

K. Jagadeesan

Vs

Union of India and Others

Civil Appeal No. 3607 of 1989

(M.H. Kania, R. M. Sahai JJ)

19.02.1990

JUDGMENT

KANIA, J. -

1. This is an appeal by special leave against a decision of the Central Administrative tribunal, Hyderabad in Transfer Application No. 1185 of 1985 (W.P. No. 8226 of 1985).
2. All the relevant facts have been set out by the Tribunal in its judgment. As we are in agreement with the reasoning and conclusions of the Tribunal in the impugned judgment, we propose to set out only the brief facts necessary for the disposal of the appeal.
3. Under the relevant rules, the recruitment to the post of superintending Mechanical Engineer was by promotion and failing that by direct recruitment. It may be mentioned that for direct recruitment to the said post, the qualifications of a degree in Mechanical or Automobile Engineering was prescribed as essential. For promotion to the post of Director (ME) the requisite qualification was five years of service in the grade of Mechanical Engineer (Senior). The appellant became eligible for promotion in 1978, but he was not promoted as there were some senior person in his grade, who were promoted to the said post. On January 31, 1984, a Notification was issued by respondent 1, amending the said Rules and the said Notification was duly published in the Gazette of India. By the said amendment, the said Rules were amended and it was prescribed that for promotion to the post of Director (ME) a degree in Engineering was a requisite qualification. The appellant challenges the validity of this Notification on the ground that it affected his chances of promotion or alternatively his right to be considered for promotion to the post of Director (ME). The appellant is a Mechanical Engineer (Senior) in the Geological Survey of India, Southern Region, Hyderabad. The appellant is a diploma holder and does not hold any degree in engineering. On April 27, 1964 he was appointed as Transport Officer (Class I Technical Grade, Group 'A'). This post was redesignated and merged with the post of Mechanical Engineer (Junior) in March 1968. On November 28, 1969, the Geological Survey of India (Group 'A' and Group 'B' Posts) Recruitment Rules, 1967, made under Article 309 of the Constitution were brought into force. The appellant was promoted as a mechanical Engineer (Senior) with effect from March 17, 1973 and his conditions of service were governed by the aforesaid rules. These rules have been amended from time to time. It was submitted by learned counsel for the appellant that the said amendment purported to be carried out by the said Notification was bad in law as it adversely affected a condition of service relating to promotion. It was submitted by learned counsel for the appellant that if the rule, requiring a degree qualification for promotion to the post of Director (ME), was applied as far as the appellant was concerned, it would amount to giving a retrospective effect to the operation of the said rule and no retrospective rule could be framed under Article 309 of the Constitution. This contention was rejected by the

Tribunal which held that it was for the Government to prescribe such qualifications as it considered fit for the post of Director (ME) and the Tribunal could not go into the question whether that qualification was necessary unless the prescribing of the requirement could be said to be perverse. The Tribunal further took the view that the appellant had no vested right to promotion but had a mere chance of promotion and he was not entitled to challenge the rule merely on the ground that it affected his chance of promotion. The said appeal is directed against the said decision.

4. The main argument of learned counsel for the appellant is that the Tribunal was in error in holding that the rule affected merely a chance of promotion which the appellant had. It was submitted by him that although the appellant could not claim any right to be promoted, he certainly had the right to be considered for promotion and the amendment to the rule carried out by the said Notification depriving of that right was bad in law.

5. Strong reliance was placed by the learned counsel for the appellant on the decision of this Court in *T. R. Kapur v. State of Haryana* (1986 Supp SCC 584, 595 : (1987) 2 ATC 595) where it was held that right to be considered for promotion is a condition of service. This decision is, however, of no assistance to the learned counsel in support of his argument because the Bench which rendered the said decision has stated as follows : (SCC p. 595, para 16)

"It is well settled that the power to frame rule to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with retrospective effect It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chance of promotion may not be."

It was further held that : (SCC p. 595, para 16)

"an authority competent to lay down qualification for promotion. Is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively."

It was, however, clarified that : (SCC p. 595, para 16)

"unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled."

6. It is only in this sense, that is, as set out in the immediately preceding paragraph, that the view has been taken that the rules cannot be retrospective. The ratio of this decision is not applicable to the case before us as there is no question of reverting the appellant. Again, it has been held by a Bench comprising three learned Judges of this Court, in *State of Maharashtra v. Chandrakant Anant Kulkarni* ((1981) 4 SCC 130 : 1981 SCC (L&S) 562) (at paragraph 16, page 442 of the said report), that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not. It was also held there that mere passing of the departmental examination conferred no right on the concerned S.T. Inspectors of Bombay, to promotion. They merely became eligible for promotion. They had to be brought on to a select list, not merely on the length of service but on the basis of merit-cum-seniority principle.

7. In our opinion, no retrospective effect has been given to the said amended rule. It is not argued that the appellant has been reverted from the post which he occupies on the ground of any lack of any qualification. The only effect is that his chances of promotion of his right to be considered for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules carried out by the impugned notification and the challenge to the said notification on that ground must fail.

8. The next argument advanced before us by the learned counsel for the appellant is that employees in the drilling stream who might be diploma holders could move by promotion to the grade of Director (Drilling) which is equivalent to the post of Director (Mechanical Engineering) and would be further eligible to be considered for the next higher post of Deputy Director General (Engineering Service) on the basis of a common seniority of Directors (Mechanical) and Directors (Drilling). It was submitted that, in this situation the requirement of a degree for promotion to the post of Director (Mechanical) must be regarded as unreasonable and bad in law. This argument was rejected by the Tribunal on the ground that the fact that for the higher post of Deputy Director General (Engineering Service) it is not necessary to hold a graduate degree is no reason why a degree requirement for the post of Director (Mechanical) should be regarded as unreasonable or bad in law. It is for the Government to decide what qualification was required for the promotion to the post of Director (ME) and, unless that requirement was totally irrelevant unreasonable it could not be said to be bad in law. In this regard we agree with the reasoning and conclusions of the Tribunal.

9. In the result, the appeal fails and is dismissed. There will be no order as to costs.

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