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Jaswant Singh Vs. Delhi Electric Supply Undertaking and Others

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Court : Delhi

Decided On : Mar-31-1998

Reported in : 1998IIIAD(Delhi)883; 72(1998)DLT686; 1998(45)DRJ464

Judge : M.K. Sharma, J.

Acts : Constitution of India - Articles 14, 16 and 226

Appeal No. : C.W.P. No. 797 of 1978

Appellant : Jaswant Singh

Respondent : Delhi Electric Supply Undertaking and Others

Advocate for Def. : Mr. Jayant Nath, Adv.

Advocate for Pet/Ap. : Mr. G.D. Gupta and; Mr. Pramod Gupta, Advs

Judgement :

Dr. M. K. Sharma, J.

1. Challenge is made, in this writ petition by the petitioners, to the orders dated 22.4.1978 and 17.5.1978 whereby the respondents have promoted respondents No. 5 to 47 to the post of Assistant Engineers (Electrical). The petitioners have sought for quashing of the said promotion orders with a further direction that the petitioners be considered for promotion to the said post according to the draft R &

P Regulations with effect from the date from which the said respondents were promoted with all consequential benefits.

2. The petitioners, at the relevant time, were working as Foreman with respondent No. l. According to the petitioners 43 posts were created in the cadre of Assistant Engineers by upgrading the said posts from the cadre of Superintendents (Technical). The said posts, petitioners state, were required to be filled up in accordance with the provisions of draft Recruitment Regulations, in terms of which the petitioners were eligible to be considered for such promotion. It is stated that the respondents however, ignoring the provisions of the draft Recruitment Regulations decided to promote respondents No. 5 to 47 to the said posts of Assistant Engineers and accordingly issued the impugned orders which are under challenge in this writ petition.

3. Mr. G.D. Gupta, appearing for the petitioner drew my attention to the provisions of the draft Recruitment Rules annexed as Annexure-1 to the writ petition which appear to have been circulated under letter dated 28.10.1975. The said Recruitment Regulations also include the posts of Assistant Engineers (Electrical).

4. In the said Recruitment Regulations the mode of recruitment to the post of Assistant Engineer (Electrical) is provided as 25% by promotion and 75% by direct recruitment. According to the said Recruitment Regulations the posts are required to be filled up by promotion from amongst the Supervisors Grade 'A' provided the employee had a total service of not less than 10 years out of which atleast 3 years should be as of Supervisor. It further provides that the persons in the category of Foreman, Superintendent etc. working with respondent No. 1 at the time of commencement of the Regulations would be screened by a Committee to be constituted by the General Manager for assessing their suitability for appointment as Assistant Engineer.

5. Learned Counsel for the petitioner also drew my attention to the Minutes of the Meeting of respondent No. 1 dated 15.2.1978 Wherefrom it is found to have been resolved that 43 permanent posts of Superintendent (Technical) be upgraded to that of permanent posts of Assistant Engineers. The purpose of the upgradiation of these 43 posts was to provide avenue of promotion to the existing employees. The

said upgraded posts of Assistant Engineers, were to be filled up only by promotion according to the draft R&P; Regulations dated 15.3.1977. Subsequently, by an amendment the said date 15.3.1977 was corrected as 21.9.1977. According to the learned Counsel for the petitioners the respondents, in violation of the provisions of the aforesaid Recruitment Regulations and also in violation of the resolution of the Board decided to fill up those 43 upgraded posts of Assistant Engineers by way of promotion from amongst Superintendent (Technical) only thereby shutting out from the zone of consideration the cases of the petitioners. In pursuance of the aforesaid decision promotion orders were passed on 22.4.1978 and 17.5.1978 which are assailed in this writ petition on the ground that they are illegal, void and vocative of the provisions of the draft Recruitment Regulations as also of the own decision of the Board.

6. Mr. Jayant Nath, appearing for the respondents however, submitted that a decision was taken by respondent No.1 to upgrade the aforesaid 43 posts of Superintendent (Technical) by re-designating the same as Assistant Engineers after negotiation with the DESU Technical Supervisory Staff Association who had submitted a Charter of Demands. In terms of the agreement arrived at with the said Association, the respondent decided to fill up the said 43 upgraded posts by giving promotion from Superintendents Technical only. In terms of the aforesaid agreement arrived at with the Association a Resolution was also adopted by the Board to promote only Superintendents Technical to the aforesaid 43 posts upgraded from Superintendents Technical to that of Assistant Engineers. The Counsel submitted that the aforesaid decision of the Board was legal and valid and is a result of settlement between the management and the workmen and thereforee, binding. The Counsel further submitted that in absence of any statutory rule the aforesaid policy laying down the criteria for promotion being in the nature of administrative circulars would bind and govern the matters of promotion and thereforee, the action of the respondents in issuing the aforesaid orders of promotion which are not being challenged are required to be upheld.

7. The Draft Recruitment Regulations on which the Counsel for the petitioner placed reliance were issued on 28.10.1975. The said draft Recruitment Regulations provide that method of promotion to the post of Assistant Engineer

(Electrical) would be by 25% through promotion and 75% through direct recruitment. Even if it is assumed that the said Recruitment Regulations are binding and operative the petitioners could have raised their grievances only against 25%. posts out of 43 upgraded posts to which only, if at all, they could be entitled to under the aforesaid Recruitment Regulations. Heavy reliance was also sought to be placed by the petitioner on the Resolution of the Board adopted in its meeting dated 15.2.1978 annexed as Annexure II. The said Resolution provided that the upgraded posts of Assistant Engineers would be filled only by promotion according to the draft R & P Regulations dated 15.3.1977. Counsel for the parties agree that there were no draft Recruitment Regulations dated 15.3.1977. The aforesaid fact is also fortified by the fact that subsequently by Resolution dated 8.5.1977 the date 15.3.1977 was corrected to 29.1.1977. The petitioner has not placed on record-any draft Recruitment Regulations dated 29.1.1977. These materials however, establish that draft Recruitment Regulations circulated on 28.10.1975 stood superseded. The Minutes of the Meeting of the respondent No.1 dated 10.5.1978 have been placed on record. In that meeting the proposal of the General Manager that 43 newly upgraded posts of Assistant Engineers be filled up 80% by promotion from amongst superintendents (Technical) possessing degree/diploma in Engineering and 20% by promotion from Superintendents (Technical) not possessing degree/diploma was approved. In that meeting it was further approved that six posts of Foremen on Distribution and Construction Wing and 10 posts of Supervisory Grade 'A' on Generation side be upgraded to the posts of Assistant Engineers and they be filled up from amongst the remaining categories of Grade 'A' Supervisors and Foreman in the Generation Wing and Distribution & Construction Wings separately after following the same criteria as that of Superintendents (Technical). Accordingly, thereforee, the petitioners who were Foremen also received certain benefits for being considered for promotion to the said upgraded posts from within their wing alone without the posts being distributed and making available to all the employees. The aforesaid proposal which was approved by the Board laying down the policy for promotion to the post of Assistant Engineer (Technical) was a one time exception formula and was not to form a precedent for future and was laid down without effecting the provisions of the draft Recruitment Regulations. The aforesaid decision laing down the policy

was arrived at after a valid settlement/agreement by the management of Respondent No. 1 with the workmen association and is thereforee, binding as one time exception. It is also not the case of any of the parties that there was any statutory Service Rules governing the service conditions of the petitioners as also the respondents No. 5 to 47. Government Notification circulating draft recruitment rules laying down mode and manner of recruitment does not assume the character of statutory Rule and would continue to be considered as executive instructions so long it is not given the statutory character under Article 309 of the Constitution of India. The aforesaid decision of the respondent No. 1 and circulated under its letter was in the nature of administrative decision of respondent No. 1 and in absence of any Service Rules it was open for the respondents to lay down and also change service conditions by administrative orders. It is well settled that in absence of a rule or regulation the authority can prescribe service conditions by executive instructions and that is exactly what was done by respondent No. 1 by laying down the guidelines as to the mode of recruitment to the post of Assistant Engineer as one time exception. Reference in this regard can be made to the decisions of the Supreme Court in Mysore State Road Transport Corporation Vs . Gopi Nath Gundachar Char; : (1968)IILLJ144SC , V. Balasubramaniam v. Tamil Nadu Housing Board; : (1988)IILLJ435SC and Shamkant N. Deshpande v. Maharashtra Industrial Development Corporation; 1993 Supp. (2) SCC 194.

8. The employees belonging to the same grade as that of the petitioners also received benefit of promotion to the post of Assistant Engineer as six posts of Foremen in Distribution and Construction Wing and 10 posts of Supervisory Grade 'A' on Generation Side were also upgraded to the posts of Assistant Engineer in the same ratio to the respective sanctioned strength of 43 numbers of posts. Accordingly, it is established that there was no discrimination so far the Foremen are concerned and thereforee, the petitioners who were serving as Foremen cannot make any grievance as sought to be done in the present case under Articles 14 and 16 of the Constitution of India.

9. In view of the facts and circumstances stated above and in view of the reasons stated herein, I do not find any merit in this writ petition which stands dismissed but without any costs.

Writ petition dismissed.

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