

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
K.B. RAJORIA

DATE OF JUDGMENT: 28/03/2000

BENCH:
M.J.Rao, Ruma Pal

JUDGMENT:

RUMA PAL, J.

Leave granted.

The undisputed facts of this case are that the appellant No. 4 was notionally promoted to the post of Additional Director General (Works) of the Public Works Department with effect from 22nd February, 1995. The notional promotion was given by an order dated 10th June, 1998 in terms of instructions contained in the DPTs O.M. No.22011/05/86 Estt. D, dated 10th April, 1989 as amended from time to time. In the meanwhile on 1st July 1997, the post of Director General, (Works) CPWD fell vacant. The mode of selection to the post has been laid down in the Central Public Works Department (Director General of Works) Recruitment Rules, 1986, which were amended on 23rd March 1992 by the Central Public Works Department (Director General of Works) Recruitment (Amendment) Rules, 1992. The amendment came into force on 4th April 1992. The Schedule to the Rules (referred to hereinafter as the said Schedule) provides that the post of Director General (Works) is a selection post to be filled up by promotion from amongst, inter-alia, Additional Director General (Works) with two years regular service in the grade. Since Krishnamoorti had been granted notional promotion to the post of Additional Director General on 10.6.98 w.e.f. 22nd February 1995, his name was considered for the post of Director General when the Departmental Promotion Committee met in January, 1999. Shri K.B. Rajoria (the Respondent No.1 before us) filed an application before the Central Administrative Tribunal claiming that he was also eligible to be considered for the post of Director General. According to Rajoria, if the Departmental Promotion Committee had been held in 1995-96, he could have been appointed to the post of Additional Director General which had fallen vacant on 1.5.1995. His case was that he too should have been given notional promotion with effect from 1.5.95 in which case he would have also been eligible for promotion to the post of Director General. Rajoria claimed that he had been unfairly discriminated against because only Krishnamoorti was being considered for the post of Director General. It was however made clear before the Tribunal that Rajoria was not challenging the eligibility of Krishnamoorti to be considered but was only seeking consideration of his

own case along with Krishnamoorti for the post of Director General. The Tribunal dismissed the respondent No. 1's application on 12th May 1999. The respondent No. 1 challenged the decision of the Tribunal before the High Court under Article 226 of the Constitution. The High Court held that neither the respondent no.1 nor Krishnamoorti were eligible on the cut off date i.e. 1st July, 1997 for promotion to the post of Director General. According to the High Court the words regular service in the Rules means actual service and that the fiction of notional promotion could not amount to the two years experience necessary under the Rules. The High Court was of the view that the notional seniority granted to Krishnamoorti by the order dated 10th June 1998 was no substitute for the requirement of two years regular service as Additional Director General (Works) which had been laid down in the relevant rules as the eligibility criteria for promotion to the post of Director General (Works). In our view, the High Courts decision cannot be sustained. First, the concession of Rajoria before the Tribunal that he was not challenging the eligibility of Krishnamoorti to be considered for promotion was overlooked. Second, the High Court erred in not dismissing the writ petition on the ground of the obvious lack of locus standi in Rajoria who had never been granted notional promotion because the DPC was not in fact held for reasons which the High Court felt were unavoidable. Rajorias case was built on hypothetical situations, and his position could not reasonably be equated with that of Krishnamoorti. Third, the High Court erred in construing the words regular service in the grade as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that ad hoc service rendered by any of the parties would not count towards eligibility. Finally, while considering the definition of the word regular in the Concise Oxford Dictionary, Ninth Edition, the High Court noted that it meant: (1) conforming to a rule or principle, systematic; (2) harmonious, symmetrical; (3) acting or done or recurring uniformly or calculably in time or manner, habitual, constant, orderly; (4) conforming to a standard of etiquette or procedure, correct, according to convention; (5) properly constituted or qualified, not defective or amateur, pursuing an occupation as ones main pursuit.

The word regular therefore does not mean actual and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the Rules or was it irregular in the sense that it was contrary to any principle of law?. The decision which is somewhat apposite is the case of K. Madhavan V. Union of India 1987 (4) SCC 566 where the eligibility requirement was eight years in the grade on a regular basis. In that case it was held : In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. It is nobodys case that the notional promotion granted to Krishnamoorti was irregular. By giving him notional promotion as Additional Director General with effect from 22.2.95, Krishnamoorti was in fact regularly appointed to the post on that date. The next question which should have been considered was the meaning of the word service in the light of the relevant rules.

The Office Memorandum referred to in the order dated 10th June, 1998 and in terms of which notional promotion was granted to Krishnamoorti contains several provisions of which one is relevant for our purposes: 18.4.3. If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior-most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade

Analysed these instructions provide:

(i) For the immediate promotion of a person who has been superseded. (ii) Upon such promotion his pay should be fixed at the stage at which it would have reached had he been promoted from the date that the junior officer was promoted.

(iii) The seniority of such notionally promoted officer would be determined according to the select list prepared by the DPC if a minimum period is prescribed.

(iv) For the further promotion of such notionally promoted officer, his eligibility would be calculated as including the period from which the junior officer was promoted.

Krishnamoorti was admittedly superseded by Shri S.R. Goyal, a junior officer on 22nd February, 1995, when S.R. Goyal was promoted to the post of Additional Director General (Works). In terms of the provisions of para 18.4.3, Krishnamoorti was entitled to count the period from 22.2.95 as the period of qualifying service for the purpose of further promotion to the post of Director General. The distinction drawn by the High Court between the word service used in the eligibility criteria in this case and the words qualifying service in para 18.4.3 is specious. The Notes to the eligibility criteria as set out in the said schedule fortify this view. Notes 1 and 2 to the said schedule clarify the position with regard to the calculation of two years regular service in the grade. (1) The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grades/posts.

(2) If a junior with the requisite years of service is considered, the senior will also be considered notwithstanding the fact that he does not possess the requisite years of service. (Emphasis added)

Note 1 leaves no room for doubt that the word

service means qualifying service, and Note 2 makes it clear that in case of supersession actual service for the prescribed period is not required. This is in keeping with para 18.4.3 of the O.M. quoted earlier. As the notional date of promotion of Krishnamoorti was 22.2.95 he was eligible to be considered for the post of Director General in 1999. In the context of this case, the High Court erred in equating the words regular service with actual experience relying on the decision in Union of India and others V. M. Bhaskar and Others 1996 (4) SCC 416. In that case the eligibility criteria expressly was of completion of 2 years experience in Grade II. The case is therefore entirely distinguishable. The notional promotion was given to Krishnamoorti to right the wrong that had been done to him by his supersession on 22nd February, 1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done.

We, therefore, allow the appeal and set aside the impugned order of the High Court, in so far as the finding regarding Krishnamoorti was concerned. There will be no order as to costs.