

Tek Chand Vs. Bhakra Beas Management Board (b.b.m.s.)

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Court : Supreme Court of India

Decided On : Jul-29-2021

Judge : Hon'Ble Mr. Justice Navin Sinha Hon'Ble Mr. Justice R. Subhash Reddy

Appeal No. : C.A. No.-004482-004482 - 2021

Appellant : Tek Chand

Respondent : Bhakra Beas Management Board (b.b.m.s.)

Advocate for Def. : Shri. Vikas Upadhyay

Advocate for Pet/Ap. : S. N. BHAT __

Judgement :

NONREPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.4482 OF2021(arising out of SLP(C)No.28392 of 2018) TEK CHAND AND OTHERS ...APPELLANT(S) VERSUS BHAKRA BEAS MANAGEMENT BOARD (B.B.M.S.) AND OTHERS ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. The appellants were promoted to the post of Leading Fireman on 09.02.2012 under the Bhakra Beas Management Board ClassIII and ClassIV Employees (Recruitment and Conditions of Service) Regulations, 1994 (hereinafter called the Regulations). Their promotions have been annulled by the High Court, holding them to be ineligible for promotion under the Regulations. 1

3. The post of Fireman is a feeder post for that of Leading Fireman. The appellants are admittedly senior to respondent no.3 having been appointed as Fireman on 09.02.1991. Respondent no.3 was appointed as Fireman on 09.01.1992. The respondent filed a writ petition claiming to be considered for promotion as Leading Fireman in view of available vacancies. The appellants came to be promoted during the pendency of the writ petition and were impleaded as respondents. No relief was sought against the appellants. The High Court annulled the promotion of the appellants as ineligible under the Regulations, and directed the promotion of respondent no.3.

4. Shri S.N. Bhat, learned counsel for the appellants, submitted that the appellants are admittedly senior to respondent no.3. Regulation 5 provided that promotion was to be based on the senioritycummerit principle. The appellants held a good service record. The Departmental Promotion Committee after consideration of their candidature promoted them on 09.02.2012 as Leading Fireman. Respondent no.3 had sought no relief for annulling the promotion of the appellants, yet the High 2 Court travelled beyond the pleadings to grant a relief not sought by respondent no.3.

5. Shri Bhat submits that the possession of an appreciation certificate under serial 3 of Schedule A of the Regulations was not an independent requirement in addition to a good service record. It was but only a facet of the good service record. He relies upon a passage from Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edition, which reads as under: It is also not unusual to find use of pairs of words as a composite class. An example of this nature is found in section 22(1) of the Common Regulation Act, 1965 which uses the expression sports and pastimes as a composite class. In interpreting this expression LORD HOFFMAN said: As a matter of language I think that sports and pastimes is not

two classes of activities but a single composite class which uses two words in order to avoid arguments over whether an activity is a sport or pastime. The law constantly uses pairs of words in this way. As long as the activity can properly be called a sport or a pastime, it falls within the composite class. [R. v. Oxfordshire County Council, (1999) 3 All ER385p.396 (HL)]. The High Court erred in holding that the two were conjunctive requirements and in absence of appreciation certificates, the 3 appellants were ineligible to be considered for promotion. Under the Regulations, promotion was to be based on senioritycum merit. Since the appellants held good service records and were senior to respondent no.3, they were rightly promoted on 09.02.2012. Appellants nos.1 and 3 have since retired from service. The promotion of the appellants was protected, both before the High Court and during the pendency of the present appeal. They have uninterruptedly continued on the post of Leading Fireman. Respondent no.3 has also been promoted subsequently on 21.07.2014 with effect from 09.02.2012.

6. Shri Kailash Vasdev, learned senior counsel appearing for the management, submitted that promotion from the post of Fireman to Leading Fireman under the Regulations are based on senioritycummerit principle alone. The appellants are admittedly senior to respondent no.3. There were 21 other persons above respondent no.3 in the seniority list of Fireman, as mentioned in the counter affidavit before the High Court. Respondent no.3 could not have been granted promotion superseding so many persons without examination of their claims.

7. Shri Vikas Upadhyay, learned counsel for respondent no.3, submitted that the requirements to show appreciable initiative and to obtain good reports cannot be telescoped together, as suggested on behalf of the appellants, but are separate requirements. The respondent alone possesses an appreciable initiative certificate dated 14.08.2011 from the Chief Engineer. It was acknowledged that the respondent has also since been promoted with effect from 09.02.2012. The respondent, though junior but being more meritorious than the appellants, there has been no violation of the senioritycummerit principle.

8. We have considered the submissions on behalf of the parties. Regulations 4(5) and 5, relevant to the controversy, read as follows: 4. Mode of appointment xxxxxx

5 4(5) Notwithstanding anything contained in these regulations appointment by promotion shall be made by selection based on senioritycummerit and no employee shall be entitled to such appointment as of right.

5. Qualification No person shall be appointed to the service unless he possesses the essential qualifications and experience prescribed in Schedule A annexed with these regulations.

9. Serial 3 to Schedule A (for Group VIII) prescribing the qualifications for promotion to Leading Fireman from Fireman inter alia reads as follows: Sr. Name of Method Minimum Educational and other Minimum No. Post of qualifications Experience Appoint ment 3. Leading By Qualified in sub-Fire Officers 5 years Fireman promoti course from National Fire Service experience in on from Fire Service College, Nagpur or equivalent amongst degree with heavy vehicles driving firemen license or Qualified in Fire Course arranged 7 years by Ministry of Defence or Home experience in Affairs with heavy vehicles license Fire Service or Departmental candidates without 10 years any course who show appreciable experience in initiative and obtain good reports Fire Service with heavy vehicle license 6 10. The Regulations provide that appointment by promotion is to be made by selection based on senioritycummerit and no employee is entitled to appointment as a matter of right. Schedule A provides three different categories of Fireman eligible to be considered for promotion to Leading Fireman. We are not concerned with the first two categories. The appellants and respondent no.3, all belong to the third category. They do not possess any proficiency qualifications but have 10 years experience as Fireman. It was expected that they would acquire sufficient experience by that time to be considered for promotion. Experience and skill acquired during onthetjob training is very different from expertise acquired based on preceding proficiency qualifications from accredited institutions.

11. The term selection used in Regulation 4(5) and its connotation in respect of the third category of Fireman has to be understood in that context. Though a good service record would be a sine qua non for selection based on senioritycummerit, but if a Fireman appeared to have acquired better proficiency by on thejob training by reason of an appreciation certificate, he would 7 certainly be considered in

possession of an additional attribute. The appellants have not been granted appreciable initiative certificates in performance of their duties. We find it difficult to uphold the reasoning that both requirements were mandatory and conjunctive for promotion or that appreciable initiative was only a facet of a good service record. If that were so, there was no need to incorporate appreciable initiative as a separate head in the Regulations. To interpret it otherwise is to render a part of the Regulations as redundant. The language of the Regulations being clear, it shall require a literal interpretation. The view be taken by us is fortified from the endorsement by the Chief Engineer on the appreciable initiative certificate given to respondent no.3 that it should be annexed to his service record.

12. In other words, a person possessing good reports is eligible to be considered for appointment by promotion as Leading Fireman based on selection. Other things being equal between competing candidates, seniority is to be given due weightage. But it does not mean that even if a junior is more meritorious by way of possessing an appreciable initiative certificate which the senior does not, irrespective of the same, the senior shall march ahead on the senioritycummerit principle.

13. The fallacy in the thinking of the management is evident from the letter of the Secretary dated 06.02.2011 in context of the writ petition filed by respondent no.3, opining that under the Regulations there was no provision for extra weightage of appreciation letter issued to employees. We are unable to sustain the same.

14. The senioritycummerit principle is well established in service jurisprudence and does not need much discussion. In *B.V. Sivaiah and Ors. vs. K. Addankl Babu and Ors.*, (1998) 6 SCC720 explaining the principle of senioritycummerit in service jurisprudence, this Court observed as follows: 10. On the other hand, as between the two principles of seniority and merit, the criterion of senioritycum merit lays greater emphasis on seniority. In *State of Mysore v. Syed Mahmood* [AIR 1968 SC1113: (1968) 3 SCR363 while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of senioritycummerit, this Court has observed that the Rule required promotion to be made by selection on the basis of seniority

subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion. It was pointed out that where the promotion is based on senioritycummerit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

11. In *State of Kerala v. N.M. Thomas* [(1976) 2 SCC310 A.N. Ray, C.J.

has thus explained the criterion of senioritycummerit: (SCC p. 335, para

38) With regard to promotion the normal principles are either meritcum seniority or senioritycum merit. Senioritycummerit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. xxxxxxxxxx 18. We thus arrive at the conclusion that the criterion of senioritycummerit in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of senioritycummerit. 10 15. We are unable to sustain the view taken by the High Court that it was only if a candidate possessed an appreciable initiative and also obtained good reports, then only he was eligible to be considered for promotion. The use of the word and, to our understanding does not make it compulsory for the candidate to possess both because in that event the question of selection from amongst the eligible post on the senioritycummerit principle would not apply *stricto sensu*.

16. Respondent no.3 had not sought any relief for setting aside the promotion of the appellants. The High Court travelled beyond the pleadings in annulling the promotion of the appellants. The High Court even while holding that promotion

was not a matter of right, nonetheless instead of directing consideration of the claim of respondent no.3 for promotion, exceeded its jurisdiction by issuing a mandamus for promotion. The High Court completely lost sight of the objection of the management that there were many others senior to respondent no.3 in the category of Fireman. A writ petition by respondent no.3 could not become 11 a springboard for out of turn promotion superseding his seniors, taking them by surprise without an opportunity to contest even. The impugned order directing promotion of respondent no.3, causes discrimination by a judicial order leaving the aggrieved remediless as observed in *Bharat Petroleum Corporation Ex employees Association vs. Bharat Petroleum Corporation Ltd.* (1995) 2 SCC15 Appropriately the High Court ought to have directed consideration of respondent no.3 for promotion in accordance with law. However, in the facts of the case we are not inclined to interfere with the promotion of respondent no.3.

17. The appeal therefore is allowed holding that the appellants were eligible to be considered for promotion. Their orders of promotion are restored subject to the principle of senioritycum merit as discussed hereinabove.J.

[NAVIN SINHA].J.

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