

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6701 OF 2009

BALRAJ SINGH JASWAL

... Appellant

VERSUS

UNION OF INDIA & ORS.

... Respondents

O R D E R

The appellant was inducted into the service of the Department of Lighthouses and Lightships as an Assistant Executive Engineer in 1989.

The question which arises for consideration in the instant appeal, pertains to his claim of promotion to the post of Deputy Director (Electronics). Insofar as the above promotion is concerned, we are informed, that the same is regulated by the Department of Lighthouses and Lightships (Group 'A' Gazetted Technical Posts Recruitment Rules, 1990) (hereinafter referred to as the 'Rules'). Qualifications and other eligibility conditions, for appointment to the various posts, are expressed in the schedule appended to the said Rules.

Insofar as the post of Deputy Director (Electronics) is concerned, the same figures at serial no. 4, in the schedule. Column 5 which relates to the manner of appointment to the post provides, that the post would be filled up by way of selection. For promotion to the post of Deputy Director (Electronics), there are two feeder cadres. Firstly, Assistant Executive Engineer with five years regular service in the grade. Assistant Executive Engineers are placed in the pay scale of Rs.2,200-4,000. And secondly, Assistant Engineers with eight years regular service in the grade. Assistant Engineers are placed in the pay scale of Rs.2,000-3,500. It needs to be pointed out, that the Assistant Executive Engineers are a part of Group 'A' service, whereas Assistant Engineers fall in Group 'B' service.

In the process of selection in which the name of the appellant was considered, the Departmental Promotion Committee conducted its proceedings on 23.10.2001, for which, eligibility was determined with reference to 01.01.2000. Even though both the parties are agreed, that it is "selection" which would regulate the process of appointment by promotion, from the two feeder cadres, to the post of Deputy Director (Electronics), the manner of conducting the "selection" is disputed.

Insofar as the instant aspect of the matter is concerned, the State Government has issued consolidated instructions dated 27.03.1997. All Departmental Promotion Committees, are mandated to conduct considerations for promotions, in compliance with the above instructions. Learned counsel for the rival parties are agreed, that the instant instructions would regulate the consideration for promotion (at the hands of the Departmental Promotion Committee) even for the post of Deputy Director (Electronics). Paragraph 6.3.1 of the instructions dated 27.03.1997 are relevant to the present controversy

and the same is being extracted as hereunder: -

"6.3.1 Principles to be observed and preparation of panel - The list of candidates considered by the DPC and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the DPC. The following principles should be observed in the preparation of the panel: -

SELECTION-CUM-SENIORITY AND SELECTION BY MERIT

(i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a benchmark grade would be determined for each category of posts.

For all Group 'C', Group 'B' and Group 'A' posts (up to and excluding the level of Rs.3,700-5,000), the benchmark would be 'Good' and will be filled by the method of Selection-cum-Seniority as indicated in sub-para (iii).

- ii) In respect of posts which are in the level of Rs.3,700-5,000 and above, the benchmark grade should be 'Very Good' and will be filled by the method of Selection by Merit as indicated in sub-para (iv).
- iii) Each Departmental Promotion Committee while considering the suitability of officers for promotion to posts for which the benchmark has been determined as 'Good' would grade the officers as 'Good', 'Average' and 'Unfit' only. Only those officers who obtain the grading of 'Good' will be included in the panel in the order of their seniority in the lower grade subject to availability of vacancies.
- iv) Notwithstanding the provisions mentioned above, in the case of promotions made for induction to Group 'A' posts/services from lower groups, while the benchmark would continue to be 'Good', the DPC shall grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be, and the officers will be arranged according to the grading obtained, placing the 'Outstanding' officers on top followed by those graded as 'Very Good' and so on in the select panel up to the number of vacancies, with the officers having the same grading maintaining their inter se seniority in the feeder grade.

AUTHORS' NOTE: - No need to scrutinize ACRs of all eligible candidates covered by the zone of consideration after the DPC has assessed the employees, equal to the number of vacancies, as 'Good'. - See Q.M., dated 6-11-1998 (Sl. No. 4).

SELECTION BY MERIT

- v) In respect of services/ posts for which the benchmark has been determined to be 'Very Good', each DPC would grade the officers as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be. However, only those officers who are graded as 'Very Good' xxxxx and above will be included in the select panel, by placing the officers graded as 'Outstanding' on top followed by those graded as 'Very Good', subject to availability of vacancies, with the officers with the same grading maintaining their inter se seniority in the feeder grade.
- vi) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.
- vii) Where sufficient number of officers with the required benchmark grade are not available within the zone of consideration, officers with the required benchmark will be placed on the panel and for the unfilled vacancies the appointing authority should hold a fresh DPC by considering the required number of officers beyond the original zone of consideration."

Since the post of Deputy Director (Electronics) is in the pay scale of Rs.3000-4500, it is apparent that the process of selection would be regulated by paragraph 6.3.1(i), namely, the post will have to be filled up by the method of selection-cum-seniority, as indicated in sub-paragraph (iii). The benchmark of 'Good' will be applicable for selection to the post. In other words, only such candidates, who on selection, are graded as 'Good' and above, would be eligible.

Obviously, since the post in question, i.e., Deputy Director (Electronics) is below the scale of Rs.3,700-5000, paragraph 6.3.1 (ii) is inapplicable, because the procedure contemplated in sub-paragraph(ii), is applicable only for posts which are placed above the scale Rs.3,700-5,000. The process to be adopted for promotion, to the post of Deputy Director (Electronics), according to the learned counsel for the appellant is the one depicting in sub-paragraph (iii) of paragraph 6.3.1. Paragraph 6.3.1 (iii), clearly mandates, that candidates subjected to the procedure contemplated therein, would be graded either as 'Good', or 'Average', or 'Unfit'. Sub-paragraph (iii), according to learned counsel does not contemplate the grading of 'Very Good', or 'Outstanding'. As such, according to learned counsel, even if candidates are graded as 'Very Good', or 'Outstanding' (i.e., levels higher than 'Good') while following the procedure under sub-paragraph (iii), they will be deemed to have been graded as 'Good'. There is nothing wrong with the above submission, and we hereby affirm the same.

In the above view of the matter it is submitted, that since the appellant was factually graded as 'Good', and was factually senior to all Assistant Executive Engineers who were within the zone of consideration, he ought to have been selected and placed above the rest of the contestants in the same process of selection, by applying the procedure contemplated in sub-paragraph (iii) of paragraph 6.3.1.

As against the aforesaid submission advanced at the hands of the learned counsel for the appellant, it is the submission of the learned counsel representing Union of India, as well as, the Union Public Service Commission, that it is sub-paragraph (iv) of paragraph 6.3.1 which will be applicable to the facts of this case. Insofar as the instant aspect of the matter is concerned, the pointed submission is, that for promotion to the post of Deputy Director (Electronics), those falling in the zone of eligibility are not only Assistant Executive Engineers placed in the pay scale of Rs.2,200-4,000 (like the appellant); but also Assistant Engineers placed in the pay scale of Rs.3000-4500. Assistant Engineers, according to the learned counsel for the respondents, are a part of Group 'B' service. On the successful consideration of the claim Assistant Engineers, for onward promotion to the post of Deputy Director (Electronics), they would move on promotion from Group 'B' services to Group 'A' services. Thus viewed, on promotion of an Assistant Engineer to the post of Deputy Director (Electronics), he would also be inducted into Group 'A' service (from Group 'B' service). There is nothing wrong with the above submission, and we hereby affirm the same.

In view of the above, according to the learned counsel for the respondents, it is sub-paragraph (iv) of paragraph 6.3.1 which should be made applicable, insofar as the instant process of selection is concerned. This because; the instant promotion, has within the zone of consideration, officers belonging to Group 'B' service, who would be inducted into Group 'A' service, if found suitable for promotion.

We have considered the submission advanced by learned counsel, representing the rival parties.

During the course of hearing, it was undisputed that the process of selection is conducted jointly. Inasmuch as, all those who are eligible and fall in the feeder cadre of Assistant Executive Engineers, as well as, those who fall in the feeder cadre of Assistant Engineers, are to be considered together, in a common unified process of selection. Insofar as the present controversy is concerned, we are informed that nine candidates were shortlisted as eligible for the post of Deputy Director (Electronics). Out of these nine officers, eight were from the feeder cadre of Assistant Executive Engineers, whereas one belonged to the feeder cadre of Assistant Engineer. The question which arises is, whether the procedure contemplated in paragraph 6.3.1 (iii), as submitted by the learned counsel for the appellant, would apply; or the procedure provided in paragraph 6.3.1(iv), as submitted by the learned counsel for the respondents, would apply.

It is not possible to accept, that for some of the candidates in the zone of consideration one rule would determine the process of promotion, and for some others a different rule. Accordingly one of the above two rules would necessarily have to be chosen for conducting the instant common process of selection. While making a choice between sub-paragraph (iii) and sub-paragraph (iv) of paragraph 6.3.1 of the above paragraph, the choice essentially has to be made of sub-paragraph (iv). The reason for our above conclusion is, that sub-paragraph (iii) would not regulate the process of selection, for the candidates who come from the cadre of Assistant Engineers, and claims promotion to the post of Deputy Director (Electronics). Since on promotion such candidate would be moving from Group 'B' to Group 'A' services. Therefore essentially, only sub-paragraph (iv) would regulate their process of his selection for onward promotion, which expressly caters to the above eventuality. Since as already noticed hereinabove, a common process of selection has to be adopted, all those in the zone of consideration will necessarily have to be adjudged by the norms adopted in sub-paragraph (iv) of paragraph 6.3.1 of the policy instructions dated 27.03.1997 because sub-paragraph (iii) is inapplicable for promotions of Assistant Engineers to Deputy Director (Electronics). Moreover, sub-paragraph (iv) begins with a non obstante clause, thereby, giving it overriding effect over sub-paragraph (iii) (as also the other sub-paragraphs (i) and (ii)). Thus, leaving no room for any doubt, that the choice must fall on sub-paragraph (iv) for the present process of selection.

Under paragraph 6.3.1 (iv), candidates are to be graded as 'Outstanding', or 'Very Good', or 'Good', or 'Average', or 'Unfit'. And a candidate with a better grading would oust a candidate with a lesser grading. Factually, the aforesaid procedure was adopted in the process of selection, wherein, on account of the fact that the appellant was graded as 'Good' whilst others were graded as 'Very Good', they were liable to be placed above the appellant in the process of selection (contemplated under paragraph 6.3.1 (iv)).

In view of the conclusions arrived at by us hereinabove, we find no infirmity in the impugned order, the instant civil appeal is accordingly liable to be dismissed. Ordered accordingly.

....., J.
[JAGDISH SINGH KHEHAR]

....., J.
[M.Y. EQBAL]

New Delhi;
March 06, 2014.

ITEM NO.105

COURT NO.14

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 6701 OF 2009

BALRAJ SINGH JASWAL Appellant (s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With prayer for interim relief and office report)

Date: 06/03/2014 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE M.Y. EQBAL

For Appellant(s) Mr. Joy Basu, Sr. Adv.

Mr. Saket Sikri, Adv.

Mr. Ankit, Adv.

Ms. Ranjeeta Rohtagi, Adv.

For Respondent(s)

Ms. V. Mohana, Adv.

Ms. Sushma Suri, Adv.

Mr. C. K. Sharma, Adv.

Mr. D.S. Mahra, Adv.

Ms. Binu Tamta, Adv.

Mr. Dhruv Tamta, Adv.

Ms. Bhawana Dev Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The civil appeal is dismissed in terms of the signed order.

[Nidhi Ahuja]
Court Master

[Phoolan Wati Arora]
Assistant Registrar

[Signed order is placed on the file.]