

S.B. Mathur Vs. Union of India

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Court : Delhi

Decided On : Oct-28-1997

Reported in : 1997VIAD(Delhi)1042; 1998(44)DRJ355

Judge : Usha Mehra, J.

Appeal No. : Civil Writ Appeal No. 4301 of 1996

Appellant : S.B. Mathur

Respondent : Union of India

Advocate for Pet/Ap. : G.D. Gupta and ; Vinay Bhasin, Advs

Judgement :

Usha Mehra, J.

(1) The Short points involved in this writ petition are (i) whether the rule which provides promotion on seniority-cum-merit would mean comparative merit only or seniority and then merit. (ii) whether the decision of the Departmental Promotion Committee based on misleading facts can be sustained in law?

(2) In order to answer the above points let us have quick glance at the facts of this case. The petitioner was appointed as Sales Assistant by the respondent No.2 i.e. Central Cottage Industries Corporation of India Ltd. (in short the Corporation). He got promotions from time to time and finally promoted as Manager on 1st

January,1993. Respondent No.3 Shri M.L.Chugh was also promoted on 1st January,1993 Along with petitioner. Respondent No.3 was junior to the petitioner by two steps through out. Respondent No.3 started working in the Personnel Department and thus, according to the petitioner, manipulated to win over the Additional General Manager (Personnel) in his favour. He got the petitioner transferred to showroom and himself continued to work as P.S. to the Chairman beside being shown as Manager in the Personnel Department. Mr.Chugh never allowed the petitioner to remain in any one department for a period of more than one year. Mr.Chug manipulating plump post for himself. The petitioner had to suffer 17 transfers in a span of 17 years. Since Mr.Chugh had been working in the Administration and Personnel Department for the last 33 years, therefore, he manipulated the promotion in his favour. Petitioner's record had remained unblemished. He had obtained good remarks in his CRs. No adverse entry was ever communicated to him. In May,1995 some allegations were leveled against the petitioner. He refuted the same in his reply. Thereafter nothing was heard nor any communication was received from the respondent meaning thereby that those allegations were found to be false against the petitioner. inspire of petitioner being senior to Mr.Chug, the respondent vide office order dated 15th June, 1996 circulated the promotion order to the post of Add.General Manager. Vide this order Mr.Chug has been promoted to the post of Agm thereby superceding the petitioner. By this act of the respondent the petitioner has felt aggrieved.

(3) That the procedure adopted by the Departmental Promotion Committee (in short the DPC) for making promotion to the post of Additional General Manager had been against the rule hence bad in law. The Dpc violated the rules governing the promotion known as Ccic Officers Policy. This was promulgated vide office order No.396 dated 28th September,1994 and this came into force w.e.f. 14th February,1994. The promotion policy is applicable to the person holding the post of Deputy Manager and above. Prior to this promotion policy there was another promotion policy which was published vide office order dated 11th May,1987. The said promotion policy drew distinction between criteria of promotion on seniority-cum-merit and the criteria of promotion on merit and fitness/ merit. The promotion policy of 1987 indicated that normal promotion from Assistant Manager to Additional General manager was time bound. The promotion was time bound and

on the basis of seniority-cum-merit. However, in the case of accelerated promotion the same was required to be made on the basis of Annual Confidential Reports subject to merit and fitness in contrast to seniority-cum-merit. Promotion from Assistant General Manager to Additional General Manager was required to be made on the basis of merit alone. thereforee, there was clear distinction between promotion on the basis of seniority-cum-merit and on the basis of merit alone. But in the case of present promotion policy the Annual Confidential Reports and record of service of the candidate was to be assessed but weightage had to be given in seniority.

(4) The Dpc instead of following the procedure as laid down in the present policy regarding grant of promotion in fact gave a go-bye to seniority altogether. Moreover, the respondent deliberately fed misleading information to the Dpc about the Annual Confidential Reports of the petitioner with the result Dpc superceded the petitioner. Aggrieved by the order of supercession the petitioner submitted representation on 15th July,1996. The same was rejected, hence the petition.

(5) To find out whether promotion could be on the basis of seniority and then merit or on merit alone we may have a glance at some relevant paras of the present promotion policy which read as under:- Procedure for promotions Para 5.1- The promotions will be on the basis of annual CRs and record of service which will be assessed by Departmental Promotion Committee (DPC). The main thrust will be on seniority-cum-merit. Direct recruitment Para 7.3 - Notwithstanding anything contained in the Ccic Officers Promotion Policy, the Management reserves the right to promote or to recruit from outside any officer on any consideration at any point of time. Reading of para 5.1 above show that while considering a person for promotion his Annual Confidential Reports will be considered but weightage would be given to seniority. Senior could be rejected if found unfit. Merits would be considered but not by ignoring seniority. Merits would not be the sole criteria. In the present case from the perusal of original Dpc proceedings it is apparent that complete CRs files were not produced before Dpc only a comparative chart was sent to the Dpc which gave Seriall Numbers, names of the candidates and their grading for the last five years. While sending the grading of the petitioner it was shown that out of five Confidential Reports earned by the petitioner, his two

Confidential Reports i.e. for the year 1991-92 and 1993-94 were satisfactory. Whereas the fact of the matter is that the petitioner had earned 'Good' for the year 1991-92 and 1993-94 respectively. The respondent instead of sending correct CRs of the petitioner grading mislead the Dpc by reporting 'Satisfactory' for two years which infact was wrong information. As a result of this misleading information the Dpc ignored the petitioner in preference to Mr.Chugh. Whereas the fact remains that the petitioner had earned three 'Goods' and only two 'Satisfactory'. On the basis of this wrong information, the Dpc assessed the performance of the petitioner and naturally rejected his case particularly when out of five Confidential Reports the Department represented that the petitioner had only one 'Good' and four 'Satisfactory'. The members of the Committee constituting the Dpc must have been prejudiced against the petitioner. By misleading and misrepresenting the facts to the Dpc the case of the petitioner on merit had been spoiled. This fact depicted only as an average officer. Whereas the record depicts otherwise. Petitioner was not having any adverse report. He had three 'Goods' and being senior to Mr.Chugh his claim could not have been brushed aside if the respondent represented his CRs correctly.

(6) Contention of Mr.Vinay Bhasin that since the post of Additional General Manager is a very senior post hence comparative merits alone has to be considered, to my mind, this argument is contrary and against the spirit of the rules. Para 5.1 as quoted above clearly show that while considering the CRs thrust has to be given to the seniority unless found unfit. It is not the case of the respondent that petitioner was found unfit or that there was any adverse entry against him. On the contrary the petitioner had earned three 'Goods'. therefore, while considering the comparative merits the Dpc was deprived of the opportunity to consider it in proper prospective the CRs of the petitioner. A perusal of the counter affidavit and in particular para 8 shows that Dpc on its own decided to give weightage to merit and ignored the seniority. The only data which was placed before the Dpc was as indicated in para 6 of the counter affidavit i.e. giving the table consisting of the names of the eligible candidates, their educational qualifications and grading obtained by them for the last five years. Thus there was no question of the Dpc considering or examining the work performance of the petitioner because his original record was not produced before the DPC. Hence to

say that Dpc considered the over all profile and work performance of the respective candidates is not borne out from the record produced in the Court nor any such discussion is found in the meeting note of the DPC.

(7) That the contention of Mr.Vinay Bhasin that the Preamble read with para 7.3 of the policy gives discretion to the employer to appoint any person in the organisation, to my mind, this argument has also no substance. The present promotion policy issued vide Office Order No.396, the bare reading of its Preamble indicates that the policy was adopted for promotion of its Officers and the policy could be deviated by the Management only on justiciable administrative grounds and for the reasons to be recorded in writing. That while deviating from the policy it had to be at a point of time and in the interest of the Corporation. But while making selection no power was given to the Dpc or for that matter to the respondent to deviate from the same. Hence Mr.Bhasin cannot take any advantage of the Preamble. So far as para 7.3 is concerned that deals with direct recruitment. That is not the case in hand. The Dpc in question was not considering the appointment of a direct recruit. therefore, para 7.3 of the policy is of no help to Mr.Bhasin. If the respondent had resorted to direct recruitment things would have been different. But that is not the case. It is not justified on the part of respondent to urge that there is no rule to give preference to seniority. In fact Rule 5.1 clearly show that while considering the Annual Confidential Reports of a candidate the Dpc has to give weightage to the seniority. Merit of course has to be there. If a person is not fit even if senior he can be ignored. But that again is not the case in hand. Para 5 governs the service condition of the petitioner with regard to his promotion. The Dpc could not have ignored the seniority of the petitioner particularly when he was not declared unfit for promotion. Since the CRs of the petitioner made him eligible the Dpc had to give weightage to his seniority and seniority was to prevail. Mr.G.D.Gupta to support his contention that where seniority-cum-merit is the criteria for promotion then seniority must be given due weightage and not merit only, he placed reliance on the decision of the Supreme Court in the case of State of Kerla & Another v. N.M.Thomas & Ors. 1979 (1) Slr 805. Apex Court while explaining the meaning of a rule of promotion based on seniority-cum-merit held that such a rule is not vocative of Articles 14, 16 (1) & (2) of the Constitution of India. It further held that 'With regard to promotion the normal

principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority.' Relying on these observations Mr.Gupta contended that since the petitioner was senior to respondent No.3 hence even if on merit he was less meritorious still he could not be superceded unless found unfit. He had three 'Good' and never declared unfit for promotion hence his seniority could not have been given a go-bye. Petitioner's case is squarely covered by the Constitution Bench judgment of Supreme Court. Similar view was expressed by the Apex Court in the case of Mohd. Usman & ors. V. The State of Andhra Pradesh, : (1971)ILLJ534SC , where the Court opined that when recruitment has to be on the basis of seniority-cum-merit it is a reasonable rule. Where the rule does not prescribe that recruitment should be made on the basis of merit and merit alone, in other words the selection has to be made on the basis of seniority-cum-merit i.e. the senior has to be selected subject to suitability. It is not established by the respondents that the petitioner was not suitable. Same view was expressed by the Supreme Court in the case of Joginder Nath & Ors. v. Union of India & Ors. reported in 1975 (1) Slr 33, and Union of India & Ors. v. Virpal Singh Chauhan etc., 1995 (5) Slr 400 respectively. On the other hand Mr.Bhasin placed reliance on the case of Jagathigowda, C.N. & ors. v. Chairman, Cauvery Gramina Bank & ors., : AIR 1996 SC2733 , where it has been held that while considering promotion totality of service record has to be considered. In that case totality of service record had to be considered by the Dpc because the rule so provided. In that case the rule of the bank provided that the promotion will be on the basis of seniority-cum-merit, but subsequent thereto Nabard issued circular dated 7th April,1986 clarifying the earlier circular and specifically providing that 'the selection of the eligible candidates should be based on the performance of the respective candidates in the Bank.' This guide-lines or the circular clarified the earlier circular by which promotion was to be on the basis of seniority-cum-merit. It was in this backdrop that the Supreme Court taking cumulative reading of the guide-lines issued by the Nabard came to the conclusion that while considering the case of promotion comparative assessment of the performance appraisal of the officers concerned had to be taken into consideration. But that is not the case in hand. There is no circular issued by the respondent clarifying that the promotion

which was to be on the basis of seniority- cum-merit has to be only on performance of the respective candidates. The facts of Jagathagowda's case (Supra) are distinguishable. Hence the ratio of that case is not applicable to the facts of the present case. Petitioner's case is covered by the law laid down by the Supreme Court in the case of N.M.Thomas (Supra) where it has been clearly mentioned that when promotion is to be on the basis of seniority-cum-merit it means give the minimum necessary merit requisite for efficiency of administration and weightage to seniority over merit. In the present case though the petitioner is less meritorious to respondent No.3 yet Dpc could not give a go-bye to his seniority nor could make promotion based solely on the basis of merits. In this view of the matter the petitioner could not have been superceded on the ground that on comparative merit of respondent No.3 had better CRs.

(8) It is accordingly ordered that petitioner was wrongly superceded. His seniority could not have been ignored by the Dpc hence the super cession of the petitioner was bad, arbitrary and against the rules. He shall be deemed to be promoted from the date respondent No.3 was promoted. Since during the intervening period the petitioner stood superannuated, therefore, the respondents are directed to pay him the wages of the post of Additional General Manager from the date respondent No.3 was promoted till the petitioner superannuated. With these observations petition stands disposed but with no order as to costs.

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