Band-1 in the Grade Pay of Rs.2000/-; and 5 years later he gets his 1st regular promotion as UDC in Pay Band-1 in the Grade Pay of Rs.2400/-, then the 2nd financial upgradation under the MACPS will be granted on completion of 20 years of service in Pay Band-1 in the Grade Pay of Rs.2800/-. On completion of 30 years of service he will get the 3rd ACP in the Grade Pay of Rs.4200/-. However, if two promotions are earned before completion of 20 years, only 3rd financial upgradation would be admissible on completion of 10 years of service in the Grade Pay from the date of the 2nd promotion or 30 years, whichever is earlier. In the present case, the nomination of the Petitioner, who passed the Departmental Exam, 2001 for the diploma programme at the CME, Pune was based on merit. When the Petitioner cleared the diploma and the CME Pune in October, 2004, admittedly the Petitioner became eligible for

promotion as JE (Civil) on passing the diploma and civil engineering course. For some reason he was not promoted, while those junior to him came to be promoted earlier even though they became eligible after passing the CME diploma course later.

12. The stand of the Respondents that no discrimination has been meted out to the Petitioner; that he was correctly promoted as Superintendent (Grade-II) in the DPC held in 2007 and that his seniority and pay were fixed accordingly appears untenable. The reference to his seniority position in the MSL of Group 'C' employees to justify promoting the others who passed the CME Exam later is equally unacceptable. Employees who undergo merit selection through a rigorous competitive selection process and complete the training resulting in CME Diploma course do constitute a separate class. Indeed if the basic eligibility for promotion as JE (Civil) through the DPQ is passing the CME diploma, then equating those like the Petitioner who in fact passed the CME Exam with others who did not take such exam at the relevant time, and giving priority to the latter category, would be plainly unfair.

13. As rightly pointed out, the MSL of Group 'C' employees is relevant only for determining inter-se promotion in their own cadre i.e. LDC to UDC, Vehicle Mechanical to Charge Mechanic and so on. The present case is concerned with the post of JE (Civil) which is not in the direct line of promotion for any Group 'C' non-technical cadre post. Consequently, this Court does not agree with the Respondents that in the present case the MSL will apply for the purposes of promotion of LDCs/Group 'C' as JE (Civil)

conducted through the Departmental competitive exam. In the circumstances, a mandamus is issued to the Respondents to fix the date of the Petitioner's promotion from the date when the first person junior to the Petitioner, after obtaining eligibility/fitness for the post, was promoted. The necessary consequential orders will be issued by the Respondents not later than eight weeks from today.

14. The writ petition is allowed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

January 08, 2019

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