

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4528 OF 2006

Bharat Sanchar Nigam Ltd. & Anr. ...Appellant(s)

Versus

B.N. Mistry & Anr.  
...Respondent(s)

O R D E R

This appeal arises out of an order dated 26th October, 2005 passed by the High Court of Gujarat at Ahmedabad whereby Special Civil Application No.21808 of 2005 filed by the Union of India and Department of Telegraph (the predecessor-in-interest of the present appellant-Corporation before us) has been disposed of with a direction to the appellant-Corporation to grant the same benefit to respondent-B.N. Mistry as was allowed to similarly situate persons like Mr. T.S. Solanki and others.

In the writ petition filed before the High Court by Union of India and Department of Telegraph, the appellant-Corporation challenged the correctness of an order dated 1st September, 2005 passed by the Central Administrative Tribunal, Ahmedabad, in O.A. No.438 of 2004 whereby the Tribunal had issued the following direction:

"We, in view of this position while disposing of this O.A. direct the respondents to extend the benefits of 10% BCR promotion to the applicant w.e.f. the date his immediate junior i.e. Mr. T.S. Solanki was given i.e. w.e.f. 30.11.1990 with consequential benefits. With these directions O.A. stands disposed of. No order as to costs."

The direction, extracted above, proceeded on the basis that the appellant-Corporation had while operating the "Biennial Cadre Review" Scheme (BCR) granted the benefit of upgradation from Grade III to Grade IV to Mr. T.S. Solanki w.e.f. 30th November, 1990 while denying the same to respondent-B.N. Mistry no matter the former was senior to Mr. T.S. Solanki in the basic grade. The Tribunal was of the view that since benefits of upgradation under the BCR Scheme were to be granted on the basis of seniority there was no reason why such benefits should have been denied to respondent-B.N. Mistry ignoring his superior claim on the basis of his seniority in the basic grade. The appellant-Corporation has in the present appeal assailed the correctness of the view taken by the Tribunal as also the order passed by the High Court directing grant of the benefit of upgradation with effect from the date Mr. T.S. Solanki was given that benefit subject to the ultimate result of similar cases pending in this Court.

We have heard Mr. R.D. Agrawala, learned senior counsel for the appellant-Corporation, and Mr. Sudarshan Rajan, learned counsel for respondent-B.N. Mistry. The essential facts are not in dispute. It is not disputed that in terms of decision of the Central Administrative Tribunal in Smt. Santosh Kapoor & Ors. v. Union of India in O.A. No.1455 of 1991 dated 7.7.1992 and the decision of this Court in C.A. No.3201 of 1993 disposed of on 9th September, 1993 affirming the said view, the benefit of the BCR Scheme had to be granted by reference to the seniority of the incumbents in the basic grade. It is also not in dispute that in the basic grade respondent-B.N. Mistry was placed senior to Mr. T.S. Solanki. It is also common ground that notwithstanding Mr. T.S. Solanki was, being junior to respondent-B.N. Mistry, given the benefit of upgradation with effect from 30th November, 1990 while denying the same to respondent-B.N. Mistry.

Mr. Agrawala contended that the benefit given to Mr. T.S. Solanki by way of upgradation was on account of his being a scheduled caste candidate which could not have been extended to respondent-B.N. Mistry, no matter the latter was senior to Mr. T.S. Solanki. That contention was by far the only justification advanced before us by Mr. Agrawala for Mr. T.S. Solanki stealing a march over respondent-B.N. Mistry in the matter of upgradation from Grade III to Grade IV under the BCR Scheme. We however regret to say that the contention though attractive does not stand closer scrutiny. We say so because the decision of this Court in *Bharat Sanchar Nigam Limited v. R. Santhakumari Velusamy and Others* - (2011) 9 SCC 510 provides a complete answer to the same. In that case one of the questions that fell for consideration related to the implementation of the BCR Scheme. The question was whether upgradation under the BCR scheme to a higher grade was tantamount to promotion so as to attract the principles of reservation applicable to such situations. This Court upon a comprehensive review of the decisions delivered earlier summed up the following principles relevant to determining whether upgradation is or is not tantamount to promotion:

"(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both-that is, advancement to a higher position and advancement to a higher pay scale-are described by the common term "promotion" does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefits by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay scale without change of post is available to everyone who satisfied the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simpliciter, there is no need to apply the rules of reserving. But where the upgradation involves a selection process and is therefore a promotion, the rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by

those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provided relief against stagnation, the said process does not invite reservation."

This Court then examined the Scheme on the touchstone of the above principles and came to the conclusion that since no creation of additional posts was involved and since it was a mere restructuring of the existing posts under which 10% of the posts in Grade III were placed on a higher grade i.e. Grade IV to give relief against stagnation, upgradation envisaged by the Scheme did not involve any promotion. This is evident from the following passage from that decision:

"30. In this case, the BCR Scheme did not involve creation of additional posts but merely restructured the existing posts as a result of which 10% of the posts in Grade III were placed in a higher grade (Grade IV) to give relief against stagnation. This is evident from the terms of the BCR Scheme and the clarification contained in the Letter dated 7-5-1993 that no posts were sanctioned, as far as 10% BCR was concerned.

31. In this case, the BCR Scheme dated 16-10-1990 provided that the persons who had completed 26 years of service would be screened by a duly constituted Review Committee to assess the performance and suitability for advancement. The screening was for the limited purpose of finding out whether the service record of the employee contained any adverse entries or whether the employee had suffered punishment. The screening process did not involve consideration of comparative merit nor involve any selection. The 10% posts were upgraded strictly by seniority subject to screening. This is evident from the terms of the BCR Scheme and the Circular dated 13-12-1995 which provided that the promotions to Grade IV were to be based on seniority in the basis grade from among the officers in Grade III, subject to fitness determined as per OTBP manner, that is, screening to ascertain whether there are any adverse comments or punishment against the employee concerned."

This Court accordingly allowed the appeal, set aside the orders passed by the High Court of Judicature of Madras and also Central Administrative Tribunal who had taken the view that the grant of upgradation under the BCR Scheme was tantamount to promotion and that the reservation policy was attracted to any such exercise.

In the light of the above pronouncement which squarely answers the point urged by Mr. Agrawala, we find it difficult to accept the contention that upgradation of Mr. T.S. Solanki to Grade IV was by way of promotion to the said grade and since it was a case of promotion the fact that he was a scheduled caste candidate made all the difference. That contention is no longer tenable in the light of the view taken by this Court in R. Santhakumari's case (supra). That being so there was no justification for denial of upgradation to respondent-B.N. Mistry to Grade IV ignoring his seniority in the basic grade which was the only test for such upgradation.

Mr. Agrawala next argued that respondent-B.N. Mistry was subsequently upgraded to Grade IV on his own turn and that this Court could, while extending the benefit of such upgradation with effect from the date on which Mr. T.S. Solanki was upgraded, restrict the benefits admissible to respondent-B.N. Mistry to retiral benefits only without payment of any arrears. We have not been able to persuade ourselves to accept that contention either. If Mr. T.S. Solanki, who was junior to respondent-B.N. Mistry in basic grade, was upgraded on 30th November, 1990 when in fact respondent-B.N. Mistry ought to have been upgraded on account of his being senior to the former, we see no reason why the benefit



UPON hearing counsel the Court made the following  
O R D E R

C.A.No.4527/2006 and C.A.No.3626/2011:

Mr. R.D. Agrawala, learned senior counsel for the appellant-Corporation, submits that two other appeals arising out of the common order dated 27.03.2003 passed by the High Court and impugned in these two appeals have not been listed.

We, therefore, direct that the said two appeals arising out of special civil applications, particulars whereof shall be furnished by Mr. Agrawala to the Registry within one week, shall be listed along with these appeal on a non-miscellaneous day.

C.A.No.4528/2006:

The civil appeal fails and dismissed in terms of the signed order.

SLP(C) No.(s).7089 of 2009:

Respondent no.1-Mohinder Nath Sharma has passed away. The application for substitution for bringing on record the legal representatives left behind by him was filed but dismissed for non-prosecution on 29th July, 2013. Mr. Agrawala proposes to make an application for restoration of the application for substitution. He may do so within three weeks with a copy to Mr. Pankaj Gupta, Advocate, who had entered appearance on behalf of the proposed legal representatives. Post application for restoration and the special leave petition together for hearing after the needful is done.

SLP(C) No.(s).29997 of 2010:

Delay condoned.

Mr. Agrawala prays for some time to file some additional documents. Six weeks' time is granted finally to do the needful.

SLP(C) No.(s).36608 of 2010:

Heard Mr. R.D. Agrawala, learned senior counsel for the petitioner.

Delay condoned.

We do not see the present to be a fit case for our interference in exercise of our power under Article 136 of the Constitution of India.

The special leave petition is accordingly dismissed.

(Mahabir Singh)		(Veena Khera)	
Court Master		Court Master	

(Signed order is placed on the file)