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Union of India and ors Vs. N. Gireesh Kumar

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Court : Rajasthan Jodhpur

Decided On : Jan-02-2014

Appellant : Union of India and ors

Respondent : N. Gireesh Kumar

Judgement :

D.B.Civil Special Appeal (Writ) No.640/2010 Union of India & ORS.vs N.Gireesh Kumar 1 44 D.B.Civil Special Appeal (Writ) No.640/2010 Union of India & ORS.vs N.

Gireesh Kumar DATE OF

ORDER
: 2nd January 2014 HONBLE Mr.JUSTICE DINESH MAHESHWARI HONBLE Mr.JUSTICE P.K.LOHRA Mr.Falgun Buch, for the appellants.

Mr.S.K.Nanda, for the respondent.

<><><> BY THE COURT: This intra-court appeal is directed against the order dated 08.07.2010 whereby, learned Single Judge of this Court has allowed the writ petition (CWP No.500/2000) filed by the respondent of this appeal, on his grievance against denial of promotion to the post of Superintendent, Electrical & Mechanical Grade-II (EM-II) in the vacancies pertaining to the year 1996.

The learned Single Judge has granted relief to the respondent (writ-petitioner) in the following terms:- Consequently, this writ petition is allowed and the respondents are directed to re-consider the case of the petitioner for promotion against the vacancies of Superintendent, Electrical & Mechanical Grade-II of the year 1996 for which the DPC was convened on 25.04.1997 vide Annex-P/8 by holding review DPC within a period of three months from today and as the petitioner deserves to be accorded said promotion from such year of vacancy against 10% quota of vacancies vide Annex-1, Notification with all consequential benefits, he may be given the said relief.

No order as to costs.

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Briefly put, the relevant background aspects of the matter are that the respondent (writ-petitioner) was appointed in General D.B.Civil Special Appeal (Writ) No.640/2010 Union of India & ORS.vs N.

Gireesh Kumar 2 Reserve Engineer Force (GREF) as Radio Mechanic on 20.06.1989.

He had undergone diploma couRs.in Electrical and Mechanical Engineering from the College of Military Engineering (CMA).Pune from November 1993 to November 1995.

As per the applicable revised Recruitment & Promotion Rules,10% of the vacancies for promotion to the post of Superintendent EM-II were to be filled in by promotion of Group 'C' employees in possession of diploma from CME, Pune with 5 years regular service in GREF.

The relevant portion of the Rule reads as under:- 11 (c) - 10% vacancies by promotion of Group 'C' Employees in possession of Diploma CouRs.in Electrical and Mechanical Engineer from College of Military Engineering Pune with 5 years regular service in the grade in General Reserve Engineer Force, failing which by promotion of personnel having qualifications as at (a) and (b) above.

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When the Departmental Promotion Committee (DPC) met for consideration of the eligible candidates for promotion to the said post of Superintendent, EM-II on 25.04.1997, the case of the writ- petitioner was not considered for the alleged reason that only the personnel having seniority from 13.10.1988 were considered whereas he entered the service only on 20.06.1989.

The writ-petitioner contended in the writ petition that he fell within the zone of consideration for such promotion but his case was wrongly and illegally ignored whereas two persons, who had completed the diploma couRs.in the year 1996, were indeed considered.

The writ-petitioner was, of course, given the promotion in the year 2002 but he claimed the same from the year 1996.

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Gireesh Kumar 3 The respondents took the stand in their reply that the writ-petitioner, who entered the service only on 20.06.1989, did not fall within the zone of consideration; and only the Group 'C' employees in possession of CME diploma with the date of seniority upto 13.10.1988 were promoted.

It is borne out from the order impugned that the learned Single Judge dealing with the writ petition posed a specific query as to what was the basis of taking the said cut-off date i.e., 13.10.1988 and what was the method of determining the zone of consideration; and, for there being no cogent and specific answer to this query, the learned Single Judge observed, inter alia, as under: .....The alleged reason given by the respondents for not considering the case of the petitioner vide Annex-P/8 dated 09.04.1999 that personnel with seniority of 13 Oct.

1988, were only considered, however, no document or no explanation has been placed on record by the respondent to justify this cut off date of 13.10.1988.

Since the eligibility criteria was only two requisites, as stated above, and which the petitioner admittedly satisfied and as admitted by the respondents in reply to para

4 of the writ petition that irrespective of trade/status/pay scale, the candidates from Group C employees were to be considered for promotion to the post of Superintendent, Electrical & Mechanical Grade-II, there appears no valid reason for the respondents to ignore the case of the petitioner who satisfied the twin criteria in the year 1997 when the DPC met to consider the case of eligible candidates for promotion to the said post.

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In the opinion of this Court, therefore, the distinction made on the basis of pay scales and date of joining was irrelevant and the only criteria to be applied was 5 years regular service and possession of Diploma from specified institution, which the petitioner admittedly did satisfy.

Since no other guidelines have been produced by the respondents for determining the consideration zone by the respondents and the petitioner satisfied the eligibility criteria in the present case, the non- consideration of his case for promotion cannot be justified.

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Seeking to question the order aforesaid, the stand of the appellants, again, is that only the persons who had entered by 13.10.1988 were considered in the DPC held on 25.04.1997 and D.B.Civil Special Appeal (Writ) No.640/2010 Union of India & ORS.vs N.

Gireesh Kumar 4 hence, the writ-petitioner, who entered on 20.06.1989, could not have been considered.

The learned counsel for the appellant has also questioned the other part of the order impugned whereby, the appellants have been directed to accord promotion to the writ- petitioner and to extend him all consequential benefits.

We have heard the learned counsel for the parties and have perused the material placed on record.

In the true operation of the applicable rules, we are unable to find any basis wherefor the cut-off date of 13.10.1988 had been employed by the appellants.

It is not made out as to why, while considering the persons for promotion in relation to the vacancies of the year 1996, all the persons answering to the eligibility criteria were not considered; and the consideration was restricted by a particular chosen date of entry i.e., 13.10.1988.

The appellants having wrongfully ignored the case of the writ- petitioner from consideration, we find unexceptionable the directions, as issued by the learned Single Judge, for consideration of his case for promotion against the vacancies of Superintendent EM-II of the year 1996 by holding review DPC.

So far the other part of the observations in the operative portion of the order impugned are concerned, whereby it appears as if the learned Single Judge has given mandatory directions for promotion of the writ-petitioner with all consequential benefits, the learned counsel appearing for the writ-petitioner has, very rightly, not attempted to support the same.

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Gireesh Kumar 5 We are clearly of the view that in the given set of facts and circumstances and looking to the nature of the proceedings and the relief claimed, the order could have only been for re- convening of DPC so as to consider the case of the writ-petitioner.

With respect, we are unable to end ORS.the other part of observations in the operative part of the order impugned, suggestive of a mandate against the appellants to accord promotion.

The matter, obviously, is required to be left open for consideration of the authorities concerned in accordance with law.

Accordingly and in view of the above, this appeal is partly allowed but only to the extent that the last part of the order impugned, wherein the learned Single Judge has observed and directed that as the petitioner deserves to be accorded said

promotion from such year of vacancy against 10% quota of vacancies vide Annex-1, Notification with all consequential benefits, he may be given the said relief.

shall stand annulled.

The rest of the order impugned is maintained and affirmed.

Hence, the appellants shall consider the case of the respondent (writ petitioner) for promotion against the vacancies on the post of Superintendent, Electrical & Mechanical Grade-II of the year 1996, for which, the DPC was convened on 25.04.1997 by holding review DPC within a period of three months from today.

No costs.

(P.K.LOHRA),J.

(DINESH MAHESHWARI),J.

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