

A

RAMANUJ PRASAD
v.
COAL INDIA LTD. AND ORS.

SEPTEMBER 17, 2003

B

[V.N. KHARE, CJ. AND S.B. SINHA, J.]

Service Law:

C

Promotion—Person discharging his duties on a higher post—Later, claiming promotion to the said post—Bharat Coking Coal Ltd.—Draftsman—Promoted to Executive Cadre as Public Relation Officer in E-2 Grade—Later assuming charge of Public Relation Manager in E-5 Grade—Meanwhile qualifications prescribed for promotion from Non-Executive Cadre to Executive Cadre—Claim for promotion to E-5 grade or in the alternative for regularization in the E-5 grade—Allowed by Single Judge but rejected by Division Bench of High Court—Held, the employee was not promoted to the post of Public Relation Manager—He began to discharge his duties in the said post—In absence of any order of promotion to the post of Public Relation Manager, passed in his favour, he by no stretch of imagination was entitled thereto—He did not have any legal right to be promoted to the post of Public Relation Manager which was in E-5 grade —The writ petition was misconceived and has rightly been dismissed by the Division Bench of the High Court.

D

E

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2059 of 2002.

G

From the Judgment and order dated 17.7.2001 of the Calcutta High Court in A.P.O.T. 827 of 2000 in G.A. No. 4587 of 2000 in W.P. No. 2012 of 1997.

S.B. Upadhyay for the Appellant.

Mukul Rohtagi Additional Solicitor General, Ms. Kunud Lata Das
H and Saurabh Kirpal for the respondents.

The following Order of the Court was delivered :

A

Bharat Coking Coal Limited (in short the 'BCCL') is a subsidiary company of Coal India Limited. On 27th March, 1975, the appellant was appointed in BCCL as a Draftsman. It is alleged that subsequently on 20th November, 1987, the appellant was promoted to Executive cadre as Public Relation Officer in E-2 Grade. On 9th May, 1990, the appellant took charge of the office of Public Relations Manager, which was of E-5 Grade.

B

On 20th January, 1993, a circular was issued providing therein that for promotion from Non-executive cadre to the Executive cadre in public relations office, the candidate must possess a Post Graduate Degree/ Diploma in Journalism/Public Relations and also to pass the qualifying examination. The appellant was not subsequently promoted allegedly on the ground that he did not possess the requisite qualification.

C

It is this stage the appellant herein filed a writ petition under Article 226 of the Constitution before the Calcutta High Court for issuing a direction to the respondents herein to promote him to E-5 Grade and in the alternative to regularise his services in the said Grade.

D

A learned Single Judge of the High Court was of the view that since the appellant herein was working on the post of E-5 Grade for the last 10 years, his services are liable to be regularised. Consequently, the writ petition was allowed and the order to that effect was issued to the respondents. The respondents thereafter preferred a Letters Patent Appeal before the High Court and the Division Bench of the Calcutta High Court, reversed the judgment of the learned Single Judge. Consequently, the appeal was allowed. It is against the said judgment, the appellant has come in appeal before us.

E

F

Learned counsel appearing for the appellant at the threshold, argued that since the appellant was promoted to E-2 Grade in the year 1987, the circular dated 20th January, 1993 was not applicable as the same provided only for promotion from Non-Executive cadre to the Executive cadre. After hearing the learned counsel for the parties. We are not inclined to entertain this argument at this stage for the reason that the appellant's case before

G

H

A the High Court was that he should be promoted to E-5 Grade, or in the alternative his services be regularised therein.

B It is not in dispute that the terms and conditions of service of the appellant are governed by Common Coal Cadre issued by Coal India Ltd. which is the holding company. The relevant provisions of the said Common Coal Cadre are as under :

C “Clause 4.1 : “All promotions from one executive grade to another will be on the basis of the recommendations of the duly constituted Department Promotion Committee (DCP).

ELIGIBILITY NORMS FOR PROMOTION

D 4.7(a). The promotion of departmental executives will be step-by-step according to the channel of promotion indicated in the cadre schemes placed at Appendix IV(2) of the Common Coal Cadre and modified from time to time.

E (b) The eligibility of executives for consideration for promotion shall be determined on the basis of minimum qualification and minimum period of service in a particular grade as indicated in the respective cadre schemes placed at Appendix IV(2) of the common coal cadre and should be subject to the following :

(i) xxxx xxxx

F (ii) Promotion orders of the executives will be issued on receipt of vigilance, departmental and safety clearance in respect of Mining E&M and Excavation disciplines and vigilance and departmental clearance in respect of other disciplines.

G (iii) xxxx xxxx

(iv) xxxx xxxx

H (c) Unless otherwise stipulated in the relevant cadre scheme executive has to put in a minimum of three years service in a particular grade before he becomes eligible for consideration for

promotion to the next higher grade. A

(d) xxxx xxxx

(e) xxxx xxxx

(f) Any relaxation, either in the minimum length of service or minimum qualification shall be only with the specific written approval of the cadre controlling authority i.e. Chairman CIL. B

(g) xxxx xxxx

(h) xxxx xxxx

ACTING OFFICIATING ARRANGEMENT IN RESPECT OF EXECUTIVE POSITIONS D

9.1. xxxx xxxx

9.2. xxxx xxxx

9.3. xxxx xxxx E

9.4. Temporary acting arrangements made will not confer any claim for promotion.

9.5. the period of 'Acting' will not count towards eligibility for promotion to the next higher level. F

9.6 Quantum of Acting Allowance

The amount of acting allowance payable to an employee acting in a higher post shall not exceed 20% of his pay or the pay to which he would be entitled to in case of promotion to the higher post, whichever is lower. G

9.7 xxxx xxxx H

A It is not in dispute that the appellant was not promoted to the post of Public Relations Manager. Shri R.N. Dwivedi who held the said post was asked to hand over the charge to the appellant. Pursuant to and in furtherance whereof he began discharging his duties in the said post. In absence of any order of promotion passed in favour of the appellant to the post of Public Relations Manager, he by no stretch of imagination was entitled thereto. He did not have any legal right to continue to hold the said post and no writ of mandamus therefor could be issued. It appears that before the Division Bench of the Calcutta High Court an additional affidavit was filed by the respondents herein: the material portion whereof is as under :

C
D
E
F
G
H
“On 9.5.1990 when Mr. Dwivedi was directed to hand over charge of his office to the writ petitioner, the writ petitioner was an E-2 Grade Officer. His designation was Public Relations Officer. By an office order dated 2.8.1991 the writ petitioner was promoted to the post of Senior Public Relations Officer in E-3 Grade. After completion of three years of service in E-3 Grade, the case of the writ petitioner was considered by the D.P.C. for promotion in the ‘higher Grade. The meeting of the D.P.C. was held on 20.7.1995. The writ petitioner was however not recommended for promotion from E-3 to E-4 Grade due to lack of qualification. Subsequently, in the meeting held on 22/23rd May, 1996 the case of the writ petitioner again came up for consideration for promotion from E-3 Grade to E-4 Grade but the same did not meet any fruitful result. So was the case with the writ petition in the meeting of the D.P.C. held on 2/3rd December, 1997. No meeting of the D.P.C. was held between 1998 and 1999. Subsequently decision for relaxation of qualification was taken in the meetings dated 5.5.1999 and 7.5.1999 for those candidates who have completed 5 years of service in their existing Grade and have bagged three ‘excellent’ ratings in the Executive Evaluation Report. The case of the writ petition was also considered and relaxation was granted. On the basis of such relaxation the D.P.C. met on 20/21st January, 2000 and recommended the case of the writ petition for promotion from E-3 Grade to E-4 Grade which however has not been made available to the writ petition due to pendency of this proceedings.”

The contention of the appellant at best could have been that having regard to the fact that the purported circular letter dated 20th January, 1993 was not applicable in his case, the Departmental Promotion Committee should have considered his case for promotion to E-4 Grade in the year 1995. He did not say so. As the appellant did not have any legal right to be promoted to the post of Public Relations Manager which is in E-5 Grade, the writ petition was misconceived and has rightly been dismissed by the High Court. This appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.