

SARABJIT SINGH
v.
EX. MAJOR B.D. GUPTA AND ORS.

A

AUGUST 9, 2000

[M. JAGANNADHA RAO AND DORAISWAMY RAJU, JJ.]

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Service Law :

Departmental Promotion—Government Circulars—Applicability of—Appellant promoted in the meeting of DPC held on 16.4.1999, as per Government Circular dated 28.6.61—High Court set aside the promotion holding that for the DPC Government Circular dated 1.10.1999 was applicable—All the parties conceded that for the DPC, Circular dated 1.10.99 was not applicable—Plea of respondent that Circular dated 17.6.1960 applicable to the DPC—Held, Circular dated 17.6.1960 not applicable as the same was replaced by Circular dated 28.6.1961.

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DPC selected three Chief Engineers including the appellant, from amongst the first five from the seniority list of eight Superintending Engineers. Respondent was at number six in the seniority list and he was not selected.

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Respondent filed writ petition challenging the above-mentioned selection. High Court set aside the selection holding that since the DPC was governed by the guidelines issued by the Central Government which were adopted by the State on 1.10.1999, and as per those guidelines DPC would have had to consider eight Superintending Engineers for promotion to the post of Chief Engineer, and if that had been done, the writ petitioner (respondent herein) would have come within the zone of consideration for promotion. High Court directed fresh DPC to be conducted in accordance with the State Government Circular dated 1.10.1999.

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As per the direction of the High Court, petitioner was reverted back to his previous post and fresh date for the meeting of DPC was fixed.

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In appeal to this Court, respondent contended that though in respect of DPC which met on 16.4.1999, by which date the Circular dated 1.10.1999 had not come into being, the said Circular was not applicable, but Punjab Guidelines dated 17.6.60 were applicable, according to which for each post

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A at least three officers had to be considered. Appellant contended that Punjab Guidelines dated 17.6.60 were also not applicable as the same were replaced by Punjab Government Circular dated 28.6.61 applied to DPC under which it was sufficient to consider the case of five officials.

Allowing the appeal, this Court

B. HELD : 1. Since all the parties had conceded that for the DPC dated 16.4.99, the Punjab circular dated 1.10.99, which adopted the Central Government's guidelines for the DPC did not apply, the DPC would not have obviously applied guidelines, which were formulated much later. Therefore, the view of the High Court that as per the Central guidelines, dated 1.10.99 adopted by the Punjab Government, eight candidates had to be considered, could not be accepted. The entire reasoning of the High Court based on the 1.10.99 guidelines would fall to the ground.[327-C-D]

D 2. Guidelines dated 17.6.60 are no longer applicable once the 28.6.61 guidelines, have come into being. Therefore, it is these guidelines dated 28.6.61 that are applicable and have been rightly applied by the DPC. [327-F]

E 3. There was no need for considering the name of the writ petitioner, who was the sixth candidate. Therefore, the writ petitioner's case was rightly not considered for promotion. The High Court erred in applying the wrong guidelines and in thinking that eight names ought to have been considered (including the name of the writ petitioner) and in directing fresh DPC on that ground. [328-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4467 of 2000.

F From the Judgment and Order dated 7.6.2000 of the Punjab and Haryana High Court in C.W.P. No. 13240 of 1999.

P.P. Rao, P.N. Puri, Rajiv Dutta, A.K. Chopra and M.K. Dua for the appearing parties.

G In-person for the Respondent.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted.

H The appellant Mr. Sarabjit Singh (2nd respondent in the writ petition) is aggrieved by the judgment of the Division Bench of High Court of Punjab &

Haryana dated 7.6.2000 in CWP No. 13240/99 allowing the same in favour of the Ist respondent-writ petitioner, Ex. Major B.D. Gupta. The High Court accepted the contention of the Ist respondent that the Departmental promotion committee of the State of Punjab was governed by the guidelines issued by the Central Government which were adopted by the State on 1.10.1999 and held that if those guidelines were applied, the DPC would have had to consider eight Superintending Engineers for promotion to the post of Chief Engineer and not merely five as done in the case, and if that had been done, the writ petitioner, Ex. Major B.D. Gupta would have come within the said zone of consideration and he could not have been omitted from consideration as was done by the DPC. Further under the Central Guidelines, as adopted by the State on 1.10.99, candidates had to get the grading of 'very good' while under the earlier State guidelines, "good" was sufficient. Hence the selection of Respondents 2 to 4 in CWP, namely Mr. Sarabjit Singh (appellant), Mr. B.K. Thapar and Mr. D.P. Bajaj as Chief Engineers was liable to set aside. The High Court directed a fresh DPC to be conducted in accordance with the State Government's circular dated 1.10.1999 where the State had adopted the Central guidelines. That is how this appeal came to be filed by Sri Sarabjit Singh. Before the matter was listed in this Court, the appellant was reverted back as Superintending Engineer and a fresh date was fixed for the meeting of the DPC to consider eight names, including that of the respondent-writ petitioner and others. This Court stayed the fresh meeting of the DPC.

In this appeal, learned senior counsel for the appellant Sri P.P. Rao contended that the High Court failed to notice that the DPC had met on 16.4.99 by which date the Circular of the Punjab Government dated 1.10.99 adopting the Central Government's guidelines had not come into being. The other circular dated 25.11.95 of the State Government referred to the Central Government's guidelines only to the limited extent that the DPC must meet periodically. Counsel contended that the earlier Punjab Guidelines 28.6.61 applied and the DPC which met on 16.4.99 rightly followed the said guidelines of 28.6.61 under which, on the facts of the case, it was sufficient to consider the cases of five Superintending Engineers and inasmuch as the writ petitioner (Ex. Major B.D. Gupta) fell beyond five in the seniority (being sixth), the DPC was not obliged to consider his case. The selection of the appellant and two others (Respondents 2 to 4 in the CWP) was perfectly in order.

In this appeal, so far as the State of Punjab is concerned, the learned counsel Sri Rajiv Dutta submitted that the State had filed a brief counter

A affidavit here without supporting either side while, no doubt, the State had filed a counter-affidavit in the High Court supporting the appellant.

The contesting respondent in this appeal is the writ petitioner (Ex. Major B.D. Gupta) and he filed a separate counter-affidavit and appeared in person. He contended that he had a fundamental right to be considered for promotion.

B Of course, he agreed that in respect of a DPC dated 16.4.99 the Punjab circular dated 1.10.99 could not have been applied and the High Court was wrong in applying the said circular. He, however, referred to the Punjab guidelines dated 17.6.60 and contended that they applied to the DPC and that for each post to be filled, atleast three officers had to be considered. In this case, for two posts, C six names should have been considered and he (Mr. B.D. Gupta) was the sixth person in the list. In fact, here three persons were ultimately selected, as one was on deputation.

D Adverting to the above contention of the respondent-writ petitioner, Sri P.P. Rao learned senior counsel for the appellant replied that the guidelines of 17.6.60 were not applicable and were replaced by fresh guidelines in Punjab Government Circular letter 4044-5GS-61/23179 dated 28.6.61 which read as follows :

E “In this connection, it is also made clear that, in fact, in the first instance, a list of eligible officers/officials who fulfil the prescribed experience, etc., for promotion is to be drawn up in accordance with the sub-paras (i) and (ii) above, then out of this list, such officers/officials as are considered unsuitable for promotion are to be weeded out and a list of only those who are suitable for promotion was to be drawn up. Selection thereafter is to be confined to the 3 suitable officers/officials of the latter list if there is one post, 4 if there are two posts, and 5 if there are three posts and so on. Unsuitable officers/officials are those who, on the basis of their service records, general reputation etc., are definitely not considered fit for promotion by the department. Selection for every vacancy has, therefore, to be made from the slab of 3 officers/officials who are considered fit for promotion and unless a junior among them happens to be of exceptional merit and suitability the senior-most will be selected.”

The points for consideration are :

H (1) whether the High Court was right in applying the Punjab guidelines dated 1.10.99 which adopted the Central Government’s guidelines for DPC?

(2) Whether, in case the State guidelines dated 1.10.99 did not apply, the 17.6.60 guidelines of the State relied upon by the respondent applied or the 28.6.61 guidelines relied upon for the appellant applied? A

(3) If the 28.6.61 guidelines applied, whether the decision of the DPC dated 16.4.99 was not liable to be set aside on the ground that the writ petitioner's name was not considered? B

Point 1 :

It was practically conceded before us by all the parties that for the DPC dated 16.4.99, the Punjab Circular dated 1.10.99 which adopted the Central Government's guidelines for the DPC did not apply. The DPC would not have obviously applied guidelines which were formulated much later. Therefore, the view of the High Court that as per the Central guidelines dated 1.10.99 adopted by the Punjab Government, eight candidates had to be considered could not be accepted. The entire reasoning of the High Court based on the 1.10.99 guidelines would fall to the ground. Point 1 is decided in favour of the appellant. C D

Points 2 and 3 :

In our view, the respondent-writ petitioner is no doubt right in contending that he has a fundamental right to be considered for promotion but this is available only if the 1st respondent falls within the prescribed zone of consideration. That question depends again on the relevant guidelines in Punjab as applicable on the date the DPC met, i.e. 10.4.99. E

The respondent is not right in relying upon the State guidelines dated 17.6.60 which no doubt require atleast three names to be considered for each post. But, in our view, those guidelines are no longer applicable once the 28.6.61 guidelines, extracted above, have come into being. Therefore, it is these guidelines dated 28.6.61 that are applicable and have been rightly applied by the DPC. We have already extracted the guidelines of 28.6.61. F

Now, it appears that by the date of the DPC meeting on 16.4.99, the position was that the seniority list of Superintending Engineers was as follows: (1) Mr. K.K. Vasisht (2) Mr. Subhash Malhotra (3) Mr. Sarabjit Singh (appellant) (4) Mr. D.P. Bajaj (5) Mr. B.K. Thapar (6) Mr. B.D. Gupta (respondent-writ petitioner) (7) Mr. Gurdip Singh and (8) Mr. Gurbax Singh. G

Admittedly, the DPC first called for the files of the first five and later, it also called for the files of the next three, - in all eight. At the time of calling H

A for the files, it was not in a position to say whether it could select three candidates for the post of Chief Engineer from the first five. (Mr. Bajaj was already on deputation).

B But, ultimately, the DPC was able to select three from the first five. The procedure followed by the DPC, in our view, is consistent with the guidelines dated 28.6.61, under which for three posts, five names had to be considered. The DPC said that having regard to certain adverse remarks/departmental inquiries, it did *not* find No. 1 and 2 in seniority Mr. K.K. Vasisht and Mr. Subhash Malhotra suitable for promotion. It recommended the appellant Mr. Sarabjit Singh and the two others, Mr. D.P. Bajaj and Mr. B.K. Thapar. In other words, the DPC was able to select three out of the first five names as explained earlier and this was permissible under the guidelines of 28.6.61. So far as C 25.11.95 guidelines of the State were concerned, they referred to the Central guidelines only to the extent of the need to have periodical DPCs in time.

D There was, therefore, no need for considering the name writ petitioner, who was the sixth candidate. Therefore, the writ petitioner's case was rightly not considered for promotion. The High Court erred in applying the wrong guidelines and in thinking that eight names ought to have been considered (including the name of the writ petitioner) and in directing fresh DPC on that ground.

E The judgment of the High Court is set aside and the recommendation of the DPC dated 16.4.99 and the consequential promotions of the respondents 2, 3, 4 in WP 13240/99 (including that of the appellant) are upheld. There will be no order as to costs.

K.K.T.

Appeal allowed.