

SUPREME COURT OF INDIA

Union of India

Vs.

B. Annathurai

C.A.Nos.1128-1129 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

20.02.2009

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Leave granted.

2. These appeals arise out of the common judgment and order dated 24.4.2007 passed by the Division Bench of the High Court of Judicature at Madras by which the High Court upheld the common order dated 11.8.2005 passed by the Central Administrative Tribunal, Madras Bench (hereinafter referred to as the 'Tribunal') and dismissed the writ petitions filed by the appellant- Union of India.

3. By the aforesaid order the Tribunal quashed the minutes of the Departmental Promotion Committee (DPC) dated 13.10.2003 in respect of both the respondents herein and directed the appellants herein to evolve a proper format for recording minutes of DPC and to review the case of the two respondents, namely, Shri B. Annathurai and Shri E. Chandiran Gandhiji respectively for promotion to the post of Scientist/Engineer 'SB' and Scientist/Engineer 'SD' with effect from 01.04.1999 and 01.01.2000 respectively. Review applications filed by the appellants were also dismissed by the Tribunal through a common order dated 26.10.2005 as being in the nature of an appeal. The writ petitions filed by the Union of India and others against the aforesaid findings were dismissed by the High Court.

4. A time bound merit based and non-vacancy oriented scheme of promotion called Flexible Complementary Scheme (for short FCS) has been in existence in Indian Space Research Organisation (for short 'ISRO')/ Department of Space (for short 'DOS') for promotion of its Scientific and Technical personnel in all the four groups (A, B, C & D) right from the year 1976. Emphasis was on merit and not on seniority unlike in other Ministries/Departments of Government of India. The Department of Space was vested with powers to formulate its own policies including norms for recruitment and promotion of its personnel and to this extent; the DPT orders were not applicable to ISRO/Department of Space. In 1972, ISRO was brought under DOS by the Govt. of India

5. The Liquid Propulsion Systems Centre (for short `LPSC'), the appellant Organization is one of the five major Centres of ISRO under DOS, Government of India. The Ministry of Personnel and Training, Government of India issued OM No. 2/41/97-PIC, dated 9.11.1998 as a continuation of O.M. No. A.42014/2/86-Admn 1(A), dated 28.5.1986 introducing Flexible Complementing Scheme of promotion in other Scientific and Technological Departments which was not applicable to ISRO/ DOS. Relevant portion of the said OM is extracted hereunder:

".....1. The recommendation of the Pay Commission that the modified Flexible Complementing Scheme proposed by it should be applicable in all the Departments, including the Departments of Space, Atomic Energy and DRDO without any special dispensation for any individual department, has not been accepted. The existing scheme of merit based promotion system covering the Group `A', `B', `C' Personnel, as presently applicable in the Department of Atomic Energy, the Department of Space and the DRDO shall continue. 2. The recommendation of the Pay Commission to define "Scientific Administrators" and to exclude them from the benefit of in situ promotions under Flexible Complementing Scheme and to bring them under the ambit of "Assured Career Progression Scheme" formulated by the Pay Commission has not been accepted. However, it has been decided that the Flexible Complementing Scheme should, as per its original objective, be made applicable only to scientists and technologists holding scientific posts in Scientific and Technology Departments and who were engaged in scientific activities and services....."

6. The respondent no. 1 herein namely B. Annathurai was working as Technical Assistant `C' in the grade of Rs. 5500-175-9000 whereas respondent No. 2, namely Shri E. Chandiran Gandhiji was working as Scientist/Engineer `SC'. Both were working in the appellants Organization i.e. Liquid Propulsion Systems Centre.

7. Respondent No. 1 was considered by the DPC for promotion to the post of Scientist/Engineer `SB' in the review held on 20.4.1999 along with 18 other candidates. Cases of five candidates including the respondent No. 1 were deferred by DPC to be reassessed after one year as per prevalent norms. In view of certain special order issued by the Department, the respondent No. 1 became eligible for consideration once again along with others even before completion of one year period. But respondent no. 1 did not appear for the interview, although he was called for the same.

8. Respondent no. 2 was interviewed along with 19 other candidates. Cases of six candidates including the respondent no. 2 were deferred by the DPC. Respondent no.2 was called for interview again after one year on 19.12.2000 but he did not appear. Respondent no. 1 was again called for interview on 30.2.2000 but again he did not appear.

9. Both the respondents filed separate O.A. before the Central Administrative Tribunal, Chennai Bench, (for short `Tribunal') praying for setting aside the DPC proceedings held on 20.4.1999 and 23.12.1999 respectively. They stated that the appellants are unhappy with

them for repeatedly approaching the Tribunal with regard to promotion. By a common order dated 4.7.2001 the learned Tribunal directed to reconstitute the DPC by including a member of SC/ST community as prayed for by respondents. In compliance with the said direction the appellant organization reconstituted the DPC and called both the respondents for interview but they did not attend. They were given further opportunities even subsequent thereafter on 1.4.1999 and 1.1.2000 respectively. Although they appeared before the Selection Committee but they refused to answer any of the questions put to them by the DPC members. Therefore, the respondents were not recommended for promotion.

10. Respondents were given further opportunities to appear in subsequent selections held for the purpose but they did not appear. They did not appear in the interview which was conducted as per Tribunal's order dated 28.8.2003 as such they were not recommended for promotion by the duly reconstituted DPC. The respondents filed O.As. before Tribunal which were disposed off by the Tribunal by a common order dated 11.08.2005 directing the appellants to evolve a proper format for recording the minutes of the DPC taking into account the various requirements and then to hold a Review DPC retrospectively i.e. as on 01.04.1999 and 01.01.2000 respectively.

11. Being aggrieved the appellants herein filed writ petitions before the High Court of Madras. The High Court found no merit in the writ petitions and dismissed the same. It did not find any illegality or perversity in the findings of the Ld. Tribunal and directed the writ appellants to implement the directions of the Tribunal within a period of three months from the date of receipt of a copy of the order of the High Court. Hence the appellants filed the Special Leave Petitions on which leave stand granted.

12. The High Court in paragraphs 10, 11 and 12 of the impugned judgment observed as follows:

"10. The procedure for conducting DPC was issued by the Government of India in G.I. Min. of per. & Trg. OM No. 2/41/97-PIC, dated 9.11.1998 as a continuation of O.M. No. A.42014/2/86-Admn 1(A), dated 28.5.1986. The allegation of the applicants is that the authorities have disobeyed the said instructions issued by the Government of India. As could be seen from the affidavit filed in support of these two writ petitions, the contention of the appellants is that there is no apportionment of marks for interview and ACRs in the scheme of promotion followed for Scientific Assistants, Technical Assistants and Scientists/Engineers and therefore, the DPCs, need not mention any thing about these two elements of review in the minutes. When Government of India has specifically issued instructions/guidelines to be followed in such matters, the appellants/authorities are bound to follow the same. Without complying with the said instructions, the appellants have taken a flimsy stand that such a practice is in vogue for the last three decades. Prolonged continuation of illegality cannot acquire the status of legality for any purpose. Further from paragraph No. 16 of the order of the Tribunal, we are able to see that the learned counsel for the authorities represented before the Tribunal that he would personally brief the authorities about the need for proper documentation of the DPC proceedings,

probably realizing the mistake committed by the authorities. In such circumstances, taking a stand by the authorities that everything is well with them, does not appear to be fair and therefore, we are unable to appreciate the stand taken by the appellants¹¹. Further more, the Tribunal, to find out whether the authorities have acted fairly and considered the cases of the applicants in both the writ petition herein had called for the original minutes of the DPC held on 13.10.2003 and found the entire procedure adopted by the authorities to be illegal, which resulted in miscarriage of justice. The Tribunal, had scrupulously analysed the case in depth as could be seen from paras 12 and 13 of its order, in the light of the discrimination and injustice meted out to both the applicants in both the writ petitions just for the reason that they have knocked the doors of justice, and had quashed the DPC proceedings held on 13.10.2003. The said files were also placed before us for our perusal. Having gone through the entire files submitted by the appellants, we are unable to take a different stand from that of the one taken by the Tribunal, since the entire proceedings depicts a clear picture of go-bye given to the instructions issued in this regard by the Government of India. 12. Having gone through the entire materials placed on record, including the original files submitted by the appellants and the order of the Tribunal, we are unable to find any illegality or error apparent on the face of the record or any perversity in approach of the Tribunal, so as to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, we find no merits in both these writ petitions."

13. The learned counsel for the appellants submitted that the Tribunal as also the High Court failed to appreciate the fact that the DPC procedure and the recording of minutes is the procedure which has been followed for more than three decades in the Department of Space. He further submitted that Para 10 of the judgment of the High Court, quoted above, suffers from an error apparent on the face of record, since the Division Bench had not adverted to the stipulations contained in the first paragraph of DPT OM dated 9.11.1998, which unequivocally states that the directions contained therein are not applicable to the DOS as in the case of the Department of Atomic Energy and the Defence Research and Development Organisation (for short 'DRDO'). It was pointed out that the suggestion of the Vth Central Pay Commission to make the modified Flexible Complementing Scheme of Promotion for the Group 'A' Scientists of all the Departments of the Central Government without any special dispensation has not been accepted by the Government and the merit-based promotion scheme existing in these Departments has been allowed to continue, which fact has been totally overlooked by the High Court.

14. It was also submitted that orders of reservation issued by the Government of India are ipso facto not applicable to the Department of Space, as the Scientific & Technical posts in Group 'A' and 'B' in the said Department have been exempted from the purview of reservation orders under Office Memorandum dated 28.7.1975. But despite the said fact the appellant Deptt. complied with the orders of reservation passed by the Tribunal by including SC and ST Member in the DPC and tried to conduct the DPC for the respondents but still the respondents did not consider it appropriate to appear in the said interview and availed the opportunity. The counsel also submitted that the DPC procedures are being followed in the

Department for more than three decades which were formulated on the basis of a Presidential Notification dated 18.07.1972 conferring special powers and privileges on the Department including the powers for formulating all matters relating to personnel policy including the norms for recruitment and promotion of its personnel. The counsel also submitted that the High Court acted without jurisdiction in issuing the directions as contained in the impugned order passed.

15. The counsel appearing for the respondents, however, refuted the aforesaid submissions and contended that both the orders of the High Court as also the order passed by the Tribunal are legal and valid, and therefore, the directions issued in the said orders are required to be strictly complied with by the appellants. It was also submitted that the Office Memorandum dated 09.11.1998 clearly provides that the recommendation of Fifth Pay Commission for application of modified Flexible Complementing Scheme proposed by it in all the departments, including the Department of Space, Atomic Energy and DRDO without any special dispensation for any special department, had not been accepted and thus the existing scheme of merit based promotion system covering the Group `A', `B' and `C' personnel, as presently applicable in the Department of Atomic Energy would also continue to apply to the Department of Space and the DRDO also. It was also submitted that the contentions of the appellants that they are not bound to follow the procedure laid down in modified Flexible Complementing Scheme is unjustified and untenable. It was also submitted that the DPC has not recorded its findings in detail while DPC is required to record in detail its finding including the objective assessment of the merit of the candidate on each factor considered for such assessment and therefore DPC acted in derogation and in violation of its own circulars and consequently the order passed by the Tribunal to evolve a proper procedure for eliminating the elements of bias, prejudice or undue victimization of the candidates was justified.

16. In the light of the aforesaid submissions of the counsel appearing for the parties, we have scrutinised the records, particularly, the Office Memorandum dated 9.11.1998. A bare perusal of the 1st paragraph of the said Memorandum would make it crystal clear that the directions contained therein are not applicable to the department of Space as in the case of Department of Space and Atomic Energy and DRDO. It was clearly stated in the said Memorandum that the recommendation of the Fifth Pay Commission to make modified Flexible Complementing Scheme of promotion for Group `A' Scientists for all the Departments of the Central Government without any special dispensation for any individual department, has not been accepted by the Government and the merit based promotion existing in these Departments has been allowed to continue. The said stipulation in the office memorandum appears to have been overlooked by the Tribunal and the High Court while issuing the directions as contained in their orders impugned herein.

17. The learned counsel appearing for the appellants also brought to our notice a statement showing Review of the cases of the respondents by the Department Promotion Committee. A perusal of the same would indicate that both the respondents 1 and 2 have absented themselves in almost all the selection processes before the Departmental Selection Committee. We would like to extract the aforesaid statement, which is as under: "DETAIL

OF REVIEW OF THE RESPONDENTS: 1. Respondent No. 1 (Shri B. Annathurai) - for promotion to the post of Scientist/Engineer `SB'/`SC' Sl. No. DPC Review Date of Result Interview as on 01. 01.04.1999 20.04.1999 Attended (but recommended as `Deferred') 02. 01.10.1999 05.11.1999 Absent 03. 01.04.2000 30.03.2000 Absent 04. 01.04.2001 26.02.2001 Absent 05. 01.04.1999* 04.10.2001 Absent 06. 01.04.1999* 13.11.2001 (re- Absent scheduled) 07. 01.04.2002 19.03.2002 Absent 08. 01.04.1999* 21.11.2002 Attended (but recommended as `Status-Quo' as he declined to answer technical questions) 09. 01.04.2003 26.03.2003 Absent 10. 01.04.1999* 13.10.2003 Attended (but recommended as `Deferred') 11. 01.04.2004 22.03.2004 Absent 12. 01.04.2005 25.02.2005 Absent 13. 01.04.2006 24.04.2006 Absent 14. 01.01.2007 07.02.2007 Absent @ 15. 01.01.2008 07.12.2007 Absent @ 16. 01.01.2009 28.11.2008 Absent @ @ Review for promotion to the post of Sci./Engr. `SC' consequent on revision of norms. 2. Respondent No. 2 (Shri E. Chandiran Gandhiji) - for promotion to the post of Scientist/Engineer `SD' Sl. No. DPC Review Date of Result Interview as on 01. 01.01.2000 23.12.1999 Attended (but recommended as "Status Quo") 02. 01.01.2001 19.12.2000 Absent 03. 01.01.2000* 03.10.2001 Absent 04. 01.01.2000* 13.11.2001 (re- Absent scheduled) 05. 01.01.2002 28.12.2001 Absent 06. 01.01.2000* 20.11.2002 Attended (but recommended as `Status-Quo' as he declined to answer questions) 07. 01.01.2003 23.12.2002 Absent 08. 01.01.2000* 09.10.2003 Attended (but recommended as `Status-Quo') 09. 01.01.2004 19.12.2003 Absent 10. 01.01.2005 28.12.2004 Absent 11. 01.01.2006 23.12.2005 Promoted to the post of Scientist/Engineer `SD' *As directed by the Hon'ble Tribunal The above statements clearly indicate that although several opportunities have been granted to the respondents but they chose not to appear in the interviews held for the purpose of considering their cases for promotion whereas now they have been arguing for their promotion with retrospective effect. It is necessary to mention at this stage that respondent no. 2 Sh. E. Chandiran Gandhiji appeared in the DPC held on 01.01.2006. He also appeared in the interview held on 23.12.2005 and he was found suitable for promotion in the said selection and accordingly an order of promotion was passed in his case, promoting him to the post of `Scientist/Engineer `SD'" in the year 2006, which he has accepted without any protest. If the appellants despite being given opportunity to appear in the selection choose not to appear in the selection and stayed away from it they cannot seek for direction from the court for their promotion without appearing in the interview from a retrospective date. The reason for such non-appearance in the interview when called for selection and also for not answering questions in the selection when they appeared has not been given by the respondents. In any case such action on their part was at the peril of their own service career and also definitely detrimental to their interest. Having taken such a vital unilateral decision they now cannot seek to take advantage of their own wrong.

18. The Tribunal as also the High Court failed to notice that the Department has been following an elaborate procedure for assessing the suitability or otherwise of the candidates for promotion and the said procedure is based on the guidelines issued by the Government, which procedure is being followed for a very long period of time, and therefore, the order and the direction issued by the Tribunal which has been upheld by the High Court to evolve a new procedure for the recommendations of the DPC was unwarranted and uncalled for.

19. On close scrutiny of the procedure, which is a part of the Government Notifications dated 30.09.1976 and 22.02.1988, it is clear that the Department has a detailed procedure for assessing the suitability of the candidates for promotion. As per such procedure overall assessment of the candidates has to be taken into consideration i.e. keenness exhibited by the official in the pursuit of his profession, ability to take up higher responsibilities, managerial/leadership qualities, theoretical knowledge, etc. and more specifically achievements of the candidates being reviewed and consequently such a procedure cannot be termed as either arbitrary or unreasonable. In the matter of promotion to the job of Scientists/Engineers working in area like Space, there is no possibility for compromising in the matter of merit and therefore merit is prime consideration which is given emphasis.

20. Considering overall facts and circumstances of the case, we are of the considered opinion that the findings and conclusions recorded by the Tribunal and upheld by the High Court cannot be sustained and are therefore by this Judgment we set aside and quash the same.

21. Accordingly, these appeals stand allowed.