

Pramod Kumar Satpathy and 11 ors. Vs. State of Orissa and 16 ors.

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Court : Orissa

Decided On : Aug-22-2007

Reported in : 104(2007)CLT696

Judge : A.K. Ganguly, C.J. and; N. Prusty, J.

Appellant : Pramod Kumar Satpathy and 11 ors.

Respondent : State of Orissa and 16 ors.

Judgement :

A.K. Ganguly, C.J.

1. Two Writ Petitions being W.P.(C) No. 8650 of 2003 and W.P.(C) No. 12484 of 2003 were filed challenging the same Judgment of Orissa Administrative Tribunal (hereinafter referred to as 'the Tribunal') dated 8.5.2003. By the said Judgment the Tribunal held that Rule 5(iv) of the Orissa Special Armed Police(Method of Recruitment and Conditions of Service) Rules, 2000 has to be amended by changing the ratio of promotion. Under the said Rules, recruitment to the post of Assistant Commandant by way of promotion from the rank of Subedar/Subedar Major and Reserve Inspector has been provided and under Rule 5 (iv) the ratio of promotion is 2; 1 between Subedar/Subedar Major and Reserve Inspector.

2. W.P.(C) No. 8650 of 2003 has been filed by 12 persons, who were working as Subedar/Subedar Majors and Jamadars in Orissa State Armed Police battalions under various commandants. The Opposite Parties are Sergeants and Reserve

Inspectors of the District Reserve Police under the control of Superintendent of Police of various districts. The other Writ Petition (W.P.(C), No. 12484 of 2003) has been filed by the State of Orissa and the Director General and Inspector General of Police Orissa.

3. The reason, which was given by the Tribunal in support of its order is that the accepted principle in service matters in respect of promotions where the feeder cadre consists of more than one stream is that the quota for a stream is fixed taking into account the numerical cadre strength in that particular stream. Learned Tribunal found that the strength in the cadre below was not taken into account as the promotional avenues are provided separately. The Tribunal further held that the numerical strength is to be considered in respect of promotion to the posts for which they constitute the feeder cadre and. the Tribunal found that the cadre strength of Reserve Inspectors is 54 and the cadre strength of Subedar and Subedar Major is 54. Therefore, the Tribunal held:

in the fitness of things the ratio for promotion should be 1:1 and not 2: 1.

4. The Tribunal again found that all Reserve Inspectors occupy a higher rank in the hierarchy of the service as they are all graduates but the same is not the case with the cadre of Subedar/Subedar Major. The Tribunal held that for the sake of consistency it would be appropriate to amend the Rules and as such the Tribunal disposed of the O.A, by directing that the Rule 5 (iv) of the said Rules should be amended by fixing the ratio for promotion to the rank of Assistant Commandant for Subedar/Subedar Major and Reserve Inspector as 1: 1. The Tribunal also directed that Rule 6 (iii) be amended by prescribing the experience of at least five years of continuous service on the first day of January of the year in which the DPC meets in the case of Reserve Inspectors. The Tribunal directed that notification amending the Rule should be issued within two months from the date of receipt of the order of the Tribunal. The order of the Tribunal has been stayed by a Division Bench of this Court on 16.9.2003 in W.P.(C) No. 8650 of 2003.

5. A preliminary objection has been raised by Learned Counsel for private Opposite Parties in W.P.(C) No. 8650 of 2003 that the Petitioners before the High Court were not the parties before the Tribunal. Therefore, they have no locus

standi to file this Writ Petition challenging the Order Dated 8.5.2003 passed by the Tribunal. In support of that contention the Learned Counsel relied on a decision of the Supreme Court in the case of K. Ajit Babu v. Union of India reported in : (1997)IILLJ749SC . The Learned Counsel for the Petitioners in W.P.(C) No. 8650 of 2003 on the other hand contended that the order of the Tribunal which was passed changing the ratio of promotion adversely affected the Subedar/Subedar Majors. None of the Subedar/Subedar Majors were impleaded before the Tribunal. It is therefore, contended that the impugned Judgment of the Tribunal has been passed affecting the Writ Petitioners and who were not impleaded and as such not heard by the Tribunal. It is therefore contended that the said Judgment is opposed to the principles of natural justice and therefore can be challenged before this Court. In support of this contention the Learned Counsel for the Petitioners in W.P.(C) No. 8650 of 2003 relied on a decision of the Supreme Court in, Khetrabasi Biswal v. Ajaya Kumar Baral and Ors. reported in : (2004)1SCC317 . In that case the Hon'ble Supreme Court held that when a Judgment is passed without impleading the necessary parties, the order becomes a nullity and has no binding effect.

6. This Court finds that there is some substance in what has been stated by the Learned Counsel for the Petitioners in W.P.(C) No. 8650 of 2003. It cannot be disputed that they were necessary parties to the proceeding before the Tribunal inasmuch as the order of the Tribunal adversely affects their chance for promotion which was given to them under the relevant rule.

7. The situation which has been dealt with in the case of K. Ajit Babu is not exactly similar to the present case. In K. Ajit Babu it has been held that in service matters Tribunal or Court sometimes passes orders which affects even those who are not parties to the case. Such affected parties are entitled to file a fresh application under Section 19 of the Act before the Tribunal and the Tribunal cannot reject the same, merely on the grounds that the fresh application has been filed for setting aside the Judgment rendered by the Tribunal in an earlier case. So, if the reasoning in K. Ajit Babu is strictly followed, in that case the maintainability of the Writ Petition by the private parties becomes very doubtful. But in the instant case a Writ Petition has been filed by the State impugning the Judgment of the tribunal on

merit. That being the position, this Court, since it is hearing two cases together can examine the decision of the Tribunal on merit.

8. In the Writ Petition, which has been filed by the State (W.P.(C) No. 12484 of 2003) it has been stated; that as per Rule 5 (iv) of the said Rules promotion to the rank of Assistant Commandant is made from two feeder categories, one is Subedar/Subedar Major and the other is Reserve Inspector of Police. The ratio is 2: 1. That is as against the promotion of two Subedar/Subedar Major there is promotion of one Reserve. Inspector. The State explained that this ratio is based on the combined feeding categories beginning from their base level post. Jamadar is the base level post for the feeder category of Subedar/Subedar Major. Similarly Sergeant is the base level post of the feeder category of Reserve Inspector. At the time of framing of the rules the sanctioned strength of Jamadar was 177, Subedar/Subedar, Major was 54. The combined strength was 231. However, so far as Sergeant is concerned the strength was 80 and that of Reserve Inspector was 54. Therefore the combined strength of one side was 231 as against the combined strength of other side was 134. It is because of this reason the ratio of 2:1 was incorporated in the rule. The State contended that the sanctioned strength of the aforesaid two cadres have not been changed. Now if the ratio is made 1:1 in that case, the promotion of Sergeants will be twice faster than those of Jamadars. It is not in dispute that both Sergeants and Jamadars, the two base level posts carry the same scale of pay and discharge more or less the same nature of job. The eligibility criteria for direct recruitments to the Post of Sergeants and post of Jamadars are also same.

9. It has been stated by the state in their petition before this Court that the Tribunal took an erroneous view by reckoning the strength of Subeddar/Subeddar Majores and Reserves Inspectors only. According to the State the Reckoning of strength should begin from the level of Subeddar and Reserve Inspector, the stage from where direct recruitment takes place. The principle behind the State's rule is that both these posts of Jamadar and Sergeant have equal pay and status. Eligibility criteria for direct recruitment for both are the same. Therefore, they should have the equal chances for promotion and this has been ensured by the State by keeping the ratio 2: 1. So the ratio of 2: 1 is consciously decided by the State

Government in the Home Department for maintaining parity and equity and equal representation in the promotional cadre. It was also stated in the petition filed by the State that the framing of promotion norm is a policy decision. The rule under which the policy was framed was enacted, in exercise of powers under Article 309 of Constitution of India. Therefore, the said rule is legislative in character. Before the Tribunal can upset the said rule the Tribunal should have considered the entire matter in its correct perspective instead of only considering the cadre strength of Subedar/Subedar Major and that of Reserve Inspector.

10. Learned Counsel for the State submitted that the aforesaid rationale was made clear in the rule itself which was framed under Article 309 of the Constitution of India. The relevant part of the said rule is set out below:

(iii) Recruitment to the post of Assistant Commandant shall be made by promotion from the rank of Subedar/Subedar Major and Reserve Inspector of the District Reserve Police.

(iv) The promotion to the rank of Assistant Commandant shall be made from two categories of posts such as Subedar/Subedar Major and Reserve Inspector. the ratio of 2:1 is to be made to maintain equal representation from both the categories keeping in view the sanctioned strength of respective feeding category at their base level, i.e. Jamadars for the category of Subedar/Subedar Major and Sergeants for Reserve Inspector.

11. In this connection, this Court sets out therein below a small chart showing the avenue of promotion to the post of Asst. Commandant and also the numbers of posts in each category,

ASSISTANT COMMANDANTS
Subedar/Subedar Major (54) Reserve Inspector (54)
Jamadar (New redesignated Sergeant (80) as Dy. Subedar) (177)

12. Learned Counsel for the State however argued on the basis of additional affidavit filed by the State that during the pendency of this case 135 new posts in the cadre of Jamadar and 42 new posts in the cadre of Subedar have been created vide Government orders dated 9.1.2006, 29.4.2006 and 25.4.2007.

Therefore, at present the total cadre strength of Subedar/Subedar Major is 96 and that of Jamadar is 312, but no additional post of Reserve Inspector has been created by the Government. The cadre strength of those two posts remains the same, namely 80 for Sergeants and 54 for Reserve Inspectors.

13. Now, the question is whether in the aforesaid facts of the case the Tribunal is justified in directing amendment of the rules.

14. It has been well settled by a catena of cases that fixation of quota for promotion is within the domain of policy decision of the executive Government and the Court should be very slow to interfere in such matters. This is more so in the case of promotion in police services which is a disciplined force. The needs of a particular service or post should be left to be Judged by the Government. Here the facts which have been disclosed show that if the ratio of 2: 1 is not maintained, in that case the Subedar/Subedar Major will not get equal chance of promotion as against the chance or promotion which is made available to the Reserve Inspector. It is not in dispute that in 2003 when the order was passed' by the Tribunal, the strength in the post of Jamadar was 177 as against the strength of post of Sergeant which was 80. In that context, the observation of the Supreme Court in the case of Govind Dattatray Kelkar and Ors. v. Chief Controller of Imports and Exports and Ors. reported in : (1967)ILLJ691SC is very apt. In paragraph 16 of the said Judgment at page 843 of the report, Learned Judges of the Supreme Court were examining an argument made on behalf of the Petitioner that the Government instead of fixing the ratio of 75:25 between direct recruits and promotees should have fixed the same at 50:50. Repelling the said argument, Learned Judges of the Supreme Court laid down that posts is made from different sources, what ratio would be adequate and equitable would depend upon the circumstances of each case and the requirements and needs of the particular service. Unless the ratio is so unreasonable as to amount to discrimination, it is not possible for the Court, meaning thereby the Supreme Court, to strike that down or suggest a different ratio.

15. Similar views have been taken by the Supreme Court in the case of Government of Tamil Nadu and Anr. v. S. Arumugham and Ors. reported in : AIR

1998 SC1467 . In that case the Administrative Tribunal-gave a direction to the Government to change its policy of having a common seniority list. Hon'ble Supreme Court held that these are the matters mostly relating to policy and the Tribunal ought not to have directed the Government to change its policy. While saying so, the Court held that the Government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices. In coming to the said conclusion, Learned Judges also referred to the decision of the Supreme Court in the case of Indian Railway Service of Mechanical Engineers Association v. Indian Railway Traffic Service Association, reported in 1993 Supp.(4) SCC 473. In that Judgment, Learned Judges of the Supreme Court held that the correctness of a policy of the Government should not be questioned by the Tribunal. The opinion of the Supreme Court is that the Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made. In the case of Arumugham the Supreme Court reiterated the rationale in the case of Govind Dattatray Kelkar (supra) and held that if different treatment in matters of promotion to employees recruited from two different sources is based on a reasonable or legitimate classification, such reasonable classification does not violate the provisions of Article 14 and 16 of the Constitution of India nor the same is arbitrary.

16. In the facts of the present case and following the ratio in the cases discussed above, this Court finds it difficult to approve the interference by the Tribunal in the matter of fixation of ratio by the Government in its rules framed in exercise of power conferred under Article 309 of the Constitution of India.

17. Again in the case of Kuldeep Kumar Gupta and Ors. v. Himachal Pradesh State Electricity Board and Ors. reported in AIR 2001 SC 308, Hon'ble Supreme Court held in paragraph 6 that it is usually for the Government to provide a quota of promotion whenever the feeder category itself consists of different categories of persons. Such quota is fixed in order to equi-balance each category so that they get equal opportunity of promotion. Hon'ble Supreme Court made it very clear that in the larger interest of administration the decision of the employer who is best suited to decide the percentage of posts in the promotional cadre should not be

trifled with.

18. Similar observations have been made by the Hon'ble Supreme Court in the case of Dwarka Prasad and Ors. v. Union of India and Ors. reported in : AIR 2003 SC2971 . Learned Judges have gone to the extent of saying that fixation of quotas in favour of various categories of posts in feeder cadres based upon the structure and pattern of the Department is a prerogative of the employer and the same pertains to policy making field. Learned Judges held that in fixation of such quotas, various factors are taken into account namely, cadre strength in the feeder quota, suitability of holders in the feeder post, nature of duties, experience and the channels of promotion and most important of them is the requirement of the promoting authority for manning the post on promotion with suitable candidates. The Hon'ble Supreme Court held that when quota is therefore fixed taking various factors into account, there can be no rule of absolute equality or arithmetical exactitude. Such quotas may vary from case to case depending upon the pattern, structure and hierarchies in the Departmental set up as well as the exigencies and balancing needs of Administration.

It is obvious in such areas, the Court or Tribunal should be very slow in interfering unless there is palpable discrimination in the matters of fixation of quota.

19. In the instant case, considering the strength of the base services from which promotion to the feeder cadre is made, the ratio of 2:1, in the language of the Supreme Court, equi-balances the chances ' of promotion of the employees coming from two different sources.

20. Learned Counsel for the private Opposite Parties in. W.P.(C) No. 12484 of 2003 also relied on two Judgments of the Hon'ble Supreme Court on which reliance was placed by the Learned Counsel for the State. Reliance was also placed on Kuldeep Kumar Gupta where the Hon'ble Supreme Court held that fixation of quota should be equi-balanced. There can be no dispute to the said proposition. But here the fixation of quota is to be equi-balanced by taking the entire cadre strength of two services and including the feeder posts. If that is done the ratio of 2:1 is correctly framed in the Rules. In the case of equi-balancing the chances of promotion between the two groups of employees the Court has to see

the entire cadre strength. The Tribunal has taken only the upper strata of the feeder post which is immediately below the post of Assistant Commandant, namely, the Subdedar, Subedar Major, and Reserve Inspector. The Tribunal has not taken into account the cadre strength of Jamadar from which the Subedars are promoted and the cadre strength of Sergeants from which Reserve Inspectors are promoted. Therefore, the Tribunal has taken, if I may say so, a very perfunctory view of the cadre strength of two services. So the ratio in the case of Kuldeep Kumar Gupta virtually goes against the contention of the Learned Counsel for the private Opposite Parties.

21. Similarly reliance was placed by the Learned Counsel for the private Opposite Parties on the Judgment of the Hon'ble Supreme Court in the case of Dwarka Prasad which has been discussed above. The ratio of the said Judgment also does not support the case of the private Opposite Parties.

22. The Learned Counsel for the private Opposite Parties has, however, relied on the Judgment of the Hon'ble Supreme Court in the case of Shakuntala Sharma v. High Court of Himachal Pradesh and Anr. reported in : (1994)ILLJ923SC . In that case the Hon'ble Supreme Court held that if a Rule has treated the unequals as equals the same is violative of Article 14. The Hon'ble Supreme Court held that the basic weakness in Rule 10 of the Himachal Pradesh Recruitment (Conditions of Service) Rules, 1992 is that it places two unequal sets of posts on a par with each other and also prescribes qualifying service for the higher post. The Learned Judges found that the posts of Deputy Superintendents and Revisors are admittedly higher than those of Senior Assistants and Translators. So if the incumbents of the posts of Deputy Superintendents are eligible for promotion to the post of Superintendent, no qualifying period of service can be prescribed for the incumbents of those posts. Therefore, Rule 10 was struck down and the High Court was directed to provide promotional avenue to those who stagnate and the Hon'ble Supreme Court directed that the rule should not be framed in such a manner as not to deny promotion to the incumbents of the higher post while giving unmerited advantage to those who are holding lower posts. The ratio in Shakuntala Sharma has no application here.

23. It is clear from the aforesaid discussion of facts that the present case totally stands on a different factual footing. It is nobody's case that the post of Subedar/Subedar Major is higher than the post of Reserve Inspector. Both the posts have equal standard.

24. For the reasons discussed above, the Writ Petition. i.e., W.P.(C) No. 12484 of 2003 filed by the State of Orissa is allowed and the impugned Judgment of the Tribunal dated 8.5.2003 passed in O.A. No. 2376 of 2000 is quashed. The direction given by the Tribunal in the said Judgment for amendment of Rule 5(iv) of the ' Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 also cannot stand and the same should not be given effect to. However, in view of the decision of the Hon'ble Supreme Court in the case of K. Ajit Babu and Ors. v. Union of India and Ors. reported in : (1997)IILLJ749SC and in view of the fact that apart from filing W.P.(C) No. 8650 of 2003 the Petitioners therein have also filed a Review Petition before the Tribunal for review of the Tribunal's Judgment which has not been disposed of, the W.P.(C) No. 8650 of 2003 is dismissed. But in view of success of W.P.(C) No. 12484 of 2003 filed by the State of Orissa, Rule 5(iv) of the Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 is upheld and no amendment to the same as directed by the Tribunal need be carried out.

25. It appears that during the pendency of these two Writ Petitions some promotions Were given on the basis of the Judgment of the Tribunal but those orders were stayed by this Hon'ble Court. Since the Judgment of the Tribunal is set aside, those promotional orders also cannot stand and are quashed. All promotions should, therefore, be given in terms of Rule 5(iv) of the Orissa Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 on the ratio of 2:1.

26. Misc. Case Nos. 8339 of 2003 and 10068 of 2003 arising out of W.P.(C) No. 8650 of 2003, and Misc. case Nos. 12144 of 2003 and 15113 of 2006 arising out of W.P.(C) No. 12484 of 2003 are accordingly disposed of.

N. Prusty, J.

27. I agree.

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