

A. N. Pathak and Others

Vs

Secretary to the Government, Ministry of Defence and Another

Writ Petition No. 1889 of 1978

(O. Chinnappa Reddy, V. Khalid JJ)

12.02.1987

JUDGMENT

KHALID, J. –

1. The petitioners, six in number, are working in the Ministry of Defence, Department of Production. They joined their service on different dates ranging from 1963 to 1969. Petitioners 1, 2, 3 and 5 joined service as Senior Technical Assistants while petitioners 4 and 6 joined as Technical Assistants. Petitioners 1 and 2 are now working as Senior Technical Officers (Officiating), petitioners 3 and 4 are working as Technical Officers (Officiating) and petitioners 5 and 6 are working as Junior Technical Officers. None of the petitioners has been confirmed in his respective posts to which they have been promoted.
2. The first respondent is the Secretary to the Government, Ministry of Defence and the second respondent, Director, Directorate of Production and Inspection, Naval.
3. The appointment and promotion of persons like the petitioners were governed by the Department of Defence Production (Directorate of Production and Inspection, Naval) Group A and Group B Technical Post Recruitment Rules, 1976, for short 'the Rules'. Prior to these rules, they were governed by the Rules framed in 1965 and revised in 1972.
4. The grievance of the petitioner is that the rules discriminate between them and the direct recruits, that their seniority is not taken into consideration while the seniority list is prepared and that the direct recruits are given seniority over them undeservedly by virtue of the operation of the method of recruitment contained in the Rules. The petitioners complain that the list so prepared is purely arbitrary and ignores their length of service. They made representations to the first respondent complaining against the injustice done to them and for redressal of their grievances. There were no favourable orders. Hence this writ petition.
5. The prayer in the petition is for a mandamus declaring the rules and the seniority list dated July 25, 1977, September 3, 1977 and September 7, 1977, prepared according to rules, as bad and violative of Articles 14 and 16.
6. In the counter-affidavit filed by the respondents two preliminary objections were taken - (1) that the joint petition filed by the petitioners is not maintainable inasmuch as it involves determination of different questions of facts based on separate causes of action and (2) that the petitioners have not arrayed as respondents all the officers who would be adversely affected by any order to be passed by this Court. The rules in question are justified on the ground that they were validly passed. It is stated

that the offending clause cannot be faulted as violative of Article 14 and Article 16 of the Constitution. The rules were framed in consultation with the Department of Personnel and Administrative Reforms, Cabinet Secretariat, in the light of past experience. It is stated that the rules, far from causing any discrimination, seek to fix rationally (i) inter se seniority, (ii) quotas for recruitment and (iii) norms whereby the cases of all senior persons are to be considered. The preparation of the offending lists is justified on the plea that the principle of fixing seniority on the basis of length of service and dates of confirmation is not an inflexible rule and that it is possible in law that a direct recruit who is appointed later in point of time is senior to a promotee because of the working out of the quota rule. The counter affidavit continues with the usual plea that in certain given cases seniority based on length of service can be ignored.

7. Before dealing with the merits of this case we will dispose of the preliminary objections. We are not impressed with the preliminary objections. The petitioners have clearly given the details about the dates of appointment, promotion etc. The dates do differ. But nothing prevents this Court from modulating the relief and giving directions to the respondents to reconsider the offending lists with reference to each of the petitioners in the light of what follows.

8. The second objection has been met by the petitioners by impleading those who will be affected as respondents 3 to 8, as per orders of this Court dated August 11, 1983.

9. The method of recruitment under challenge is contained in Columns 10 and 11 of the schedule to the Rules which is given below :

#Method of recruitment whether by In case of recruitment by direct recruitment or by promotion promotion/deputation transferor by deputation/transfer and grades from which percentage of the vacancies to be promotion/deputation transfer filled by various methods to be made.-----
 10 11-----Senior Technical
 Officer : Promotion : (i) 50 per cent by promotion Technical Officers with 5 years failing which by direct service in the grade rendered recruitment after appointment thereto on a regular basis : (ii) 50 per cent by direct recruitment Provided that if an officer is considered for promotion in (iii) Failing (i) and (ii) accordance with the provisions above, by re-employment of these Rules/all persons senior to him in that grade (iv) Failing (iii) above by shall also be considered promotion notwithstanding that they may not have rendered the prescribed number of years of regular service in that grade. Technical Officers : Promotion : (i) 50 per cent by promotion Junior Technical Officer with failing which by direct 3 years service in the grade recruitment rendered after appointment thereto on a regular basis : (ii) 50 per cent direct recruitment Provided that if an officer is considered for promotion in (iii) Failing (i) and (ii) above, accordance with the provisions by re-employment of these rules, all persons senior to him in that grade (iv) Failing (iii) by promotion shall also be considered notwithstanding that they may not have rendered the prescribed number of years of regular service in that grade. Note : All eligible candidates have to qualify in a written departmental examination of a degree standard. Re-employment :##

10. The manner in which the above provision works to the detriment of the promotees is as follows. A person who is working as a Senior Technical Officer must have a minimum service of five years in that grade for promotion to the higher post. A direct recruit who joins service much later and who

does not have the requisite five years service will be placed above him for promotion.

11. The posts to be filled in by direct recruitment are kept vacant and as and when recruitment is made, the names of direct recruits are inserted at the places reserved for them regardless of the fact that there are many others who had put in more years of service than they. This method works an additional hardship to the promotees in that they will not be confirmed though the required probation period has been completed by them, only to allow the direct recruits to complete their period of probation. The combined operation of Clauses 10 and 11, according to the petitioners causes a double damage to them and the direct recruits consequently have double advantage.

12. Annexure 'C' to the writ petition is the seniority list relating to the Senior Technical Officers. In this list, places 4, 6, 8, 10, 12 and 14 are kept vacant. These places will be filled in when direct recruits come. They will steal a march over those who have entered service earlier. The latter will be pushed down in the list.

13. We do not think it necessary to refer to the various decisions rendered by this Court on this question. In the case of *A. Janardhana v. Union of India* [AIR 1983 SC 769 : (1983) 3 SCC 601 : 1983 SCC (L&S) 467], *O. P. Singla v. Union of India* [(1985) 1 SCR 351 : (1984) 4 SCC 450 : 1984 SCC (L&S) 657 : AIR 1984 SC 1595] and in *G. S. Lamba v. Union of India* [AIR 1985 SC 1019 : (1985) 2 SCC 604 : 1985 SCC (L&S) 491], length of service was given due importance in dealing with promotions and seniority. In the case of *Narender Chadha v. Union of India* [AIR 1986 SC 638 : (1986) 2 SCC 157 : 1986 SCC (L&S) 226], to which one of us was a party, it was held that to treat continuous officiation of one officer as temporary would be arbitrary and violative of Articles 14 and 16. In *G. K. Dudani v. S. D. Sharma* [AIR 1986 SC 1455 : 1986 Supp SCC 239 : 1986 SCC (L&S) 622], a three Judge Bench of this Court, Madon J., speaking for the Bench, approved the settled principle noted above. The promotees come into service, not by way fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service.

14. The learned counsel for the respondents found it difficult to justify the validity of the rules and the lists in the light of the various decisions of this Court which have consistently leaned in favour of the promotees based on their length of service and seniority, in cases where there was inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this explanation since that is little consolation to the petitioners. We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service.

15. The learned counsel for respondents 1 and 2 made a fervent plea that, being a sensitive department, relief may be granted to the petitioners by way of monetary compensation and requested us to desist from upsetting the list. We cannot accede to this request.

16. The petitioners had sought stay of operation of the list. This Court by its order dated September 4, 1978 declined to grant stay, but ordered : "Any action taken in the matter in regard to the grievances of the petitioners in this case will be subject to the final result of this writ petition."

17. In our judgment, the petitioners are entitled to succeed. We allow this writ petition and direct the authorities to re-draw the seniority lists dated July 25, 1977, September 3, 1977 and September 7, 1977, appended as Annexures 'C', 'D' and 'E' to the writ petition and prepare the lists afresh giving the petitioners the positions they would have been entitled to, but for the offending portions of Clauses 10 and 11 in the schedule to the rules.

18. There will be no order as to costs.

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