

Council of Scientific and Industrial Research and Another

Vs

K. G. S. Bhatt and Another

Civil Appeal No. 3967 of 1987

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

29.08.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. Mr. K. G. S. Bhatt - respondent No. 1 in this appeal was Civil Engineer - A in the Central Food and Technological Research Institute, Mysore, which is one of the national institutes under Council of Scientific and Industrial Research. He was not considered for any kind of promotion for nearly two decades. He approached the Central Administrative Tribunal, Bangalore Bench making that grievance and asking for relief. The Tribunal by judgment dated August 7, 1987 allowed his claim which has been challenged in this appeal by leave.

2. Council of Scientific and Industrial Research is a society registered under the Societies Registration Act. It is appellant No. 1 in this appeal. The Director of Central Food and Technological Research Institute at Mysore is appellant No. 2. They are hereinafter together called as 'the appellant'. The appellant has framed certain bye-laws for regulating promotion of technical and scientific staff. One such bye-law is bye-law 71(b)(ii) which expressly does not cover the case of civil engineers. The Tribunal, however, extended the benefit of that bye-law to respondent 1 also. It directed the appellant to consider his case for promotion in terms of the said bye-law with all consequential benefits.

3. Before turning to bye-law 71(b)(ii), it is of some importance to see the relevant facts : On April 20, 1961, respondent 1 was appointed as Civil Engineer-A in the appellant's institute. He was given the pay scale of Rs. 350-900. This pay scale was equivalent to that of starting pay scale of Junior Scientific Officers. The respondent 1 remained in the same cadre and pay scale till 1981 while Junior Scientific Officer and Junior Technical Officers were given periodical promotion under bye-law 71(b)(ii). In 1981, the appellant framed a separate scheme for promoting civil engineers and other administrative officers. The scheme is called the New Recruitment and Assessment Scheme (NR & AS). Under that scheme respondent 1 was considered and promoted to higher cadre with which we are not concerned in this appeal. We are only concerned with his claim for promotion for the period from 1961 to 1981, that is, from the date of his appointment till the NR & AS was introduced.

4. Prior to 1978, there were five categories of officers and staff working under the establishments of the appellant. They were as follows :

"(i) those engaged in research work; (ii) those engaged in scientific work other than research work; (iii) auxiliary technical; (iv) administrative, ministerial and accounts;

and (v) supporting staff (class IV) " .

5. Subsequent to October 1978, those five categories were reclassified as under :

"(i) Scientific; (ii) technical; and (iii) administrative."

This latter classification resulted in the limitation of supporting staff (class IV) and the category of 'auxiliary technical'. It is not disputed that the civil engineers were categorised as 'auxiliary technical'; under the first classification, but under the latter classification, they were brought under the 'administrative' category. The exclusion of their cadre from the scientific or technical category and bringing them under the 'administrative' category led to a wave of protests and representations. The question was also raised in the Parliament about the injustice done to the civil and structural engineers. On August 3, 1979, the Governing Body of the appellant approved the proposal to classify the Civil Engineering and Architectural Personnel as 'technical' instead of as 'administrative', but it was only for the purpose of retirement at 60 years. No promotional benefits were however, extended to them till NR & AS was approved.

6. We may now turn to bye-law 71(b)(ii) on which the Tribunal rested its conclusion. It reads as follows :

"Notwithstanding anything contained in these bye-laws :

(ii) The merit of officers of the rank of a Junior Scientific Officer/Junior Technical Officer and Senior Scientific Officer Gr. II/Senior Technical Officer Gr. II engaged in scientific work may be assessed for promotion to the next higher grade, after every five years of the appointment of the officer concerned against that post. Such assessment will also be made after completing one year's service at the maximum of the scale of pay of his grade."

7. The Tribunal while considering this bye-law has observed that it could be applied to respondent 1 since he was in the rank of a Junior Scientific Officer/Junior Technical Officer. This view has been seriously criticised by counsel for the appellant. He argued that the said bye-law would be applicable only to Junior Scientific and Technical Officers who are engaged in scientific and technical work and it excludes others who are not engaged in scientific work. He also claimed that the bye-law was intended to give accelerated promotion to scientific and technical officers as an incentive for them and it cannot be extended to others who are doing routine administrative work.

8. It seems to us that the submission of counsel for the appellant is not unjustified. Apparently the bye-law governs only the promotion of junior scientific and technical staff grade II who are engaged in the scientific work. One who is "engaged in the scientific work" is alone entitled to the benefit to the bye-law. It is a necessary qualification for being considered for accelerated promotion. A person who is not engaged in the scientific work, therefore, stands excluded from the bye-law. In other words, it has no application to the staff who are doing administrative work. Under the categorisation of jobs, respondent 1 falls under the 'administrative' category and therefore, stands excluded from bye-law 71(b)(ii).

9. That then is the scope of bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to respondent 1. By pointing out the error that crept into the decision of the Tribunal, we need not to take its logical end which will defeat justice. Respondent 1 is not a layman. He is a highly qualified engineer. Although he joined service with a diploma in engineering, he later

passed Bachelor of Engineering (B.E.) and also acquired M. Tech. degree and one more diploma (D.P.M.). He was, however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation, public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career, One must, therefore, be given opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B., 4th edn., p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See : Personnel Management by Dr. Udai Pareek, p. 277). There cannot be any modern management much less any career planning, manpower development, management development, etc., which is not related to a system of promotions. (See : Management of Personnel in India Enterprises by Prof. N. N. Chatterjee, Chapter 12, P. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent 1 was concerned till NR & AS was introduced.

10. Respondent 1 has alleged in the counter-affidavit that electrical engineers, mechanical engineers, refrigeration engineers, glass blowers. etc. were promoted treating them as 'technical' personnel. He has stated that electrical engineer deals with electrical services. Mechanical engineer looks after laboratory equipments. Glass blower takes care of glass apparatus. Refrigeration engineer provides cold storage. It is said that they got benefit of promotion under bye-law 71(b)(ii). Not merely that even some of the plumbers, masons, mates, polishers, etc., who were working under respondent 1 were said to have been classified as 'technical' for giving them promotion. These averments have not been denied or disputed in the reply affidavit filed on behalf of the appellant. We have referred to these averments only to highlight the injustice done to respondent 1 and not to impeach the validity of categorisation. Indeed, we cannot meddle with the categorisation since it was done by the Expert Committee.

11. There is yet another reason for not interfering with the relief given by the Tribunal. We have accepted tribunalisation of justice by divesting jurisdiction of the High Courts with regard to service matters. The Service Tribunals have been constituted under the Administrative Tribunals Act, 1985, as final arbiter of controversies relating to conditions of service of officials. The Administrative Tribunals Act was enacted on the recommendations of this Court made in *Harjeet Singh v. Union of India* ((1980)3 SCC 205, 207-08 : 1980 SCC (L&S) 351 : (1980) 3 SCR 459, 464) and in *Kamal Kanti Datta v. Union of India* ((1980) 4 SCC 38, 39 : 1980 SCC (L&S) 485 : (1980) 3 SCR 811, 823) There, this Court observed that the Tribunal should decide disputes as to service matters without being tied down to strict rules of evidence. In fact sub-section (1) of Section 22 of the Administrative Tribunals Act, 1985, provides that a Tribunal should not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principle of natural justice etc. Section 27 provides finality to orders of the Tribunal. Section 28 excludes the jurisdiction of courts except the Supreme Court or any Industrial Tribunal, Labour Court.

12. But this Court under Article 136 exercises power only when there is supreme need. The decision on individual disputes of seniority, promotion, reversion, suspension, pay fixation etc., are not ordinarily interfered with even though it is viewed as erroneous. The Tribunal may fall into some legal errors but if substantial justice has been rendered to a person, this Court will not interfere with

such a decision. In *Rashpal Malhotra v. Satya Rajput* ((1987) 4 SCC 391), this Court expressed the view that even if legal flaws might be electronically detected in the order of the Tribunal or Court, this Court will not interfere unless there is manifest injustice or substantial question of public importance.

13. It may be borne in mind that the exercise of power under Article 136 while granting a special leave and while hearing an appeal is one continuous process, and this Court will apply the same principles even at the time of disposal of the appeal. (See : (i) *Bengal Chemical & Pharmaceutical Work Ltd., v. Employees* 1959 Supp 2 SCR 136, 141 : AIR 1959 SC 633 : (1959) 1 LLJ 413 and (ii) *Baldota Bros. v. Libra Mining Works*, AIR 1961 SC 100, 103)

14. In the instant case as already noticed the respondent 1 has suffered and stagnated for about twenty years in the same scale from inception due to defective promotional policy. Therefore, we decline to interfere with the relief granted by the Tribunal although we do not agree with the views expressed on the scope of bye-law 71(b)(ii).

15. In the result, the appeal fails and is dismissed. But in the circumstances of the case, we make no order as to costs.

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