

A UNION OF INDIA AND ORS.

v.

N.R. BANERJEE AND ORS.

DECEMBER 16, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Indian Ordinance Factories Service Rules:

C *Indian Ordinance Factories—Promotion to the post of Senior General Manager—Preparation of panel—Proposal for filling the vacancies sent to Ministry on December 22, 1993—Communication of approval by Ministry to UPSC on February 8, 1994—ACRs of eligible candidates approved on August 16, 1994—Meeting of DPC on March 15, 1995—Direction by Tribunal that Government should ignore the ACRs for the years 1994 and consider the candidates eligible upto March, 1993—Held direction given by Tribunal was in accordance with the procedure.*

D *S.K. Rizvi & Ors. v. Union of India & Ors., [1993] Supp. 3 SCC 575, referred to.*

E *Service Law—Promotion—Departmental Promotion Committee—Functions and composition of—Guidelines issued by Government—Judging the suitability of officers—Frequency of meeting of D.P.C. Preparatory action plan for consideration for promotion.*

F *Service Law—Panel—Rights of candidates—Mere inclusion of one's name in the list does not confer any right in him to appointment—It is not incumbent that all posts may be filled up—But the authority must act reasonably, fairly end in public interest and omission thereof should not be arbitrary.*

G *Shankarasan Dash v. Union of India, [1991] 2 SCR 567; Babita Prasaad & Ors. v. State of Bihar & Ors., [1993] Supp. 3 SCC 268; Union Territory of Chandigarh v. Dilbagh Singh & Ors., [1993] 1 SCC 154; State of Bihar & Ors. v. Secretariat Assistant Successful Examinees Union & Ors., [1994] 1 SCC 126 and Nagar Mahapalika Kanpur v. Vinod Kumar Srivastava, AIR (1987) SC 847, referred to.*

H *Service Law—Confidential Report—Object of—A.C.Rs. should be writ-*

ten by competent officer and approved by superior officer objectively and impartially. A

State Bank of India & Ors. v. Kashinath Kher & Ors., [1996] 7 SCC 762, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 16986-87 of 1996. B

From the Judgment and Order dated 14.8.96 of the Central Administrative Tribunal at Jabalpur, in O.A. Nos. 219/95 and 237 of 1996.

Altaf Ahmad, Additional Solicitor General, N.N. Goswami, Mrs. Anil Katiyar and T.V. Ratanam for the Appellants. C

K.M. Reddy S.K. Mehta, Dhruv Mehta, Fazlin Anam and Ms. Monita Jairath, for the Respondents. D

The following order of the Court was delivered :

Leave granted.

These appeals by special leave arise from the orders of the Central Administrative Tribunal, Jabalpur Bench, made on August 14, 1996 in OA Nos. 219/95 and 237/96. the controversy involved relates to promotion to the post of Senior General Manager in the Indian Ordinance Factories under India Ordinance Factories Services Rules. The question for consideration is: as to when the vacancies in the above posts would arise? The grade and scale of pay for the said post is Rs. 3700-8000. For the year 1994-95, panel of successful candidates was required to be prepared. According to the appellants, there were no clear vacancies as on April 1994. Four members in the above grade were to retire in that year. Proposal for filling up the ensuring vacancies from Ordinance Factory Board was sent to the Ministry on December 22, 1993. The Ministry had communicated to the Union Public Service Commission its approval on February 8, 1994. A.C.Rs. of the eligible candidates were approved on August 16, 1994 and the incumbent members joined as members of the Board on August 22, 1994, September 03, 1994, October 6, 1994 and March 1, 1995. Consequently the D.P.C. met on March 15, 1995 for selection of Officers to fill up the four vacancies. E
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A On this factual matrix, it is contended for the appellants that the crucial date for the D.P.C. meeting for selection should be April or May 1995 for selection of candidates to fill up the vacancies of the year 1994-95. The A.C.Rs. recorded of all the candidates falling within the zone of consideration and approved by the Government, as on March 31, 1994, are required to be looked into and merits adjudged. The Tribunal, therefore, was not right in directing the government to ignore the A.C.Rs. for the year 1994 and consideration of the candidates eligible by then upto March, 1993. The D.P.C. was to be constituted as on April 1, 1994. Resultantly, the direction were given in paragraphs 25 and 28 for consequential action. Shri Altaf Ahmed, learned Additional Solicitor General, contends that the view of the Tribunal is not correct in law. As per the procedure, preparation of the panel of candidates for consideration by the D.P.C. to fill up to clear vacancies as on April 1994 is necessary. A.C.Rs. are prepared on the basis of the performance during financial year which would be *October 1 of the year*. In this case, the A.C.Rs. of the incumbents are written on the financial year basis. It was approved by the Government in March 31, 1995. Therefore, the D.P.C. could not have got approved A.C.Rs. before that date, namely, as held by the Tribunal on March 19, 1993. The direction, therefore, that the D.P.C. in its proceedings should take into consideration A.C.Rs. of all the eligible candidates as on April, 1993 is incorrect. Though, *prima facie*, we are impressed with the arguments of Shri Altaf Ahmed, on deeper probe and on going through the procedure laid by the Ministry of Personnel and Training, we find no force in the contention. Preparation of the action plan for consideration by the D.P.C. of the respective claims of the officers within the Zone and thereafter for setting in motion the preparation of panel on yearwise basis, is elaborately mentioned. In case of their failure to do so, what further procedure is required to be followed is also indicated in the rules. It thereby manifests the intention of the rule-maker that the appellant-Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and it should also get the A.C.Rs. prepared and approved. It is also made clear that the D.P.C. should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is clear that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel. In that behalf, it is seen that in the guidelines issued H by the Government in Part I of clause (49) dealing with functions and

composition of Departmental Promotion Committee etc. necessary guidelines have been enumerated. It envisages that a post is filled up by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidates for promotion is considered *in an objective and impartial manner*. In other words, the consideration of the candidate is not clouded by any other extraneous considerations like caste, creed, colour, sect, religion or region. In consideration of claims, merit alone should enter into objective and impartial assessments. The object appears to be that the A.C.Rs. be written by competent officer and approved by superior officer objectively and impartially without being influenced by any extraneous and irrelevant consideration, to augment efficiency in public service and to improve competence. For the purpose of selection, Department Promotion Committee should be formed in each Ministry/Department/Office, whenever an occasion arises, for promotions/confirmations etc. The D.P.Cs. so constituted shall judge the suitability of officers for :

(a) promotions to selection as well as non-selection posts;

(b) confirmation in their respective grades/posts;

(c) assessment of the work and conduct of probationers for the purpose of determining their suitability for retention in service or their discharge from it or extending their probation; and

(d) consideration of cases of Government servants for crossing the efficiency bar.

Rule 2.1 relates to composition of the D.P.C. for Group A and Group B Officers. Members included in DPCs should be officers who are at least one step above the posts in which promotion/confirmation is made as indicated thereunder. This is consistent with the law laid by this Court in *State Bank of India & Ors. v. Kashinath Kher & Ors.*, [1996] 8 SCC 762 wherein it was held that the object of writing the confidential report is two-fold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate

- A devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to his efficacy and efficiency of public service, the confidential reports should be written by a superior officer of high rank. There should be another higher officer in rank above the officer who has written confidential report to review such report.
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Part II of the guidelines relating to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs. should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. In other words, the life of the panel is one year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel, by collecting relevant documents like A.C.Rs., integrity certificates, seniority list etc. for placing before the D.P.C.

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D.P.Cs. should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May, in the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C. meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmations during the year in question. It would, thus, be seen that D.P.Cs. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs. for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

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Part III deals with preparatory action plan for consideration for promotion. Para 4.1 reads as under: A

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long terms. As regard vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately." B C D

Crucial date for determining eligibility has been dealt with there-under. By an amendment brought w.e.f. July 19, 1989, it is stated that relevant dates for determining eligibility of the officers for promotion would be, where A.C.Rs. are written calendar yearwise, 1st July of the year and where the A.C.Rs. are written financial yearwise, 1st October of that year. The other details prescribed in Chapter IV are not material for the purpose of this case, Part 6.4.1. deals with preparation of yearwise by D.P.C. which reads as under: E F

"Where for reasons beyond control, the DPC could not be held in year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures: G

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately. H

- A (ii) Consider in respect of each of the years those offices only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select list' by placing the select list of the earlier year above the one for the next year and so on:
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It would, thus, be seen that the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take the action plan in finalising the A.C.Rs. preparation of the select list and place necessary material before the D.P.C. for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

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D.P.C. in the present case was directed to consider the cases of all the eligible candidates within the zone of consideration so that there will not be any heart burning among the eligible persons whose claims have been withheld for consideration for promotion to the higher post. In *S.K. Rizvi & Ors. v. Union of India & Ors.*, [1993] Supp. 3 SCC 575 the mandatory duty of the preparation of the select list of the officers for promotion to the All India Services has been indicated in para 35 of the judgment at page, 605 thus; "We, therefore, hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the Rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction".

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It would thus be seen that the claims of the candidates eligible have to be considered for promotion objectively and dispassionately, with a sense of achieving many-fold purpose (1) affording an opportunity to an incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within zone of consideration for promotion to higher post or office; and (4) ensuing that the Committee regularly meets and considers their claim objectively, impartially with high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any

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undue delay. They are the salutary principles, and form the purpose and the policy behind the above rules and the Government should follow them. A

Considered from that perspective, the question arises: whether the view taken by the Tribunal is justified in law? It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary. In *Shankarasan Dash v. Union of India*, [1991] 2 SCR 567, the Constitution Bench had held that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant recruitment rules so indicate. The State is under no legal duty to fill up, all or any of the vacancies even though the State acts in arbitrary manner. In *Babita Prasad & Ors. v. State of Bihar & Ors.*, [1993] Supp. 3 SCC 268 it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In *Union Territory of Chandigarh v. Dilbagh Singh & Ors.*, [1993] 1 SCC 154 it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In *State of Bihar & Ors. v. Secretariat Assistant Successful Examinees Union 1986 & Ors.*, [1994] 1 SCC 126 it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules extracted hereinbefore, it is seen that the exercise of preparation of the panel is undertaken well in advance to fill up the clear vacancies or anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable H

A reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith. In *Nagar Mahapalika, Kanpur v. Vinod Kumar Srivastava*, AIR (1987) SC 847, this Court had pointed out with respect to the proscription of the limitation of one year of the waiting list thus :

B "The reason underlying the limitation of the period of list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the post in the succeeding year and being selected for appointment."

C It is true that the material furnished before us would indicate that action was taken on December 22, 1993 by the Ordinance Factory Board and circulated for action to be taken by the Government and thereafter the Union Public Service Commission was consulted. Action taken on this material should have been taken much earlier to the date on which it was taken since they knew that four members were due to retire in August, September, October 1994 and March 1995. These were anticipated vacancies likely to arise on permanent basis and promotion to them was to be made on regular basis. In other words, they were all clear vacancies. So they were to be finalised before April 1994 and the confidential reports should have been approved before 31st March 1993 and all eligible candidates within the zone of consideration as on the date of D.P.C. were entitled to be considered. The direction given by the Tribunal referred to above is clearly in accordance with the procedure indicated hereinbefore. Therefore, we do not find that the orders are vitiated by any error of law warranting interference.

F The appeals are accordingly dismissed. No costs. Since the Tribunal has given time to constitute the D.P.C. and finalise the matter within 45 days, time is extended for 45 days from today. It is needless to mention that all those found eligible are required to be appointed.

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Appeals dismissed.