

CASE NO.:
Appeal (civil) 5930 of 2005

PETITIONER:
Arvind Kumar Saxena

RESPONDENT:
Brij Raj Kishore Ranga & Ors.

DATE OF JUDGMENT: 28/09/2005

BENCH:
B. N. Srikrishna & C. K. Thakker

JUDGMENT:
JUDGMENT

O R D E R
(arising out of S.L.P. (C) No. 5389 of 2004)
with
Civil Appeal No. 5931/2005 @ S.L.P. (C) No. 5156/2004 and
Contempt Petition (C) No. 386/2004 in S.L.P. (C) No. 5389/2004

Civil Appeals arising out of S.L.P.(C) Nos. 5389/04 and 5156/04:

Leave granted.

We have perused the records and heard the learned counsel for both sides.

There were two vacancies for the post of Superintending Mining Engineer in the year 1996-97, which had to be filled on the basis of merit. A Departmental Promotion Committee ("DPC" in short) meeting was held and it considered the officers falling within the zone of consideration. One of the said vacancies was filled up by appointment of Arvind Kumar Saxena (appellant in the appeal arising from S.L.P. (C) No. 5389/04). The DPC took the view that there was no other eligible candidate having an Annual Performance Appraisal Report ("APA Report" in short) rating "very good" for at least five out of seven-year, prior to the date of promotion, which was the requirement for appointment on the basis of merit. Hence, the other vacancy of the post was filled by lateral shifting and appointing one Mohd. Hussain.

There were two other aspirants to the posts of Superintending Mining Engineer. One was Brij Raj Kishore Ranga and the other was Arun Kumar Kothari (appellant in the civil appeal arising out of S.L.P. (C) No. 5156/04). These two candidates independently challenged the appointment of Mohd. Hussain by their appeals presented before the Rajasthan Civil Services Appellate Tribunal ("Tribunal" for short). Because of territorial jurisdiction, Ranga's appeal was filed before the Jaipur Bench of the Tribunal, while Kothari's appeal was filed before the Jodhpur Bench.

On 27.3.1999 the Tribunal allowed the appeal filed by Kothari and held that five out of seven of his APA Reports were "very good" and directed the State to hold a Review DPC for considering his case for promotion to the post of Superintending Mining Engineer for the year 1996-97 on the basis of merit. The Review DPC was directed to be held within a period of three months. On 3.4.1999, Ranga filed a writ petition before the Rajasthan High Court (CWP No. 1176/99) praying that convening of the Review DPC be deferred until final adjudication of his appeal before the Jaipur Bench of the Tribunal. An interim stay was granted by the High

Court in the said writ petition.

On 13.4.1999, Kothari filed an application under Order 1 Rule 10 CPC before the Jaipur Bench of the Tribunal and sought to be impleaded in Appeal No. 283/97 filed by Ranga. The Tribunal merely directed that Kothari would be permitted to address the arguments and not to file any reply or documents in support.

On 28.4.1999 the Tribunal allowed Ranga's appeal and held that five out of seven of his APA Reports were "very good" and directed the State to hold a Review DPC for consideration of his case for promotion to the vacant posts of Superintending Mining Engineer within a period of three months.

On 17.5.1999, Ranga withdrew his Writ Petition No. 1176/99 and it was dismissed by the High Court as not pressed.

On 5.8.1999, Kothari filed a writ petition, CWP No. 2803/99 challenging the order dated 28.4.1999 made by the Tribunal in Ranga's appeal. The learned Single Judge allowed the writ petition of Kothari, set aside the order dated 28.4.1999 made by the Tribunal and remanded the case back to the Tribunal with a direction that Ranga be directed to file amended appeal in the shape of amended cause title and thereafter Kothari be given an opportunity to file a reply to the appeal and that the appeal be heard and disposed of after affording an opportunity of hearing to all the parties. Ranga challenged the order of the learned Single Judge by his Civil Special Appeal No. 436/03 before the Division Bench of the High Court. By the impugned judgment, the Division Bench of the High Court allowed the Special Appeal filed by Ranga and set aside the order dated 26.5.2003 passed by the learned Single Judge. The time granted by the Tribunal to hold the Review DPC was made effective from the date of the judgment of the Division Bench, and it was also directed that the performance of the candidates shall be assessed keeping in view both the judgments of the Tribunal. Finally, the High Court directed, "the appellant shall be entitled to all the benefits including promotion and seniority throughout."

It is the grievance of the appellant, Arun Kumar Kothari, before us that despite a long application raising several contentions in his application dated 13.4.1999, made purportedly under Order 1 Rule 10 CPC, the Tribunal has not considered several of the contentions raised before it. After having acquainted ourselves of the contentions urged and the documents presented along with the said application, and also having perused the Tribunal's judgment in the appeal of Brij Raj Kishore Ranga, we are inclined to hold that adequate opportunity was not given to Kothari to present his case, nor were the contentions placed on record by his application carefully considered and decided by the Tribunal. Despite the subsequent developments, we are of the view that interests of justice demand that both the contending parties should be given proper opportunity of presenting their rival cases before the Tribunal. This is particularly so in view of the fact that when both Ranga and Kothari had moved their appeals before the Tribunal, their immediate object was to challenge the appointment of Mohd. Hussain, who had been appointed by the lateral shifting of the vacancy. That situation no longer holds good, as we are informed that Mohd. Hussain has since retired.

It appears that today the real contest for the vacancy for the year 1996-97 is only between Ranga and Kothari for being selected to the vacancy on the basis of merit. Learned counsel on both sides invited us to go into a comparative evaluation of the APA Reports of the rival candidates and to decide as to which of the candidates is better suited. We decline to do so as it is not our function to embark upon such an exercise. We would rather leave this exercise to the Tribunal for a decision after careful consideration of the material presented to it.

As far as the appeal of Arvind Kumar Saxena is concerned, it appears that there was no challenge, whatsoever, to his promotion as Superintendent

of Mining Engineer in the year 1996-97. His promotion to the said post, therefore, has become immune from challenge, reducing the contest to the rival candidates, Ranga and Kothari.

With these observations, we set aside the impugned judgments of the Division Bench, the learned Single Judge and that of the Tribunal rendered in Appeal No. 283/97 on 28.4.1999 of Brij Raj Kishore Ranga. The said appeal is remitted to the Rajasthan Civil Services Appellate Tribunal, Jaipur Bench, to be heard in accordance with law. We direct that if Arun Kumar Kothari, the rival candidate, is desirous of filing, and files, a counter affidavit in Appeal No. 283/97, within such period as permitted by the Tribunal, the Tribunal shall consider such affidavit after giving opportunity of filing a rejoinder affidavit to Brij Raj Kishore Ranga. Arun Kumar Kothari shall be afforded an adequate opportunity of making submissions with regard to the contentions urged in Ranga's Appeal No. 283/97, and thereafter the appeal shall be decided in accordance with law, as expeditiously as possible and preferably before 31.1.2006. No separate orders are necessary in the appeal of Arvind Kumar Saxena. This order disposes of both the appeals of Arvind Kumar Saxena and Arun Kumar Kothari.

Contempt Petition (C) No. 386/04 in S.L.P.(C) No. 5389/04:

After making submissions for some time, Mr. C.S. Vaidyanathan, learned senior counsel stated that this petition is not being pressed. Hence, the contempt petition is dismissed as not pressed.