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PURAN DAS

v.

UNION OF INDIA AND ORS.

FEBRUARY 23, 2006

B

[ARIJIT PASAYAT AND TARUN CHATTERJEE, JJ.]

*SERVICE LAW:*

C

*Indo-Tibetan Border Police (Non-Gazetted Telecommunication Cadre) Rules, 1983—Promotion—Entitlement to—With retrospective effect—Permissibility—Employee becoming eligible for promotion test and qualifying subsequent to consideration for promotion—Claim of employee to promotion with retrospective effect because he was debarred from appearing in promotion test due to suspension/dismissal from service—Held: Employee could not be considered for promotion since he was not qualified on the date when consideration for promotion was made—Giving retrospective effect to his qualification is impermissible.*

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Appellant had joined Indo-Tibetan Border Police Force as a Constable. He was placed under suspension and was later removed from service on a different charges. High Court, on a writ petition set aside the order of removal from service directing all consequential benefits. Thereafter having qualified in certain tests, he became eligible for departmental promotion test. His representation seeking consequential benefits, was rejected by the concerned authorities, he filed Writ Petition, seeking the consequential reliefs. During pendency of the Writ Petition, juniors of the appellant were promoted. Appellant filed another Writ Petition challenging the promotion. High Court held that since he did not possess requisite qualification for promotion at the time of consideration for promotion, his claim for promotion from the date his juniors were promoted was not acceptable. The earlier Writ Petition regarding consequential benefits was also decided denying promotion from earlier point of time. Hence the present appeals.

Dismissing the appeals, the Court

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HELD: At the point of time when the consideration was made the

appellant was not qualified. The appellant could not be considered for promotion as he did not have the basic qualification under the Indo-Tibetan Border Police (Non-Gazetted Telecommunication Cadre) Rules, 1983. He became eligible for promotion test and qualified subsequently. The question of giving any retrospective effect to his qualification is clearly impermissible. [417-G; 418-B-C]

*C.O. Arunugam and Ors. v. State of Tamil Nadu and Ors.*, [1991] Supp. 2 SCC 199, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5024-5025 of 1998.

From the Final Order & Judgment and dated 12.12.1996 of Himachal Pradesh High Court in C.W.P.Nos. 562 of 1987 and 16 of 1987.

E.C. Agrawala for the Appellant.

T.S. Doabia, Mrs. Rekha Pandey and Ms. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. These appeals are interlinked and are disposed of by this common judgment.

Appellant challenges the judgments of a Division Bench of the Himachal Pradesh High Court at Shimla holding that the appellant was not entitled to the benefit of promotion from the date his juniors were granted promotion. The appellant's case was that he was deprived of the opportunity of acquiring the requisite qualification for promotion as he was initially placed under suspension and subsequently removed from service. After reinstatement he qualified at the requisite tests and on the basis of such qualification he shall be deemed to have acquired the right to be considered along with his juniors when the consideration was made.

The factual background is as follows:-

Appellant joined the Indo-Tibetan Border Police Force as a Constable on 7.1.1967. In 1969 he was promoted as Head Constable. On 11.9.1973 he was suspended from service as a criminal case was registered against him. He was subsequently acquitted in that criminal case. During the period of

A suspension, appellant was directed to stay at Taradevi and not to leave the Headquarters. On 25.10.1974 his application for station leave was rejected and he was directed to stay at Taradevi. Notice was given to him for proposing disciplinary action for not reporting at Taradevi. After enquiry the appellant was held guilty of charge of deserting the services during the period of suspension. On 14.2.1976 show-cause notice was issued to the appellant to show-cause as to why the punishment of removal from service shall not be imposed upon him. By order dated 1.3.1976, the appellant was ordered to be removed from service. By order dated 24.4.1976 the appeal was rejected by the appellate authority. The appellant filed Civil Writ Petition No.324/1976 in the High Court praying for the quashing of the aforesaid order of removal from service. As noted above, appellant was acquitted in the criminal case by judgment dated 31.5.1979. The High Court allowed the writ petition by order dated 4.1.1983 and directed that all consequential reliefs be given to the appellant. On 8.2.1983, an order was passed to reinstate the appellant in service with all consequential reliefs with arrears of salary. In March, 1984 the appellant qualified Radio Operator Grade II test and in June 1986 he qualified in the Grade I test. He became eligible for departmental promotion test i.e. 'D' test subsequently. Representation was made by the appellant to the concerned authorities for granting relief in terms of the High Court's orders. The same was not accepted by the concerned authorities. The appellant again filed the C.W.P. No.16/1987 in the High Court for grant of consequential reliefs. On 18.9.1987 during the pendency of the writ petition respondents 5 to 9 were promoted. According to the appellant they were junior in service to the appellant. Civil Writ Petition No.562/87 was filed by the appellant challenging promotion given to respondents 5 to 9. The High Court partly allowed CWP No.562/87, declining the claim of promotion from the date his junior were promoted on the basis that under the relevant rules the appellant had qualified at the test in 1986 only. Appellant had highlighted that some of the persons who were granted promotion had not qualified in all the tests and the appellant was prevented from qualifying at the test because he was placed under suspension and/or dismissed. The High Court held that since the appellant did not possess requisite qualification for promotion at the time of consideration for promotion, his claim for promotion from the date his juniors were granted promotion cannot be accepted. In CWP. No.16 of 1987, the High Court granted reliefs with which the present appeals have no direct nexus. But the prayer for promotion from earlier point of time was rejected. In CWP No.562 of 1987 that was the essential prayer, as the relief sought for was promotion from the date his juniors were given promotion.

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In support of the appeals, learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. Strong reliance was placed on a decision of this Court in *C.O. Arumugam and Ors. v. State of Tamil Nadu and Ors.*, [1991] Supp. 2 SCC 199 more particularly para 5 thereof. It was submitted that by the acts of the respondent the appellant was deprived of the opportunity to appear at the concerned test. The order of removal has been set aside by the High Court and consequential benefits were directed to be given. The right to be considered for promotion was one of the consequential benefits which flows from the order of the High Court. The appellant could not appear in the test as he was under suspension, and that cannot be a ground to deny him promotion.

In response, learned counsel for the respondent submitted that at the time of consideration for promotion, the appellant did not possess the requisite qualification and, therefore, the High Court was right in justifying in revising the benefits claimed.

Strong reliance was placed as noted supra by learned counsel for the appellant on para 5 of *Arumugam's* case (supra). It reads as follows:

"5. As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

The aforesaid decision has no relevance so far as the present case is concerned. Undisputedly, at the point of time when the consideration was made the appellant was not qualified. The written and the practical tests were held by the concerned authorities in July and August, 1975 for the promotion of Head Constables (W/T) to the rank of JIO (W/T) vacancies. Under the promotion order 33 persons were promoted on *ad hoc* basis and were brought

- A on approved list 'D' with stipulation that they would clear the practical test. The persons whose promotion was cited as illustration by the appellant stood at a different footing. Head Constable Ved Prakash was promoted on regular basis and Raghubir Singh and V.P. Nautiyal were promoted on *ad hoc* basis against the unqualified cadre and they were directed to clear the practical test within 12 months failing which they were liable to be reversed. The appellant
- B could not be considered for promotion as he did not have the basic qualification under the India-Tibetan Border Police (Non-Gazetted Telecommunication Cadre) Rules, 1983 (in short the 'Rules'). The appellant had qualified Grade II test and Grade I test in March 1984 and June 1986 respectively. He became eligible for promotion test i.e. "D" list test and became qualified subsequently.
- C The question of giving any retrospective effect to his qualification is clearly impermissible. In *C.O. Arumugam's* case (*supra*) the factual position was different. The persons whose cases were not considered, had already qualified and in that background this Court held that they were entitled to be considered from an anterior point of time. That logic is not applicable in the present
- D case, as admittedly the appellant did not possess the requisite qualification on the date of consideration.

Above being the position the appeals are clearly devoid of merit, deserve dismissal which we direct. No costs.

E K.K.T.

Appeals dismissed.