

25.09.2024
Ct. No. 11
Item No. 3
rrc

WPCT 459 of 2012

(Amitava Chakraborty & Anr. Vs. Union of India & Ors.)

Mr. Siddhartha Sankar Mandal
Ms. Arunima Das Sharma

..... For the petitioners

Mr. Indrajeet Dasgupta
Ms. Puspita Bhowmick

..... For the respondents

The present writ petition has been preferred challenging an order dated 13th July, 2012 passed by the learned Tribunal in the original application (in short, OA), being OA 1303 of 2008.

Records reveal that the petitioners submitted a representation for consideration of their promotion to the post of Chargeman Grade – II (Electrical) with effect from April, 2008. Though vacancies were available and they were eligible for promotion, the respondents maintained a deceptive silence and kept the petitioners' claim in abeyance. Aggrieved thereby, the petitioners preferred OA 752 of 2008. The same was disposed of by an order dated 8th August, 2008 directing the respondent no. 3 therein to consider the petitioners' claim. Pursuant to the said order, the respondent no. 3 passed an order dated 27th October, 2008 observing, *inter alia*, as follows:

'The DPC meeting had been held on 08-8-2008. The post of C/M-II is a selection post

which, as stipulated in the prevalent SRO, is to be filled up by considering seniority cum fitness. On such basis DPC considered for promotion of only those candidates, who come within Zone of consideration as well as were having possessed the requisite eligibility in terms of qualification etc. in accordance with the extant norms and procedure the names of 14 senior most candidates from the seniority list of the feeder grade were taken for consideration against five vacancies.

Admittedly the applicants attained the eligibility for promotion to C/M-II (Electrical) as on 01-01-2008 but their seniority position in the finalized Dovetailed seniority list were at Sl. No. 20, 22 and 34 respectively and evidently the applicants did not figure in the list or the zone of consideration against 5 (five) nos. of vacancies. Hence their names were not considered by the DPC held on 08-8-2008 for their promotion.

Considering the persons from the Zone of consideration DPC has recommended only 2 (two) persons as fit for the promotion as they figured in the zone of consideration and having requisite eligibility in terms of qualification. Accordingly promotion of those 2 persons to the post of C/M-II (Electrical) had been ordered vide Rifle Factory Order Part II No. 1482, dt. 16-8-2008 having 3 (three) posts vacant before the Hon'ble CAT's order was received at this factory i.e. on 29-8-2008.'

Aggrieved by the said order, the petitioners herein along with two others preferred OA 1303 of 2008 impleading the candidates at serial nos. 2 to 10 and 12 to 14 of the seniority list, as annexed at pages 71 to 74 of the writ petition. The order passed in the said OA has been impugned in the present writ petition.

Mr. Mandal, learned advocate appearing for the petitioners submits that prior to arriving at a finding as regards the 'zone of consideration', the learned Tribunal affirmed the procedure followed by the concerned department and the Departmental Promotion Committee

(in short, DPC) in granting promotion failing to appreciate that the candidates at serial nos. 2 to 10, 12 to 14, 15 to 19 and 21 of the seniority list did not have the requisite qualification to be considered for promotion. Such infirmity in the order warrants interference of this Court.

He argues that Note 7 of the recruitment rules contained in the memo dated 4th May, 1989 categorically provides that selection would be purely on the basis of merit. The memo dated 24th September, 1997 would also reveal that seniority would be relevant only amongst persons eligible. Such contention was surprisingly negated by the learned Tribunal by a cryptic observation that *'this does not show that the persons, who do not fulfill the qualifications have to be left out'*.

Drawing our attention to the seniority list, Mr. Mandal submits that the petitioners were placed at serial nos. 20 and 22. The Assessment Sheet of the DPC, as annexed at page 134A of the writ petition would reveal that from the seniority list, DPC found that only 14 persons came within the zone of consideration as per the ratio $2n + 4$ against five existing vacancies and ultimately only the persons at serial no.1 and 11 were recommended and granted promotion since the candidates at serial no. 2 to 10 and 12 to 14 were ineligible.

Mr. Mandal points out that the persons at serial nos. 2 to 10, 12 to 14 in the assessment sheet did not fulfill the eligibility criteria to be considered for promotion. Had

they been excluded, the petitioners at serial nos. 20 and 22 would have come within the zone of consideration. The petitioners were thus elbowed out of the zone of consideration and eliminated in a most arbitrary manner. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the same.

Mr. Dasgupta, learned advocate appearing for the respondents, however, submits that all the petitioners were rank junior to the candidates coming within the zone of consideration. In case of selection on the basis of seniority cum merit, the seniority component comes first and on the basis of such criterion, candidates come within the zone of consideration. In support of such contention reliance has been placed upon an office memo dated 6th January, 2006.

He argues that the document annexed at page 137 of the present writ petition, upon which reliance has been placed by Mr. Mandal, does not indicate or define the zone of consideration. The department prepared the seniority list and forwarded it to DPC. The DPC is the authority to consider the merit and fitness of the candidates and to issue recommendation for promotion strictly as per *inter-se* seniority. In the event Mr. Mandal's submission is to be accepted then it becomes an obligation on the part of the department to first prepare an eligibility list and thereafter a seniority list. Such

procedure is not admittedly in vogue. The department has rightly considered and prepared the seniority list and thereafter the DPC in exercise of its jurisdiction had determined the eligibility, fitness and suitability of the candidates recommended for promotion.

He argues that eligibility and seniority are quite distinct, different and independent of each other. A person may be eligible, fit or qualified to be considered for promotion. It does not, however, necessarily mean that he must be treated as having requisite seniority for entry in the zone of consideration. In support the arguments reliance has also been placed upon a judgment delivered in the case of *Union of India & Others Vs. Deo Narain and Others*, reported in (2008) 10 SCC 84.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the petitioners attained the eligibility to be considered for promotion to the post of Chargeman Grade-II (Electrical) as on 1st January 2008. Such fact would be explicit from the order dated 27th October, 2008 impugned in the OA. From the memo dated 24th September, 1997 it would also be explicit that a person cannot be considered for promotion unless he fulfills the eligibility condition prescribed by the relevant rules and the seniority would be relevant only amongst persons eligible.

The Assessment Sheet of the DPC read with the seniority list prepared by the department would reveal that the persons at serial nos. 2 to 10 and 12 to 14 were not eligible candidates. They could not have been recommended by the DPC and the exclusion of the ineligible candidates would have brought the petitioners within the zone of consideration as per the ratio of 2n +4. As five vacancies were available, the zone of consideration was rightly restricted to 14 candidates. However, we are unable to accede to the contention of Mr. Dasgupta that the zone of consideration would be determined only on the basis of seniority list bereft of consideration of eligibility.

In paragraph 4.7 of the OA, it has been averred that exclusion of the ineligible candidates would have placed the petitioners herein at serial no 3 and 4, i.e, just below the candidates at serial no 3 and 4, who were promoted. Such fact stands undisputed. Promotion to a selection post is not a matter of right which can be claimed merely by selection. It is only when merit and suitability is roughly equal that seniority may be a determining factor. There is no dispute as regards to the proposition of law laid down in the case of in the case of *Deo Narain (supra)*. In the said case different recruitment rules were under consideration and the petitioners herein fulfill both the merit criterion well as the seniority criterion. The said judgment is thus distinguishable on facts.

In the said conspectus, we are of the opinion that the petitioners ought to have been assessed by the DPC as they admittedly fulfilled the eligibility criteria and accordingly, came within the zone of consideration. The learned Tribunal had glossed over the said issue and without returning any finding on the same abruptly rejected the petitioners' claim.

We have been informed that the petitioner no. 1 has already retired on 31st January, 2023. Both the petitioners were subsequently promoted to the post of Chargeman Grade-II (Electrical) in the year 2011. The writ petition has been pending for more than a decade and such delay is not totally attributable to the petitioners. The suitability of the persons, who were required to be considered in the year 2008, cannot be adequately determined after a long lapse of about 15 years.

DPC is a recommendatory body and relegating the matter to the DPC at this stage would be iniquitous. Equity regards as done, which should have been done and it would be the bounden duty of this Court to put an end to the protracted long agony suffered by the litigant, moreso when once the Court holds that the petitioners were entitled to the benefit of promotion, the Court can itself grant the relief [See the judgment delivered in the case of *Government of India Vs. B. Anil Kumar*, reported in 2010 4 Supreme 77].

In view thereof, the order dated 13th July, 2012 passed by the learned Tribunal in OA 1303 of 2008 is set aside and the respondents are directed to grant notional promotion to the petitioners to the post of Chargeman Grade-II (Electrical) on and from the date of promotion of the candidate at serial no.11 of the assessment sheet, namely, Tapas Kumar Biswas. The petitioners shall be granted all consequential benefits including seniority and fixational benefits from the date Tapas Kumar Biswas was promoted to the post of Chargeman Grade-II (Electrical), within a period of eight weeks from the date of communication of the order.

With the above observations and directions, the writ petition is disposed of.

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

All parties shall act on the service copies of this order duly downloaded from the official website of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)