

Shiv Kumar and Others Vs. Union of India and Others

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Court : Chhattisgarh

Decided On : Sep-12-2011

Judge : Satish K Agnihotri

Appeal No. : WRIT PETITION NO 1629 of 1998

Appellant : Shiv Kumar and Others

Respondent : Union of India and Others

Judgement :

(PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

1. In this petition, the petitioners seek a writ/direction to quash the order dated 18th October, 1995 (Annexure P/3) whereby applications were invited from the regular employees working in plant, mines, township and construction, for the post of Junior Executive (Coordination) (for short 'the JEC'), order dated 8th May, 1996 (Annexure P/10) whereunder, the respondents. 4 and 5 were appointed on the post of JEC on the basis of selection on probation for a period of six months from the date of taking over the charge of the appointed post and the order dated 12th January, 1998 (Annexure P/11) whereby, the respondents 6 and 7 were appointed on the post of JEC on the basis of selection on probation for a period of six months from the date of taking over the charge of the appointed. The petitioners further seek a direction to allow the petitioners 5, 6, 8, E-0 grade at par with the respondents 4 and 5 granting service and monetary

benefits to the petitioners as given to the respondents 4 and 5 under order dated 08th May, 1996, w.e.f. 01st September, 1996. Further, a direction is sought to consider the petitioners 12, 16, 17, 20, 21, 22, 23, 24 and 28 over respondents 6 and 7 for granting service and monetary benefits as granted to the respondents 6 and 7 under the order dated 12th January, 1998 (Annexure P/11) as the respondents 6 and 7 were junior to the petitioners 12, 16, 17, 20, 21, 22, 23, 24 and 28 as they were allowed E- 0 grade w.e.f. 13.12.1997. The petitioners also sought a writ of mandamus commanding the respondents 1 to 3 to follow the promotion policy as indicated in Annexure P/9 or to evolve a well settled policy for recruitment and promotion, further, a writ of mandamus commanding the respondents 1 to 3 to avoid malpractice in future and any other relief.

2. The brief facts, in nutshell, as projected by the petitioners are that the petitioners were working as Private Secretary in L-10 grade, also known as S-10 grade with the respondent Steel Authority of India Limited (for short 'the SAIL') at Bhilai Steel Plant (for short 'the BSP'). In the seniority list of L-9 and L-10 employees, as on 22nd July, 1994 (Annexure P/1) the next promotion from the S-10 grade, was to the post of Junior Executive (PS) i.e. E-0 grade. Pursuant to the circular dated 18th October, 1995 (Annexure P/3), applications were invited from the regular employees working in the Plant, Mines, Township and Construction for the post of JEC wherein qualifications and experience was prescribed. On 01st January 1997, there were 72 PS (S-10) in BSP and all the 72 PS were eligible to be called for interview for promotion as Jr. Executive (PS). This practice was followed till the year 1990. Thereafter, certain persons were called for interview during 1990 but thereafter, they were not called subsequently. Thus, the senior persons were denied the right to be promoted. In the year 1993, while moving a note for appointment of one Shri M.Shankar [Now Sr. Executive (PS)] in E-2 Grade in BSP on transfer from MECON, a non-SAIL Unit, the management specifically mentioned 12 vacancies in Executive (PS) cadre at that time. On 01st January, 1993, the strength of Executive (PS) in BSP was 51. From 1993 till December, 1997, 27 PS were separated from the cadre due to retirement/re- designation. Thus, the vacancies upto December, 1997 comes to 11+27 i.e. 38. Out of 38, only 11 were promoted from 1993 till filing of the petition, still leaving huge vacancies in the Executive (PS) cadre. In other

units of SAIL, the promotion policy for promotion from non-executive to executive cadre was implemented, as aforesaid. However, in the BSP, this policy has been ignored and a circular was issued by creating a new post, new cadre probably with a view to accommodate certain persons and thereafter, the officials associated with higher authorities were given promotion. A new post of the JEC was created by the BSP on 18th October, 1995. The circular dated 18th October, 1995 was not specific with regard to number of vacancies to be filled, proposed place of posting and preparation of panel.

3. Shri Agrawal, learned senior counsel with Ms. Sareena Khan, learned Advocate for the petitioners would submit that there was no mention about reservation of posts for SC/ST candidates in the impugned circular (Annexure P/3), thus, the same deserves to be quashed. Promoting the juniors by giving a go-bye to the rules and established norms amounts to serious infringement of the rights of superseded persons. Even the SAIL directives/policy decisions forbids issue of circular inviting applications from non-executives to fill up the posts of E-0/E-1 grades. The respondents 4 to 7 were given promotion superseding equally or more qualified and competent persons, which is against the policies of the SAIL. Even, the respondents 6 and 7 were promoted without conducting any interview and they were allowed E-0 grade after the expiry of the validity period of recruitment panel, and the petitioners 5, 6, 7, 8, 12, 16, 17, 20, 21, 22, 23, 24 and 28, being senior to the respondents 6 and 7 for promotion to E-0 grade. The circular No. 9 was the result of a conspiracy of the management to accommodate some pre-determined individuals in executive cadre. The persons selected/appointed as JEC against the circular No. 9 as well as those promoted w.e.f. June, 1996 as per the seniority rule/normal promotion policy are discharging the functions of Junior Executive i.e. PS only, thus, there was no necessity of any special recruitment by creating a new designation as JEC. The promotions given to respondents 4, 5, 6 and 7 to E-0 grade are illegal and arbitrary. Even no interview was held for the respondents 6 and 7. Further, not giving promotion to the petitioner 8 on the ground of pendency of case before the Court is also illegal as there was no preventive order passed by the Court. A scheduled caste candidate i.e. the petitioner 22 was also not considered for promotion which shows the pre-determination of the respondent

Management. Even the Stage III Grievance Committee, which consists of representatives of the Management and Recognized Union Leaders of the rank of Deputy General Secretary had returned the grievance of the petitioners, raised before them, specifically mentioning that the grievance relating to promotion to Executive Cadre is beyond the purview of the Committee.

4. On the other hand, Dr. N.K.Shukla, learned senior counsel appearing with Shri Shailendra Shukla, learned Advocate for the respondents 2 to 7 would submit that as per the recruitment policy of the respondents 2 and 3, the executive post can be filled up through internal circulation depending upon the organizational requirement. Therefore, circulation of post in executive cadre within the Plant is not illegal. Shri Shukla would next submit that it is not necessary to fill up the vacancies in Executive cadre by horizontal selection only. The panels prepared after completion of the selection process are being utilized as and when required with the approval of the competent authority for appointment. Thus, the life of the panel is not for only one year. The post of JEC was circulated in the Plant inviting applications from eligible persons and there was no question of accommodating any particular Private Secretary or employee. The circular clearly specified the job requirement, qualification and the requisite experience. The respondents 4 and 5 were appointed vide order dated 08th May, 1996 and the respondents 6 and 7 were appointed vide order dated 12th January, 1998. After selection and appointment, the incumbents are doing the job which are associated with the designation and position of JEC as mentioned in the circular, thus, it would not be proper to say that they were doing the same job as what they were doing prior to promotion. The circular inviting application for the post of JEC was given wide publicity and there was no question of depriving anyone by adopting wrong process of selection. Shri Mohanty and Shri Upadhyay entered L-8 grade on 15th March, 1983 and thus, they had completed 10 years and were eligible for consideration as per the terms and conditions contained in the circular.

5. Dr. Shukla would further submit that there is no relevance of the seniority list prepared by the petitioners themselves as this is not a case of promotion, but is a case of selection. Since the number of eligible candidates was much high, it

was though fit in June 1992 to call the eligible non-executive employees in the ratio of 1:3 with reference to the existing vacancies in the order of their seniority. As regards appointment of Shri Shanker, it is a case of appointment of an Executive Private Secretary from one Public Sector to another Public Sector with the consent of both the managements. Shri Shanker was working in MECON with the approval and consent of both the Managements of MECON and SAIL, BSP, Shri Shanker was appointed in BSP on 01st April, 1993 as per organizational requirement. The Private Secretaries in BSP have been promoted to E-0 level from time to time as per their seniority position and the provisions of E- 0 promotion policy.

6. The contention of the petitioners that the promotion policy had been given a go-bye and the circular was issued by creating a new post with a view to accommodate certain persons, have no basis as the circular was issued keeping in view the organizational requirement and in accordance with the recruitment policy of the Company. The circular dated 18th October, 1995 was issued for inviting applications for selection and not for promotion. In order to ensure coordination of certain activities in important areas, a panel of candidate was contemplated to be prepared for being released as and when the need arose. Therefore, the number of vacancies or proposed place of posting was not indicated in the circular. The post being not of very high grade, it was also considered that the experience of the candidates for a period of 10 years of service in L-8, L-9 and L-10 grade taken together will be sufficient.

7. Shri D.K.Mohanty was promoted to the grade of L8 in the year 1983 at Nilanchal Ispat Nigam Limited (for short `the NINL'), a Public Sector Undertaking to which he had been transferred from Rourkela Steel Plant, a unit of Steel Authority of India Ltd. and from NINL, he was transferred to BSP. Thus, he had 10 years of experience from L-8 to L-10 grade and he fulfilled the minimum eligibility criteria. All the eligible candidates were at liberty to apply for the post and if the petitioners did not apply, the question of their being considered did not arise. Shri G.C.Upadhyay was in the grade of L-8 w.e.f. 15th March, 1983 and as such, he fulfilled the conditions of 10 years service from the grade of L-8 onwards and therefore, he was entitled to apply for the post of JEC. Shri

D.K.Mohanty and Shri G.C.Upadhyay fulfilled the eligibility norms and thus, they were called for interview. Hence, it cannot be held that they were not even eligible to apply for the post of JEC. There was no question of using any influence for selecting D.K.Mohanty.

8. Out of 29 petitioners, the petitioners at Sl. No. 1, 2, 3, 4, 5, 6, 7, 8 and 22 applied for the post of JEC in response to the circular (Annexure P/3), out of them, petitioners 6 and 22 were not found eligible for being called for selection process. However, the petitioner 1 to 5, 7 and 9 participated in all the stages of selection process but failed to qualify for the post and therefore, they could not be selected. In view of that, they are estopped from challenging the selection of respondents 4 to 7, who qualified for the post. The petitioner 6, Smt. K.V.B.Amma did not submit the detail sought for from her regarding her proficiency in typing, stenography, secretarial jobs, her experience in coordination of VIP visits, meetings etc., thus, she was not called for interview. Even though, the petitioners at serial No. 1 to 8 were senior to Shri Mohanty and Shri Upadhyay, but the question of seniority was immaterial. In the matter of selection for a particular post through internal or external circular/advertisement, the question of seniority does not arise. The appointments have been made after selection based on the panel prepared of the successful candidates.

9. The petitioner 22, Shri K.G.Wakhodikar, a ST candidate had not applied for the post and therefore, the question of considering him for the post did not arise. Further, no ST/SC candidate applied for the post and therefore, the reserved posts have been carried forward for filling up in future. Shri Shukla next contends that the whole selection process right from the stage of invitation of application from the employees upto the stage of preparation of panel including issue of offer of appointment to the selected candidates is wholly legal in order and strictly in accordance with the recruitment policy of the company.

10. Having heard learned counsel for the parties, perused the pleadings, documents appended thereto and the written submission filed thereon.

11. It would be convenient to refer circular No. 09, dated 18th October, 1995 (Annexure P/5), which reads as under:

"STEEL AUTHORITY OF INDIA LIMITED BHILAI STEEL PLANT

No. ESTT/RECTT./95/1044 BHILAI, DATE: 18TH OCT. '95.

CIRCULAR - 09

Applications are invited from the regular employees working in Plant, Mines, Township and construction for the post of Junior Executive (Co-ordination) in the scale of Rs. 3500-150-6200 (B-O).

JOB REQUIREMENT

Co-ordination of VIP visits, meetings, protocol jobs and secretarial jobs.

The qualification and experience required for the post is indicated below.

1.	Qualification:	Graduate in any discipline. Post graduate will be preferred.
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2.	Experience:	<p>i) Should have completed minimum 10 years in L-9/L-9/L-10 grade taken together. ii) Should have proficiency in typing, stenography, secretarial jobs and working on Personal Computer.</p> <p>iii) Should have proven track record in the required area of work.</p> <p>iv) Should have demonstrated high degree of co-ordination skill.</p>
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Those who are interested may submit their applications through proper channel in the prescribed proforma given overleaf so as to reach the recruitment section not later than 06-11-95.

(V.M.RAJAGOPAL)

DY. MANAGER

(PERS. and SECTT.)

STANDARD DISTRIBUTION"

12. The principal grievance of the petitioners are issue of circular dated 18th October, 1995 (Annexure P/3) whereby the BSP invited applications from all the

regular employees working in plant, mines, township and construction for the post of JEC. The qualification and experience provided for the post was graduation in any discipline and the post graduates were to be granted preference. The candidates were further required to have (i) completed minimum 10 years in L-8, L-9 and L-10 grades taken together, (ii) proficiency in typing, stenography, secretarial jobs and working on personal computers, (iii) proven track record in the required area of work and (iv) demonstrated high degree of coordination skill. It was further required that the applications in prescribed proforma must reach not later than 6th November, 1995. Indisputably, the petitioners 1, 2, 3, 4, 5,6, 7, 8 and 22 responded to the circular dated 18th October, 1995 and made applications. Out of them, petitioners 6 and 8 were not found eligible for being called for selection. The qualification required in circular No. 09 was to have completed 10 years in L- 8, L-9 and L-10 grade taken together. It does not specify that the candidate should have completed 10 years in BSP on the basis of seniority. If the period spent by D.K.Mohanty in NINL was taken together in grade L-8 where he was promoted in March, 1983, he had completed 10 years and was eligible for consideration as per the terms and conditions contained in the circular No. 09. (See: Renu Mullick (Smt.) v. Union of India and Another). In the proceedings dated 22.11.1995, signed by Deputy Manager (P-RECTT), it is indicated that in response to the circular dated 18th October, 1995, 50 applications were received and on scrutiny of the applications, only 9 were found to be eligible on the basis of job requirement for the post. The remaining 41 candidates did not fulfill the job requirement and as such, they were not found eligible. Subsequently, 33 candidates were asked to give complete details of their experience viz. proficiency in typing, stenography, secretarial job, working on personal computer and their track record. In response, 27 candidates submitted their details out of which, 19 were found eligible on all counts, as is evident from the proceedings dated 27.02.1996, signed by R.K.Narula, Senior Manager, (P- Genl.).

13. According to Dr. Shukla, the other petitioners have not even submitted applications for appointment on the post of JEC. Thus, those petitioners are restrained from questioning the issue of circular as well as appointment of respondents 4 to 7 after proper selection to the post of JEC. So far as

petitioners 1 to 5, 7 and 9 are concerned, they participated in all the stages of selection process and finally failed to qualify. It is well settled that those candidates who have taken part in the selection process knowing fully well the procedure laid down therein, were not entitled to question the same. (See: Virendra Kumar Verma v. Public Service Commission, Uttarakhan and Others, P.S.Gopinathan v. State of Kerala and K.H.Siraj v. High Court of Kerala.

14. The contention of Shri Agrawal that the petitioners being senior ought to have been granted preference in selection to the post of JEC, is of no relevance as the circular No. 9 clearly provides that any qualified graduate in any discipline having 10 years in L-8, L-9 and L-10 taken together and further proficiency in typing and stenography, secretarial jobs and working on Personal Computers, proven track record in the required area of work and high degree of coordination skill, working in mines, township, plant and construction, were eligible to apply and after proper selection, the respondents 4 to 7 were found selected and accordingly, appointed. Thus, the entire case of the petitioners rests on the seniority, does not merits acceptance. The other allegation of the petitioners that the circular No. 9 was the result of conspiracy of the management to accommodate some pre-determined individuals in the cadre, is a mere self same statement made in the pleadings and not supported by any material, as the circular No. 9 does not confine to only one department, but to all the persons having the above stated qualifications and experience for making application for selection. The promotion policy or seniority rules, in my opinion, is not applicable to the selection of this nature.

15. It is well settled proposition of law that it is for the management to create or to abolish any post, having regard to the organizational requirement. The allegation of malafide has not been found proved. Thus, the creation of post of JEC and inviting applications for direct selection to the post cannot be faulted with. In Official Liquidator v. Dayanand and Others, the Supreme Court has held as under:

59. The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and

criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.

16. The next contention of Shri Agrawal that the respondents 6 and 7 were appointed without conducting the interview is without any basis. The original papers were produced by the respondents 2 and 3 and it was found that all the eligible candidates were interviewed on 7th March, 1996 by a committee comprising of General Manager (Marketing) as Chairman, Deputy General Manager (HRD) and Chief Personnel Manager (MandS) as members and selected list was prepared on the basis of recommendation of the above stated committee and the respondents 4 and 5 were appointed on 8th May, 1996 (Annexure P/6) and the respondents 6 and 7 were appointed on 12th January, 1998 (Annexure P/11) on probation for a period of six months.

17. The further contention of the petitioners that the appointments were made beyond the period of validity of the select list, it has not been shown by the petitioners that they were either in the select list or merit list and as such, they could not be appointed within time. As per clause 15.3 of the recruitment policy, the panel/merit list would be subject to approval of the competent authority. This has not been shown as to when the competent authority has approved the panel/ merit list. Even otherwise, at this stage, the appointments of the respondents 4 to 7 cannot be quashed on this ground, at the instance of the petitioners. In respect of non-consideration of the petitioner 22, who belongs to scheduled caste category, it has categorically been stated by the respondents 2 and 3 in their return and submitted by Dr. Shukla that the petitioner 22, Shri

K.G.Wakodikar, had not made any application for selection. Thus, no grievance on the part of petitioner 22 survives.

18. The contention of the petitioners with regard to the allegation that the respondents 2 and 3 have not followed the promotion policy as several persons of L-10 grade are waiting for years, thus, a direction may be issued to consider the cases of the petitioners including the similarly situated persons for promotion in accordance with the promotion policy, a direction of this nature cannot be granted in this petition as there is no specific instance pointed out by the petitioners, wherein some other junior persons were promoted to the higher post and the petitioners have been left out. The petitioners have confused with the words 'selection' and 'promotion'. This was a case of selection and not promotion, wherein minimum seniority as prescribed in the qualification and experience was necessary and selection was not based on the seniority. Thus, this contention is also meritless.

19. The Supreme Court, in Union of India v. Pushpa Rani and Others, has defined the term promotion as under:

"32. The word "promotion" means "advancement or preferment in honour, dignity, rank or grade". "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law the expression "promotion" has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post" - State of Rajasthan v. Fateh Chand Soni."

The Supreme Court further observed that ordinarily such placement does not involve selection except wherein it is clearly provided that the promotion shall be on the basis of selection.

20. In case of A.P.Public Service Commission, Hyderabad and Another v. B.Sarat Chandra and Others, the Supreme Court, while considering the process of selection as to when it starts and when selection stands concluded, observed that it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates,

conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment.

21. In the case of selection, the qualification and experience are governed by the conditions prescribed in the advertisement or circular whereunder the applications are invited. However, in the case of promotion, all the eligible candidates are considered for promotion to the higher post in accordance with the service rules and policy governing the service conditions of the employees. Thus, in the case on hand, it is a clear case of selection pursuant to the advertisement dated 18th May, 1995 and the grievance of the petitioners that selection was in fact promotion wherein seniority ought to have been considered, is misplaced and cannot be countenanced.

22. For the reasons stated hereinabove, the petition being shorn of merit, is dismissed.

23. No order as to costs.