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Court : Rajasthan

Decided On : Oct-12-2001

Reported in : RLW2003(3)Raj2025; 2002(4)WLC487; 2003(1)WLN652

Judge : J.C. Verma, J.

Acts : Rajasthan State Road Development Corporation Ltd. Service (Recruitment and Selection) Rules, 1988 - Rule 3

Appeal No. : S.B. Civil Writ Petition No. 2769 of 2001

Appellant : Ashok Kumar Dixit

Respondent : Rajasthan State Road Development and Construction Corporation Limited

Advocate for Def. : R.C. Joshi and V.P. Mathur, Advs.

Advocate for Pet/Ap. : Ajay Rastoji and; Sogat Rai, Advs.

Disposition : Writ petition allowed

Judgement :

J.C. Verma, J.

1. The petitioner had joined service as Junior Engineer in 1979 and was promoted as Assistant Engineer vide Annexure-3 initially on adhoc basis on 14.8.1989 and was promoted on the said post of Assistant Engineer on regular basis by the DPC against the quota of 1988-89 on 5.1.1992 vide Annexure-4. A seniority list was published in march 1995 wherein the petitioner's name was shown at Sr. No. 2 and the respondent Shri N.M. Sharma found place at Sr.No. 7. 75% posts of Executive Engineer are to be filled up by way of deputation whereas 25% of the posts are to be filled up by way of promotion. The petitioner was diploma holder and if he completes 12 years of experience as Assistant Engineer, he is entitled to be promoted to the post of Executive Engineer whereas the Assistant Engineers holding degree in Engineering can be promoted after the experience of 7 years.

2. Rule 3 of the Rajasthan State Road Development Corporation Limited Service (Recruitment & Selection) Rules, 1988) empowers the Board of Directors to relax, amend alter or rescind provisions of the Rules which govern service conditions of the employees. Mode of appointment has been prescribed in Rule 6, which provides the number of vacancies falling under each quota shall be determined as at the beginning of the financial year. Rule 13 enables the appointments on officiating basis which provides that of the vacancy in a particular grade is available for filling up by direct recruitment or by promotion and regular filling up of the post if likely to take time and if the post is not to be kept vacant during the intervening period, the appointment authority may, without reference to the Selection Committee/Departmental Promotion Committee, make officiating appointment on the vacant post, for a limited period or till a regular appointment is made, whichever is earlier and only senior most eligible person in the immediately lower post shall be eligible for such officiating appointment.

3. Corporation was in need to fill up the post of Resident Engineer and, therefore, permission was sought from the State government for exercising grant of relaxation so that the candidate can become eligible for the post of executive Engineer. Vide Annexure-7 dated 28.2.1998 Permission was sought in relaxation of the rules for promotion to the post of Resident Engineer and vide Annexure-8 an order was passed on 6.10.1998 that in the interest of Corporation work, the petitioner a diploma holder, was promoted to the post of Resident Engineer in the

pay scale of Rs. 10,000-15200 from the date of joining on adhoc basis till march 1999 or selected persons are made available by then DPC as per recruitment and promotion rules.

4. The petitioner remained continued on the promotion post and vide Annexure-9 dated 6.6.2000, it was extended till the DPC was held. On 3.5.2001, the petitioner was reverted to the post of Assistant Engineer. The petitioner challenged the said order in Writ Petition No. 2278/2001. The order was quashed by the High Court on 31.5.2001, copy of which is attached as Annexure-11 on the ground that juniors were being retained when the petitioner had been reverted. The petitioner is still working as Executive Engineer. The DPC was held for the year 1995-96 to 1998-99 for promotion to the post of Executive Engineer and it was observed by the DPC that no candidate having 12 years of experience of diploma holder and 7 years for degree holder was available i.e. the petitioner along with others though were considered, but were not ordered to be promoted as they did not complete the experience of 12 years as on 1.4.1999 as Assistant Engineer vide Annexure-12. One Rakesh Jain was selected having completed 12 years of service on 9.10.1999 vide Annexure-13. Similarly vide Annexure-14, the DPC held on 26.5.2001 has recommended the name of Shri N.M. Sharma on the basis of seniority cum Merit for selection post of Resident Engineer.

5. Vide Annexure-12 dated 31.5.2001, the petitioner was ordered to be reverted to the post of Assistant Engineer. Annexure-15 is being challenged by the petitioner.

6. Written statement has been filed by the respondents. It is admitted that the petitioner was promoted as Assistant Engineer vide order dated 15.1.1992 on regular basis whereas he was already promoted on adhoc basis as such on 14.8.1989. It is submitted that the petitioner was selected for the post of Assistant Engineer in the year 1992 against the quota of 1988-89.

7. It is the contention of the petitioner that the vacancy of Resident Engineer were available against the quota of 1998-99 while the petitioner was acting under Rule 3, relaxation was already given and, therefore, the observation of the DPC while considering the vacancy for the years 1995-96 to 1998-99 that no incumbent was available and the vacancies were carried forward against the year 1999-2000 was

not proper for the reason that the petitioner had already been promoted by giving him the relaxation. According to the petitioner he had become eligible to be considered for promotion against the year 1998-99 and while holding him ineligible even the vacancy of subsequent year was not properly filled up.

8. From the admitted facts, vide Annexure-3, the petitioner was promoted as Assistant Resident Engineer (A.En.) on adhoc basis as per promotion rules and On regular basis on 15.1.1992 against the quota of 1988-89. At present the petitioner fulfills the qualifications if he has to be considered for the quota of 2000-2001. But the petitioner is praying for quashing of the impugned order and to consider him against the vacancy of rEsident Engineer after determination of vacancies of the year 1998-99 or 1999-2000 as well of 2000-2001, for the purpose of promotion, the petitioner should have 12years of experience as Assistant Engineer. The petitioner is continuing since August 1989 as Assistant Engineer and as Resident Engineer since 6.10.1998 i.e. the petitioner was appointed as Resident Engineer in the year 1998 after relaxation of the qualifications under the rules. Six posts were available for the year 1999-2000 as per Annexure R/1 out of which according to the respondents four posts have already been filled up and the candidate already been selected for the year 1993-94 and two posts were vacant for which four times, i.e. 8 names of Assistant Engineers were considered, the petitioner was one of such Assistant Engineer. It was found that he has no experience of 12 years in the year 1999-2000.

9. Counsel for the respondents state that he was regularised against the post of Astd. Engineer in 1992 and, therefore, 12 years experience is to be counted from 1992.

10. After hearing learned counsel for the parties and going through the rules which rules are reproduced hereunder and the method of selection, what is required for promotion to the Resident Engineer is the 12 years of experience as A.En. Rule 3 is an enabling provisions empowering the competent authority to promote and employee if the contingency so arises for a limited period or till the regular selection by DPC is made and in such situation even an employee has not competed the required period of experience, but to meet the emergent/contingent

post the person is promoted on ad hoc basis by relaxing the rules, that is not said to have given a right to the petitioner to say that in his case the rule stands relaxed for the purpose of regular promotion for all times to come. The employee is entitled to retain the promotional post for which the rules have been relaxed for limited period or till the contingency continues. The petitioner was entitled to be considered for promotion, he could be considered from the year 1988-89 then he was so promoted for the quota of the year 1988-89. However, the petitioner has now become entitled to be considered by the DPC as on 1.4.2001 when he completes 12 years from the year 1988-89 on 31.3.2001. Because of the necessity and urgency of the post to be filled up, the post was filled up on adhoc basis by relaxing the rule temporarily but for filling up the regular post, it is essential that the employee should have completed 12 years of experience. The petitioner has now completed 12 years of service. He is continuing in the job.

11. Counsel for the petitioner relies on a judgment of this court in the case of Jai Narain Meena v. State of Rajasthan (1), decided on 18.5.1993 and other connected matters on the proposition that at the time of promotion experience starts from the year of allotment. Jai Narain Meena was allotted the year of promotion of 1987-88 even though actually promoted on 1.4.92.1 was decided by this court that from 1.4.1992. It was decided by this court that from 1.4.87 he is deemed to have the service experience.

12. Counsel for the respondent does not disputes the law laid down in Jai narain Meena's case (supra). It is submitted that the judgment in Jai Narain Meena's case was also affirmed by the Division Bench.

13. In view of the above-said facts, the petitioner has completed 12 years of service on 31.3.2001 and was eligible for consideration by the DPC to be held in the year 2000-2001 for the vacancies to be determined of the year. In view of the above-said discussion, I hold that the petitioner was eligible for consideration the post of Executive Engineer having been promoted as Assistant Engineer for the quota of the year 1988-89 and he was within the zone of consideration when the name of Shri N.M. Sharma was considered vide Annexure-14. The petitioner who has since completed 12 years of service and was working in the still continuing in

job as Executive Engineer/Resident Engineer and it shall be unjust to revert him at this stage instead the petitioner should be considered immediately by the review DPC for the promotion to the post of Resident Engineer/Executive Engineer for which post he now fulfills all the qualifications.

14. For the above-said discussions, the writ petition petition is allowed. No order as to costs.

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