

STATE OF RAJASTHAN
v.
SRIRAM VERMA AND ANR

A

OCTOBER 29, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

B

Service Law :

Rajasthan Administrative Service Rules, 1954—Rule 28-B—Clauses [1] and [b] of Sub Rule [11]—Promotion—Seniority-cum-merit basis—Junior Promoted—No reasons recorded by D.P.C.—Held—Not obligatory—Promotion based on merit—Selecting authorities to follow the method of grading all the candidates appearing before them—Suggestion given.

C

The appellant state promoted thirteen officers, nine on the basis of seniority and merit and four on the basis of merit. The respondent challenged the promotion order before the Appellate Tribunal complaining that his junior has been promoted. Tribunal allowed the appeal. On appeal before the High Court it was observed that D.P.C. must indicate in the proceeding the reason for with-holding promotion to a candidate so that Court can see what appealed to the mind of D.P.C. for not giving promotion. Against the order of the High Court this appeal has been preferred.

D

E

The appellant State contended that it was obligatory upon the D.P.C. to record reasons for not selecting an officer unless the rules expressly provide.

F

The respondent contended that when a senior is ignored and junior is selected it is obligatory upon D.P.C. to record reasons because the selection is liable to be challenged in court of law.

Allowing the appeal, this Court

G

HELD : 1.1. When the promotion is made by the Departmental Promotion Committee it is difficult to say either that the D.P.C. should record reasons for not selecting a senior or at least the record should indicate some reason. It is one thing to say that such a course is fair and desirable, it is altogether different to say that such a course is

H

- A** obligatory or necessary in all cases, in the latter event the selection made are liable to be set aside for not complying with the said requirement. But having regard to the nature of function of selection—and taking into consideration the fact that the only right of the government servant is a right to be considered and not a right to promotion, it will not be possible to infer the requirement of recording reasons in all situations. [42-F, 43-A]

Sarat Kumar Das v. Vishwajit Patnaik, [1995] Suppl. 1 SCC 434, relied on.

- C** *State Bank of India v. Kashinath Kher*, AIR (1996) SC 1328, *Union of India v. E.G. Nambudri*, [1991] 3 SCC 38 and *Union of India v. N.P. Dhamania*, [1995] Suppl. 1 SCC 1, relied on.

- D** 1.2. The procedure adopted by the selecting body should be fair and should lend credence to the process. It should be such as to inspire confidence in all concerned within practicable limits. It would be a wholesome step for the Govt. of Rajasthan, for that matter all Governments, to provide either by amendment of Rules or by general instructions that in the matter of promotion on the basis of merit cum seniority the selecting authority should follow the method of granting all the candidates appearing before them. [43-BC]

- E** *R.S. Das v. Union of India*, [1986] Supp. SCC 617; *Union Public Service Commission v. Hiany Lal Dev and others*, [1988] 2 SCC 242; *National Institute of Mental Health and Neuro Services v. Dr. K. Kalyana Raman and other*, [1992] Supp 2 SCC 481; *Major General IPS Diwan v. Union of India and others*, [1995] 3 SCC 383; *Bhagat Raja v. Union of India and others*, AIR (1967) SC 1606 CB referred to.

- F** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 13352 of 1996.

- G** From the Judgment and Order dated 1.8.94 of the Rajasthan High Court in D.B.C.W.P. No. 3268 of 1994.

K.S. Bhati, M.K. Singh and Ms. Kusum for the Appellant.

Sushil Kr. Jain and A.P. Dhamija for the Respondents.

- H** The Judgment of the Court was delivered by

B.P. JEEVAN REDDY. J. Leave granted. Heard counsel for the parties. A

The respondent, Sriram Verma, is an officer belonging to the Rajasthan Administrative Service. By an order dated March 24, 1991, thirteen officers were "selected and appointed in senior pay-scale....subject to review and revision for the year 1990-91 as prescribed in the separate list mentioned in Rule 28(B)(b)" of Rajasthan Administrative Services Rules, 1954. Thirteen officers selected and appointed under the said order were mentioned under two categories separately. Nine officers were mentioned under the heading "On the basis of seniority and merit" and four officers were mentioned under the heading "On the basis of merit". Among the nine officers promoted on the basis of seniority and merit, "Sri Ashok Kumar Sanvaria [Scheduled Caste]" was mentioned at Sr. No. 8. B C

The respondent, Sriram Verma, who is also a member of a Scheduled Caste, preferred an appeal against the aforesaid order before the Rajasthan Civil Services Appellate Tribunal. He complained that his junior, Ashok Kumar Sanvaria, has been promoted while he himself has been overlooked wrongly. The learned advocate appearing for the state of Rajasthan submitted before the Tribunal that an enquiry was pending against the respondent under Rule 16 of the Rajasthan Civil Services [Classification, Control and Appeal] Rules, 1958 and also because the impugned promotions were in the nature of urgent/temporary promotions, the respondent herein was not promoted. The Tribunal allowed the appeal preferred by the respondent holding that "a perusal of the written reply filed by the Government does not very clearly indicate whether the appellant's case for promotion was considered by the D.P.C. or not". The Tribunal observed that during the arguments, no doubt, the advocate for the State did mention that an enquiry was pending against the respondent but that assertion was squarely denied by the respondent's counsel. The respondent's case was that "on the date of D.P.C., there was no enquiry pending against him". The Tribunal observed that it is not clear whether the respondent's case for promotion was considered by the D.P.C. or not. If an enquiry was pending against him, the Tribunal observed, his name should have been kept in a sealed cover after considering him and if no enquiry was pending against him, "then clear recommendations should have been recorded by the D.P.C. in respect of the appellant". The appeal was allowed accordingly and the Government was directed to place the respondent's case for promotion to the selection scale against the vacancies for the year 1990-91 before the DPC. The DPC was directed to record its clear recommendations about the respondent. D E F G H

A The order of the Tribunal was challenged by the Government of Rajasthan before the High Court. The High Court says that it sent for the record relating to *regular selection* by D.P.C. and then says: "We have got the record and after going through the same, find that the name of respondent No.1 was there before the D.P.C. but no reason has been provided in the proceedings of the D.P.C. as to why the respondent was not considered fit for promotion".

B The High Court then referred to the submission of the counsel for the State that there was an adverse entry against the respondent. The High Court saw the entry but without expressing any opinion whether it is really adverse or not, observed: "We may say that when his name was considered by the D.P.C. process of reasoning or application of mind had to be indicated at the time of D.P.C. meeting as to why he is not being

C promoted or as to why his promotion is being withheld. They did not say that they were withholding promotion on account of adverse entry. This is the minimum requirement of law which is being enunciated by courts from time to time and this law is being observed in breach". The High Court added further:

D "Even before us, the learned counsel for the State says that D.P.C. do not give their reasons when somebody is ignored or withheld from promotion. This is not the correct state of law. D.P.C. is not to write a long judgment but whatever occurs in their mind to withhold promotion, that must be indicated in the proceedings of the D.P.C., so that in case the matter is challenged before a Court of law, the Court can see what appealed to the mind of D.P.C. for not giving promotion.

E

F Copy of this order may be sent to the Chief Secretary to the Government of Rajasthan so that he may be able to advise all authorities and Departments keep this in view while sitting in D.P.C."

G The learned counsel for the appellant—State submitted that it is not *obligatory* upon the D.P.C. to record reasons for not selecting an officer and/or for selecting a junior while not selecting the senior. Counsel submitted that unless the rules expressly so provide, no such obligation can be deduced from the Rajasthan Administrative Services Rules, 1954. Counsel submitted that the principles of natural justice have no application to such selections. Learned counsel relied upon the decision of this Court in *Sarat Kumar Das v. Vishwajit Patnaik*, [1995] Suppl. (1) S.C.C. 434

H and the several decisions referred to therein. Counsel for the respondent,

however, disputed the said propositions and submitted that when a senior is ignored and junior is selected, it is *obligatory* upon the D.P.C. to record reasons therefor. This requirement, the learned counsel submitted, has to be inferred because the selection is liable to be challenged in a court of law and unless there is something on record to indicate the reasons for ignoring a senior or for selecting a junior, the court will not be in a position to judge the fairness of selection. Reliance is placed upon the decisions of this Court in *State Bank of India v. Kashinath Kher*, AIR (1996) S.C.1328, *Union of India v. E.G. Nambudiri*, [1991] 3 SCC 38 and *Union of India v. N.P. Dhamania*, [1995] Suppl. 1 SCC 1.

Before dealing with the submissions, it is necessary to record a statement made by the learned counsel for the appellant-State. He stated that so far as the respondent is concerned, no grievance survives on his part in as much as the order of the Tribunal [as confirmed by the High Court] has been implemented and the respondent has been given what was due to him. The counsel stated that the State is not interested in disturbing what is already given to the respondent but that they only want a decision on the proposition enunciated by the High Court that where a senior is overlooked and a junior is selected, the selecting authority must indicate the reason for doing so. The above statement is recorded.

It must be noticed in the first instance that the promotion to the selection scale is on a twin basis, *viz.*, seniority-cum-merit as well as merit. The case of the respondent and his Junior, Sri Sanvaria, was considered on the basis of seniority-cum-merit. The selection has been made by the Departmental Promotion Committee constituted according to rules. The question is whether the D.P.C. is under an *obligation* to record reasons for selecting a junior while ignoring a senior. The High Court has observed that even though the selecting authority is not required to write a long order giving reasons for not selecting a senior and for selecting his junior, the proceedings of the D.P.C. must indicate in some manner as to why a senior was ignored and his junior was selected. The questions is whether the High Court is right in saying so?

With a view to clear the ground, we may mention that we are not dealing with a case of initial appointment. We are also not dealing with a case where promotion is exclusively on the basis of merit. We are concerned with a case where promotion is on the basis of seniority and merit *i.e.*, seniority-cum-merit. It is in such a case that the question is arising whether the selecting authority is required to record reasons for not selecting a

A senior and for selecting a junior. In *R.S. Dass v. Union of India*, [1986] Suppl. S.C.C. 617 the Bench comprising Sabyasachi Mukharji and K.N. Singh, JJ. considered the amended Regulations 54 and 55 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Prior to its amendment in 1977 the Regulation required that where it is proposed to supersede any member of the State Service “the committee shall record its reasons for the proposed supersession”. After the amendment, the Regulation requires the Selection Committee to classify eligible officers as ‘outstanding’, ‘very good’, ‘good’ or ‘unfit’, as the case may be, on an over-all consideration and assessment of their service record. After such categorisation, the Committee has to arrange the names of officers in the select list in accordance with the procedure laid down in Regulation 55. The Bench opined that the amended Regulation gave *primacy to merit* and that in such a case it may happen that a junior officer, if categorised as ‘outstanding’ or ‘very good’ may supersede his seniors. The Bench rejected the argument that in such a situation, it is necessary to record reasons for superseding a senior. The following observations of the Bench are relevant.

D

“Learned counsel urged reasons if recorded ensure objectivity and impartiality. In the absence of reasons the committee may act in arbitrary manner to supersede senior officers which would be violative of Arts. 14 and 16 of the Constitution. We find no merit in the submission. Article 16 ensures equality in matters relating to appointment and promotion to an office or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the I.A.S. has right to be considered along with others for selection for promotion. If eligible officers are considered on merit, in an objective manner no Government servant has any legal right to insist for promotion nor any such right is protected by the Arts. 14 or 16 of the Constitution. Article 16 does not insist that reasons should be recorded for the non-selection of a member of a State Service.”

G

The Bench also rejected the argument that since the Regulations do not lay down any guidelines for categorisation of the officers as aforesaid, the categorisation is bound to be arbitrary. It held that since the categorisation is made objectively on the basis of the service record of the officers, there is no room for any arbitrariness. This decision was followed

H

by another Bench (M.P. Thakkar and N.D. Ojha, JJ.) in *Union Public Service Commission v. Hiranyalal Dev and others*, [1988] 2 S.C.C. 242 while considering identical provisions in I.P.S. Promotion Regulations. The Bench reiterated that it is not necessary to record the reasons for not selecting a person who is within the field of eligibility. A

National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman and others, [1992] Suppl. 2 SCC 481 was a case concerning appointment to the post of a professor in the Institute. It was held that in the absence of any requirement in the Rules or Regulations obliging the Selection Committee to record reasons, no such requirement can be inferred. It was held, following *R.S. Dass*, that principles of natural justice are not attracted to such a situation and that recording the reasons was not a necessary requirement. In *Major General I.P.S. Dewan v. Union of India and Others*, [1995] 3 SCC 383, this Bench took the view that unless the Rules so require, the Selection Committee/Selection Board is not obliged to record reasons why they are not selecting a particular person, as the case may be. In *Sarat Kumar Dash and Others v. Biswajit Patnaik and Others*, [1995] Suppl. 1 SCC 434 a Bench of this Court (K. Ramaswamy and N. Venkatachala, JJ.) considering a case where the promotion was on the basis of merit-cum-suitability. The Public Service Commission adopted the method of grading or categorisation, as it may be called, and then made the selection. It was contended that since the reasons were not recorded by the P.S.C. for the recommendations made by it, the selection was bad. This contention was rejected following the decisions aforementioned. B C D E

Now coming to the Rules applicable herein, the position is this: Clauses (a) and (b) of sub-rule (ii) of Rule 28-B of the Rajasthan Administrative Service Rules, 1954 read thus: F

“(ii) (a) The Committee shall consider the cases of all seniormost persons who are eligible and qualified for promotion to the class of posts concerned under these rules and shall prepare a list containing names of the persons found suitable on the basis of seniority-cum-merit and/ or on the basis of merit, as the case may be, as per the criteria for promotion laid down in these rules, equal to the number of vacancies determined under rule relating to “Determination of vacancies” of these rules. The list so prepared on the basis of seniority-cum-merit and/or on the basis of merit, as the case may be, shall be arranged in the order of seniority on the category of posts from which selection is G H

A made.

(b) The Committee shall also prepare a separate list on the basis of seniority-cum-merit and/or on the basis of merit, as the case may be, as per the criteria for promotion laid down in the rules, containing names of persons equal to the number of persons selected in the list prepared under (a) above to fill temporary or permanent vacancies which may occur subsequently. The list so prepared on the basis of seniority-cum-merit and/or on the basis of merit shall be arranged in the order of seniority in the category of posts from which selection shall be made. Such a list shall be reviewed and revised by the Departmental promotion Committee that meets in the subsequent year and that such list shall remain in force till the end of the last day of the next year or till the Departmental Promotion Committee meets, whichever is earlier.”

D The clauses aforesaid neither provide for grading nor do they require the recording of reasons for superseding a senior. So far as the promotion on the basis of seniority-cum-merit is concerned, it only says that the Committee shall consider the names of all senior and qualified persons “and shall prepare a list containing names of the persons found suitable on the basis of seniority-cum-merit”. After preparation of such list, the officers included therein shall be arranged in the order of *inter se* seniority obtaining in the feeder post. In such a situation and when the promotion is made by the Departmental Promotion Committee, we find it difficult to say either that ordinarily the D.P.C. should record reasons for not selecting a senior (and selecting his junior) or that at least the record should indicate some reason therefore. It is one thing to say that such a course is fair and *desirable* but it is altogether a different thing to say that such a course is *obligatory or necessary* in all cases for in the latter event the Selections made are liable to be set aside for not complying with the said requirement. The High Court has pointed out that such selections are likely to be challenged in a Court of law and if no reasons are recorded—or at least the record indicates the reasons—for superseding a senior and selecting his junior, the Court would not be in a position to consider the grievance effectively and satisfactorily. This argument brings to our mind the decision in *Bhagat Raja v. Union of India and others*, AIR (1967) SC 1606. (C.B.) but that was a case where the order questioned before the Court was a quasi judicial order. It is equally true that even in administrative matters, this Court has been insisting upon the duty to act fairly which may sometimes require an

opportunity of hearing. But having regard to the nature of function of selection—and taking into consideration the fact that the only right of the government servant is a right to be considered and not a right to promotion—we do not think it possible to infer the requirement of recording reasons in all situations. At the same time, we think that it is always desirable that procedure adopted by the selecting body should be fair and such as to lend credence to the process; it should be such as to inspire confidence in all concerned within the practicable limits. From this point of view, it would be a wholesome step for the Government of Rajasthan—for that matter, all governments—to provide either by amendment of Rules or by general instructions that *in the matter of Promotions on the basis of merit or merit-cum-seniority/merit-cum-suitability*, the selecting authority should follow the method of grading all the candidates appearing before them. This requirement we are suggesting in cases where the Rules do not provide for grading or for awarding marks or for recording of reason for over-looking a senior; where, however, the Rules already provide for awarding of marks or any other appropriate method, our suggestion may not be applicable. It must also be understood clearly that ours is a suggestion to avoid complaints of arbitrariness and primarily with a view to make the process credible. The governments shall keep this underlying object in mind and cause appropriate amendments or issue appropriate instructions. It is obvious that any such Amendments/instructions shall have only prospective operation.

For the above reasons, the appeal is allowed. The order of the High Court and that of the Rajasthan Civil Service Appellate Tribunal impugned herein are set aside. But as recorded herein above, this order shall in no manner affect the first respondent, or for that matter, the second respondent. There shall be no order to costs.

Copies of this order shall be sent to all the Chief Secretaries of State Governments and Union Territories as well as to the Secretary, Ministry of Home Affairs, Government of India.

S.V.K.I.

Appeal allowed.