

Madhya Pradesh Electricity Board, Jabalpur

Vs

Bhushan Saxena and Another

Civil Appeal No. 1485 of 1993

(S. Mohan, S. C. Sen JJ)

13.02.1997

ORDER

1. This appeal is preferred against the judgment of the Madhya Pradesh High Court allowing a writ petition filed by Respondent 1. Respondent 1 was a Junior Engineer in the service of Madhya Pradesh Electricity Board. He was appointed to the said post on 10-2-1976. Promotion to the higher post is governed by the rules contained in the Circular dated 10-3-1975.

2. Since there were not many opportunities for promotion and with a view to obviate stagnation, the Board issued on 6-5-1982 an order which reads as under :

"An officer, who has completed 9/10 years of service in the same grade in a particular pay scale as indicated in para 4 of this order and has not got promotion for no fault of his own i.e. for want of a clear vacancy, will be eligible for exercising option to the next higher scale from the date following the date on which he completes 9/10 years' service in the same grade and his pay scale be fixed in the next scale in accordance with the rules governing promotion from one grade to another grade, under the normal fixation rules."

3. This upgradation was, however, subject to several conditions mentioned in para 3 of the said order. Condition No. (ii) is relevant for our purpose. It reads :

" (ii) He is otherwise fit for promotion on the basis of overall performance as per normal rules of the Board."

4. The words in para 2 "and has not got promotion for no fault of his own" read with Condition No. (ii) clearly disclose that an officer is entitled to opt for and get the higher pay scale in the same grade provided he is fit and eligible for promotion but could not be promoted because there was no vacancy in the promotion category.

5. One must, therefore, have to see whether a person who has opted for higher pay scale in the same grade is fit for promotion and that can be determined only with reference to and on the basis of the rules contained in the circular dated 10-3-1975. The said circular prescribed inter alia that an officer becomes ineligible for promotion if he gets a 'D' report in any year. He must compensate it by getting 'A' report in a subsequent year to become eligible for promotion.

6. In this case Respondent I was given 'D' grade in the year 1984. For that reason he was not promoted in the year 1985 though he completed 9 years of service in that year. Since he obtained 'A'

grade in the year 1989, he was given w.e.f. 1989 the higher pay scale under the order dated 6-5-1992.

7. Respondent 1 thereupon approached the Madhya Pradesh High Court contending that inasmuch as he had completed 9 years of service by 10-2-1985 he is entitled to the higher pay scale with effect from that date (10-2-1985) and that his promotion should be made effective from that date, instead of 1-4-1989 (on which date he was actually put in the higher scale).

8. The High Court has observed in the first instance that for placing in the higher pay scale in accordance with the order dated 6-5-1982, it is not a necessary to examine his fitness or eligibility for promotion in the light of the circular dated 10-3-1975. In other words, the High Court was of the opinion that the placing in the higher scale is almost automatic on the completion of 9 years of service and the exercise of option by the employee concerned. The High Court observed : "It was lost sight of by the respondent that its circular dated 10-3-1975 (Annexure R-1) laid down criteria for promotion and could not be applied to cases of grant of higher pay scale of the employee. " In our opinion the High Court was clearly in error in saying so, for the reasons pointed out hereinabove.

9. The High Court then examined the individual case of the respondent. It found that ACRs of the respondent for the years 1981, 1982 and 1983 were untraceable and, therefore, they were got rewritten by the then Divisional Engineer Shri B. S. Sikarwar. The High Court observed that Shri Sikarwar had been the respondent's superior for just about a month and, therefore, he was not competent to write the respondent's confidential report for three years (1981-1983). The High Court, therefore, found that the said ACRs written by Shri B. S. Sikarwar should be excluded from consideration. Having said so it directed that Respondent 1 should be promoted with effect from 10-2-1985. Even on this count we find that the judgment of the High Court is untenable. 'D' grade was given to the respondent in the year 1984. There is no complaint with respect to the ACR relating to the year 1984. If that is so, we are unable to see what relevance the defect in ACRs of 1981-1983 has on the issue.

10. For the above reasons, this appeal is allowed and the judgment of the High Court is set aside. No costs.