

SUPREME COURT OF INDIA

P.Subramaniam

Vs.

Union of India

C.A.No.7779 of 2012

(L.Nageshwara Rao and M.R.Shah,JJ.,)

15.03.2019

JUDGMENT

M.R.Shah,J.,

2. The facts leading to the present appeal in nutshell are as under:

That the appellant herein was appointed as Semi-skilled worker on 25.05.1991 in the respondent no. 2 office, namely, Heavy Alloy Penetrator Project, Trichy. That thereafter he was promoted as Skilled worker on 21.10.1993. That thereafter, the appellant was further promoted and designated as Highly Skilled worker on 31.03.2000. That the next promotional post was the Chargeman Grade-II (Electrical). That the post of Chargeman Grade-II was governed by the statutory Rule as notified in SRO No. 191 dated 28.11.1984 by the Government of India and the post was required to be filled in as per the quota prescribed for that post, namely, 50% by way of promotion; 25% by way of LDCE (Limited Departmental Competitive Examination) and 25% by way of Direct Recruitment. That the appellant herein was promoted to the post of Chargeman Grade-II (Electrical) vide order dated 08.08.2000 in the quota of 25% LDCE. It appears that respondent No. 4 herein applied for the post of Chargeman Grade-II (Electrical) in 25% Direct Recruitment quota as well as in 25% LDCE quota. He was selected in both the quotas - Direct Recruitment and LDCE. However, he was appointed in the Direct Recruitment quota in the month of April 2000 and he resumed his duty on the post of Chargeman Grade-II in the month of April 2000 itself. It so happened that he was also promoted and selected in the quota of 25% LDCE also along with the appellant. However, at the relevant time, he did not accept his promotion to the post of Chargeman Grade-II (Electrical) in the 25% LDCE quota. It appears that, thereafter, the seniority list in the cadre of Chargeman Grade-II was published considering the relevant Rule and, as per the rule position in that year, the direct recruit was to be placed below the LDCE, as the LDCE selection process is stated as Fasttrack promotion. Respondent No. 4 was placed in the seniority list below the appellant, as respondent No. 4 was appointed in the 25% Direct Recruitment quota. Therefore, respondent No. 4 made a representation dated 12.12.2005 to respondent No. 2 stating, inter alia, that as he was appointed to the post of Chargeman Grade-II in the month of April 2000, much prior to the appellant was promoted and, therefore, there is a mistake in the selection list and he ought to have been placed in

the seniority list above the appellant. That vide communication dated 20.12.2005, the representation of respondent No. 4 was rejected on the ground that he has been placed at an appropriate place in the respective seniority list as per the rota-quota rule.

2.1 That thereafter respondent No. 4 approached the Central Administrative Tribunal, Madras by way of O.A. No. 161 of 2006. It was the case on behalf of respondent No. 4 before the learned Tribunal that as he was selected for the appointment on the post of Chargeman Grade-II against the LDCE quota also and as he being more meritorious than the appellant, and that if he would have been told with respect to the rota-quota rule and would have been told that a direct recruit shall be placed below the LDCE promotee and below the promotee who has been promoted in LDCE quota, in that case, he would have opted for the appointment against LDCE quota. It was the case on behalf of respondent No. 4 that he made a representation which ought to have been considered favourably. The O.A. was opposed by the department by submitting that the seniority list has been fixed as per the rota-quota rule. It was also the case on behalf of the department that as respondent No. 4 was appointed in the Direct Recruitment quota, at the relevant time, he did not accept the promotion in the LDCE quota. Therefore, it was prayed to dismiss the O.A.

2.2 However, by the judgment and order dated 31.10.2006, the learned Tribunal allowed the said O.A. by observing that as an employee respondent No. 4 was not aware of the quota-rota rule maintained by the department and also how the seniority list will be fixed between the LDCE appointee and direct recruit and if he had been told that as per the quota-rota rule, the LDCE candidate would rank senior even though he was appointed as direct recruit four months earlier, he would have definitely accepted the promotion through LDCE quota. The learned Tribunal observed that the department has failed to give proper guidance and advice to one of its employees and therefore he could not be denied of his legitimate right which will have a bearing on his seniority. Consequently, the learned Tribunal directed the department to place the original applicant in the seniority list above the appellant herein and one another.

2.3 Feeling aggrieved and dissatisfied with the order of the learned Tribunal, the appellant preferred a writ petition before the High Court and, by the impugned judgment and order, the High Court has dismissed the said writ petition and confirmed the order passed by the learned Tribunal. Hence the original writ petitioner has preferred the present appeal.

3. Having heard the learned counsel appearing on behalf of the respective parties and considering the reasons given by the learned Tribunal and confirmed by the High Court, we are of the opinion that both, the High Court as well as the learned Tribunal, have committed a grave error in directing to place the original applicant-respondent No. 4 herein in the seniority list above the appellant herein. It is an admitted position that the appellant herein was promoted to the post of the Chargeman Grade-II in the LDCE quota. It is an admitted position that, as per the rules, the seniority was required to be fixed as per the quota-rota rule and as per the rule position in that year the direct recruit was to be placed below the LDCE quota, since the LDCE selection process was treated as the Fast Track promotion. It is an admitted position that respondent No. 4 did not accept his appointment/promotion in LDCE quota though selected and offered and he continued his appointment as a direct recruit. The learned Tribunal as well as the High Court granted the relief to respondent No. 4 on the ground that the department ought to have informed and/or advised the employee with respect to the seniority to be fixed on the basis of rota-

quota rule and as the department failed to do so, respondent No. 4 cannot be denied his legitimate right to be placed at an appropriate place in the seniority list, as otherwise also he was selected for a promotion in the LDCE quota also. On the aforesaid terms, the learned Tribunal as well as the High Court are not justified in directing to put respondent No. 4 in the seniority list above the appellant who, in fact, was appointed in the LDCE quota and the respondent No. 4 never accepted his promotion in the LDCE quota. It was for the employee to know the rule. The department was not expected to advise and/or tell the employee about how the seniority will be fixed and/or about the rota-quota rule. As observed above, the fact remains that the appellant was appointed in the LDCE quota and in the very year, respondent No. 4 was appointed as a direct recruit. As observed hereinabove, as per the rule position in that year, the direct recruit was to be placed before the LDCE, therefore, respondent No. 4 was rightly placed below the appellant in the seniority list being a direct recruit. Under the circumstances, both, the High Court as well as the learned Tribunal committed an error in directing to place respondent No. 4 in the seniority list above the appellant.

4. In view of the above and for the reasons stated above, the present appeal succeeds. The appeal is allowed accordingly and the impugned judgment and order dated 11.10.2007 passed by the High Court in W.P. No. 18958 of 2007, upholding the order passed by the learned Tribunal, as also the order dated 31.10.2006 passed by the learned Tribunal in O.A. No. 161 of 2006, are hereby quashed and set aside. Consequently, the original application No. 161 of 2006 preferred by respondent No.

4 herein stands dismissed. No costs.

J.

[L. NAGESWARA RAO]

J.

[M. R. SHAH]

New Delhi, March 15, 2019.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.10.2007 passed by the High Court of Judicature at Madras in W.P. No. 18958 of 2007 by which the High Court has dismissed the said writ petition and upheld the order dated 31.10.2006 passed by the Central Administrative Tribunal at Madras, the original writ petitioner has preferred the present appeal.

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Digitally signed by VISHAL ANAWD Date: 20WU13.15 16:26:30nST Reason:1—J