

Marine Products Export Development Authority

Vs

A.Geetha & Ors.

(M.K. Mukherjee, M. Jagannadha Rao JJ)

12.09.1997

JUDGMENT

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S.C.AGRAWAL, J.

1. Special leave granted

2. These appeals are directed against the judgment of the High Court of Kerala dated December 20,1994 in Writ Appeal Nos.349/1994, 351/1994, 357/1994, and 362/1994. Writ Appeals Nos.349/1994, 350/1994, 351/1994 and 37/1994 were filed by the Marine Products Export Development Authority (hereinafter referred to as "MPEDA") against the judgment of the learned Single Judge of the High Court dated February 18,1994 in O.P.No.2058/91, 9205/90, 7539/90 and 321/91. Writ Appeal No. 362/94 was filed by respondent Nos. 3, 4 and 5 in O.P.No. 7539/90. O.P.No.2058/91 was filed by K.Sasidharan Nair and V.I.George, O.P.No.9205/90 was filed by K.J.Anthony, O.P.7539/90 was filed by A.Geetha and O.P.No.321/91 was filed K.S.Sreedevi. The petitioners in the said petition, who are respondents in these appeals, shall hereinafter be referred to as the petitioners.

3. MPEDA is an authority established under the provisions of the Marine Products Export Development Authority Act, 1972. Section 7(4) of the said Act empower MPEDA to appoint officers and employees as may be necessary for efficient performance of its functions and pay them such salaries and allowances as it may determine from time to time, subject to Rules prescribed by Central Government. The Central Government has not prescribed any rules governing the service conditions. MPEDA issued standing Instructions for that purpose which came into force with effect from December 15,1979. By cause 9 of the Standing Instructions read with Schedule 1 the employees have been classified into four categories in the following manner:-

1. GROUP A [Class I] consists of Joint Director, Project Director, Deputy Director and Assistant Director. [Pre-revised pay scales of Rs. 700-1300 to Rs. 1500-1800].
2. GROUP B [Class II] consists of Accounts Officer and Quality Supervisor [Pre-revised scale of Rs.550-900]
3. GROUP C [Class I] consists of Accountant, Assistant, Senior Clerk and Junior Clerk [Pre revised scales of Rs. 260 400 to Rs. 420-700].
4. Group D [Class I] consists of Watchmen, Peons, etc. [Pre-revised scale of Rs.196-232]. Clause 10 of the Standing Instruction, under the caption

"Channels of Promotion', provides as under:-

1. The following shall be the channels of promotions:

Channel I - Administration.

Channel II - Regional office, Marketing Service, Development, Economics, Publicity and Statistics.

Channel III - Quality Control & Inspection.

Channel IV - Frozen Control & Inspection Storage.

Channel V - Shrimp Farming.

The posts under each channel are given in Schedule II.

2. For the purpose of implementation of these channels of promotion, options of individual employees concerned shall be obtained.

3. Employees presently working in the posts in the scale of pay of Rs. 425-700 shall exercise their option of various channels within 60 days of completion of their probation in the post. Employees not so opting shall be placed in such channels as may be decided by the Executive Committee.

4. Options once exercised shall be final."

4. The petitioners were all appointed as Quality Supervisors by direct recruitment. K.S. Sreedevi was appointed on July 28, 1978 and the rest were appointed in 1981-82, i.e. after the coming into the force of the standing Instructions on December 15, 1979. The post of Quality Supervisor falls in Channel III. In Channel III there are 2 posts of Assistant Directors, while the number of such posts are three in Channel I, Seventeen in Channel II and twelve in Channel V. The petitioners submitted a representation wherein they sought to exercise the option regarding change of channel from Channel III to other channels. The said representation of the petitioner was referred to the Executive Committee of MPEDA. The Executive Committee, in its meeting held on August 13, 1989, decided as follows:-

"The Committee noted the implications of the interpretation of Standing Instructions clause 10(2) to (4) and it was clarified with reference to clause 10 (2) and (3) of Standing Instructions that the facility to opt for a particular channel will be available only to employees working in posts below the grade of Rs.1640- 2900 and that too for promotion to the grade of Rs.1640-2900. For this purpose employees working in next below feeder grades identified for promotion as feeder category in the recruitment rules shall exercise their option of channel within 60 days of completion of their probation in the post. The provision of option therefore will not be available to employees appointed or promoted into the grade of Rs.1640-2900 revised."

5. Feeling aggrieved by the said decision of the Executive Committee the petitioners filed the writ petitions which have given rise to these appeals. The said writ petitions were heard by a learned single judge of the High Court. By his judgment dated February 18, 1994, the learned Single Judge

(G.H.Guttal J.) allowed the said petitions and held that the channel system of promotion laid down in the Standing Instructions was violative of the right to equality guaranteed under Article 14 of the Constitution of India inasmuch the channelisation of promotions under the Standing Instructions confines the petitioners to Channel III where there are only two posts of Assistant Directors and in contrast the number of post of Assistant Directors in other channels are more and as a result officers in those channels have accelerated promotions even if they are junior to the petitioners and have lesser experience. The learned Single Judge further held that the petitioners were wrongly denied the option to choose the channel on the view that such option was available only to employees falling under sub-clause (3) of clause 10 of the Standing Instructions. The learned Single Judge was of the view that sub-clause (2) of clause 10 applies to all employees who have a desire to exercise the option to choose a channel of promotion and sub-clause (3) cannot be interpreted to mean that the application of the general provision of sub-clause (2) is excluded. Appeals filed against the said judgment of the learned Single Judge by MPEDA as well as by respondent Nos. 3,4 and 5 in O.P.No. 7539/90 have been dismissed by the Division Bench of the High Court by the impugned judgment. The learned Judges on the Division Bench have construed the Standing Instructions to mean that under sub-clause (2) of clause 10 the employees who are already in any of the channels have a legal right to exercise their option to be considered in the matter of promotion to the post of Assistant Director in a different channel and that sub-clause (3) of clause 10 deals with the employees who are outside the channels and are required to exercise their option within a specified time, in the absence of which they are to be dealt with by the Executive Committee. The learned Judge have, however, held that on the said interpretation the provisions of sub-clause (2) of clause 10 could not be held to be discriminatory. Feeling aggrieved by the said decision of the Division Bench of the High Court the appellants have filed these appeals.

6. Dr. Rajiv Dhavan, the learned senior counsel appearing for MPEDA, has urged that the High Court was in error in construing sub-clauses (2) and (3) of clause 10 of the Standing Instructions. The Submission of the learned counsel is that the channels of promotion are only in respect of different posts falling in Groups A and B and the right to exercise the option for the channel has been given to employees falling in Group C who would be promoted to Group B and for the purpose of such promotion they could exercise their option for the channel in which they want to be considered for promotion to a Group B post. It has been urged that sub-clauses (2) and (3) of clause 10 have to be read together and, if so read, the said clauses mean that the right of option is available only to employees referred to in sub-clause (3) and there is no independent right of option given to employees other than those referred up in sub-clause (3). Shri. M.J.Vellapally, the learned senior counsel appearing for the petitioner, has, on the other hand, urged that the High Court has rightly construed sub-clauses (2) and (3) of clause 10 of the Standing Instructions to mean that under sub-clause (2) a general right has been conferred on all employees while under sub-clause (3) a special provision is made with regard to employees who were working on the posts in the pay scale of Rs. 425-700.

7. On a careful consideration of the submissions urged by the learned council we find considerable merit in the submissions of Dr. Dhavan. In our opinion, sub-clauses (2) and (3) of clause 10 of the Standing Instructions cannot be read disjunctively as dealing with different set of employees. It is difficult to accept that sub-clause (2) is general in nature covering all employees, while sub-clause (3) deal with certain specific categories of employees mentioned therein. Sub-clauses (1) to (4) of clause 10 have to be read as part of a scheme and, if they are thus read, it would be evident that in sub-clause (1) the five channels of promotion have been enumerated and reference is made to Schedule II which enumerates the posts under each channel. In sub-clause (2) provision is made for obtaining option of individual employees concerned for the purpose of implementation of channels

of promotion. Sub-clause (3) prescribes the conditions for exercise of option by the employees who have been conferred the said right. It lays down that the said option will be available only the employees regularly working in the pay scale of Rs. 425-700 and such employees should exercise their option to various channels within 60 days of completion of their probation in the post and that the employees not so opting shall be placed in such channels as may be decided by the Executive Committee. In sub-clause (4) it is prescribed that the options once exercised shall be final. If it is held that in sub-clause (2) a general right to option has been conferred on all the employees irrespective of the post held by them, sub-clause(3) would be rendered otiose. Such a construction would defeat the object underlying sub-clause (3) which in specific terms indicates that the right to exercise the option is available only if the conditions laid down in the said sub-clause are fulfilled. In view of the language used in sub-clause (3) an employee falling in that sub-clause can exercise the option only in accordance with the requirements of that sub-clause. He cannot fall back on sub-clause (2). It is also not possible to hold that while sub-clause (3) deals with the category of employees referred to in that sub-clause, the rest of the employees are dealt with in sub-clause (2). There is no reason why the employees referred to in sub-clause (3) should be treated differently from the rest of the employees in the matter of exercise of the right of option. We are, therefore, unable to agree with the view of the Division Bench of the High Court that sub-clause (2) of clause 10 of the Standing Instructions confers a general right of option to all the employees and sub-clause (3) confers such a right to certain categories of employees only. Having regard to the scheme of clause 10 which deals with promotion from Group C to Group B and the fact that 'Channel of Promotion' only relate to posts falling in Group A and B, it must be held that the right of option that has been conferred under clause 10 is available only at the stage of promotion from Group C to a post in Group B. On that view it cannot be said that the petitioners who were holding a post in Group B, having been directly appointed on the post of Quality Supervisor, can exercise the right of option after they have already been appointed on a post in a particular channel.

8. Shri Vellapally has pointed out that while the order dated July 26, 1978 relating to appointment of K.S.Sreedevi contains a specific clause to the effect that her channel of promotion shall be "Channel III to Quality Control and Inspection", there is no such condition in the orders of appointment of K.Sadasivan Nair and V.I. George. It has been pointed out that though his appointment was on the post of Quality Supervisor, K.Sadasivan Nair was working in the Sub Regional Office, Goa and thereafter in the Research and the Said Section, he was transferred to the Appraisal and Investment Section, which does not come under any of the channel of promotion. It is, further, stated that V.I. George was also not posted as Quality Supervisor at any time but was posted to the Sub Regional Office at Mangalore for three years and thereafter he was transferred and posted to the Head Office at Cochin in the Economics and Marketing Service and he was transferred and posted to the Appraisal and Investment Section which does not come under any of the existing channels of promotion and after service in the said section for seven years, he was transferred to the Research and Product Development Section which comes under Channel II of promotion. It is no doubt true that in the case of K.S. Sreedevi there is specific mention in the order of appointment that her channel of promotion shall be "Channel III to Quality Control and Inspection" and a similar provision is not found in the orders of appointment of K.Sadasivan Nair and V.I.George, but in view of the fact that the appointment of both of these petitioners was made on the post of Quality Supervisor which falls in Channel III under Schedule II referred to in sub-clause(1) of Clause 10 of the Standing Instructions, it must be held that the appointment of both these petitioners was made in Channel III. The fact that after their appointment both these petitioners work on posts falling in other channel would not, by itself, mean that there has been a change in their channel for the purpose of promotion. There is nothing in the Standing Instructions which may lend support to the

view that if a person is posted on a post which falls in another channel, there is an automatic change in the channel of promotion. On the other hand, we find that MPEDA in its meeting held on June 27, 1985 has taken the following decision:-

"Mobility Within the Channel

(1) Chairman may transfer officers within channels periodically whenever found necessary in the interest of efficiency and exigencies of work.

(2) Chairman may transfer officers outside the channels on working arrangement in the interest of efficiency and exigencies of work."

9. This would show that the Chairman of MPEDA has been empowered to transfer the officers within channels or outside channels in the interest of efficiency and exigencies of work. Such posting and transfer would not result in automatic change of channels for the purpose of promotion.

10. Shri S.Balakrishnan, the learned counsel appearing for A.Geetha has submitted that clause 10 of the Standing Instructions is violative of the right to equality guaranteed under Article 14 of the Constitution as found by the learned single Judge. It is submitted that there is no rational basis for denying the right of option to person who are directly recruited to a post falling in Group B though such a right is available to a person promoted from a post falling in Group C to a post falling in Group B. We find no merit in this contention. A person who is promoted from a post in Group C to a post in Group B has been given the right to exercise the option to choose the channel of promotion for the reason that channels of promotion are available in respect of posts in Group B and Group A only and since a person holding a post in Group C can be promoted to a post falling in Group B, he has been given the right to choose the channel for promotion before he is promoted to Group B. No right to choose a channel is available after his promotion to a person who has been promoted to Group B. There is thus no distinction between a person who is directly recruited to a post in Group B and a person who is promoted to a post in Group B in the matter of exercise of option after their appointment to Group B. When a person is directly appointed on a post falling in Group B in one of the channels he exercises his option by applying for that particular post falling in the particular channel of promotion. Similarly a person holding a Group C post is given the option to choose the channel of promotion at the stage of promotion Group B. It cannot, therefore, be said that the conferment of right to exercise the option in respect of the channel of promotion under clause 10 of the Standing Instructions suffers from the vice of discrimination. The contention urged by the Shri Balakrishnan cannot, therefore, be accepted.

11. For the reasons aforementioned, we are unable to uphold the impugned judgment of the Division Bench of the High Court. The appeals are, therefore, allowed, the impugned judgment of the Division Bench of the High Court dated December 20,1994 in W.A. 349/1994, 350/1994, 351/1994, 357/1994 and 362/1994 as well as the judgment of the learned Single Judge dated February 18,1994 in O.P.Nos. 7539/1990-Y, 9209/1990-U, O.P.Nos. 321/1991-L and 2058/1991-T are set aside and the said writ petitions are dismissed. No order as to costs.