

CASE NO.:
Appeal (civil) 5660 of 1998

PETITIONER:
BOARD OF DIRECTORS, REPRESENTED

Vs.

RESPONDENT:
DIRECTOR, NATIONAL ALUMINIUM

DATE OF JUDGMENT: 25/07/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

WITH
CIVIL APPEAL NO. 5661 OF 1998

J U D G M E N T

Shivaraj V. Patil, J.

The respondents herein filed writ petitions OJC No. 9368 of 1995 and OJC No. 9218 of 1996 challenging the introduction of E-0 grade in the executive cadre as promotional avenue for the channel of supervisors inter alia in S-3 cadre on the ground that it deprived the employees of their legitimate promotional avenue E-1 in executive cadre. The respondents also prayed for quashing the circular No. 64 dated 29.6.1995 contending that it was issued without the decision of the Board of Directors as to the introduction of new induction point E-0 grade in the executive cadre.

The writ petitions were resisted by the appellants stating that the Recruitment and Promotion Rules for Executives, 1984 (for short 'the 1984 Rules') were applicable only to executives and not for the employees in the non-executive cadres; scheme for promotion of the non-executives to executive cadre was separate and independent; the impugned circular No. 64 noted that over the years, executive cadre was stabilised with consequent reduction in the requirement of E-1 level officers. Hence, it had become necessary to implement the said circular to provide promotional avenues to the employees working at supervisory level in the S-3 grade for selection against the executive posts at E-0 level subject to fulfillment of conditions prescribed. A settlement under Section 18(3) of the Industrial Disputes Act, 1947 was arrived at before the Conciliation Officer between the appellant company and nine different non-executive employees unions representing substantial majority of them. In the said binding settlement it is specifically stipulated that the employees in the revised grades M-6/T-6/P-6/S-3 (corresponding to S-3 level) would continue to be eligible for internal selection for posts at E-0 level according to the prescribed conditions.

The High Court disposed of the writ petition OJC No. 9368 of 1995 by a short order without dealing with various contentions

raised by the appellants directing that the scheme contained in Annexure-5 can only remain in force if any part or portion thereof which is at variance with the conditions contained in Annexure-1 cannot have any legal effect prejudicing the rights of the petitioner or similarly situated persons in the matter of promotion and other incidental aspects. OJC No. 9218 of 1996 was disposed of following the order made in OJC No. 9368 of 1995. Hence these two appeals by the appellant company.

On behalf of the appellants it was urged that the 1984 Rules deal with executive posts in the company and they were not applicable to the non-executives including the employees in S-3 supervisory cadre; separate schemes were framed for promotion of supervisory personnel from non-executive to executive cadre; since there were no promotional chances from S-3 cadre to E-1 executive level consequent upon the reduction in the requirement of E-1 level, the scheme was issued creating promotional avenues at E-0 level to the supervisory personnel in S-3 grade; and on account of the same no prejudice was caused to the respondents. Our attention was drawn to the relevant provisions contained in the Rules, Schemes and the impugned circular.

On behalf of the respondents submissions were made supporting the impugned orders passed by the High Court. It was contended that the legitimate expectations of the respondents for promotion from S-3 cadre to E-1 executive level cadre was denied by virtue of the schemes introduced which were inconsistent with the Rules.

In order to appreciate the respective submissions it is useful to look at the Rules, schemes and the impugned circular to the extent they are relevant for the purpose. In Rule 1.1.2.2 of 1984 Rules it is clearly stated that these rules shall apply to all executive posts up to and including the posts in the scale of Rs.2250-2750 (E-7) in the company and will not apply to the cases of promotion from non-executive posts to executive posts.

A separate scheme called Promotion Scheme for non-executive to executive level was approved by the CMD on 18.5.1985 to be effective from 25.11.1985, which provides for a system of manning posts in E-1 level up to maximum of 50% of available vacancies at that level from amongst and competent employees at S-3 level. In the said scheme, it is specifically stated that these norms may be withdrawn, amended, modified or cancelled at any time at the discretion of the CMD without notice. In the impugned circular No. 64 dated 29.6.1995 it is stated that on introduction of E-0 grade in the executive salary structure, it was decided that the supervisory personnel at S-3 level would be considered for selection to E-0 grade with effect from 1.7.1991 vide circular No. CPD/RR/0012.5(B)/951(45)/91 dated 19.3.1991. The said decision was temporarily kept in abeyance vide IOM No. CPD/RR/002.2/1965/91 dated 20.6.1991. It is further stated that over the years, the executive cadre has stabilised with consequent reduction in the requirement at E-1 level. It has, therefore, become necessary to implement E-0 grade for the purpose of selection of eligible supervisory personnel against the executive posts at E-0 level subject to fulfillment of given conditions. The said circular also states that the scheme may be amended, modified or withdrawn at any time without notice at the discretion of CMD. It is made clear that the policy to regulate further promotions from E-0 grade to E-1 grade will be issued separately. In para 4.1 of Annexure P-5, the Memorandum of Settlement dated 14.12.1995 entered into between the appellant company and nine non-executive employees union before the Conciliation Officer it is stated that the revised wage structure

of different categories of employees is given at Annexure A. In para 7 of this Annexure it is stated that the employees in the revised grades M6/T6/P6/S3 will continue to be eligible for internal selection for executive posts at E-0 level according to the prescribed conditions.

Looking to these Rules, schemes and the circular including the settlement dated 14.12.1995 the High Court was not correct in passing the impugned orders granting relief to the respondents. As noticed above 1984 Rules do not apply to non-executives, the High Court proceeded on the assumption that the said Rules were applicable to the non-executives and the impugned circular No. 64 to the extent inconsistent with the said Rules could not be sustained. The submission of the appellants that the decision of the company to operate E-0 level in the executive cadre was taken in the general interest of career advancement of non-executive employees consistent with the employers requirements at executive level due to shrinkage of vacancies at executive level is acceptable, particularly, when nothing was shown as to how creating one more level in the executive cadre to provide promotional avenues to non-executive employees was prejudicial. It is not the case of the respondents that the vacancies at E-1 executive level were not reduced on account of stabilisation of vacancies over number of years after the starting of the company. In the same impugned circular it is clearly stated that the policy to regulate promotions from E-0 grade to E-1 grade would be issued separately. Thus, the employees working at S-3 level will be benefited rather than prejudiced by the impugned circular. If such a scheme for creation or operation of E-0 level was not there and in the absence of vacancies in E-1 executive level the employees in the non-executive cadre would have been stagnated. Further, in the settlement (Annexure P-5) also it is clearly stated that the employees in the revised grades including S-3 will continue to be eligible for internal selection for executive posts at E-0 level according to the prescribed conditions. To this settlement as many as nine employees unions were parties. If the employees were aggrieved or prejudiced as to creation of E-0 level as one of the promotional avenues they should not have been parties to such settlement. We are told number of employees from non-executive cadre had already been promoted to E-0 level of executive cadre. At any rate the respondents were unable to say as to how they were prejudiced by creation of E-0 level in the executive cadre to provide one more promotional opportunity in the circumstances already stated above. The appellants also brought to our notice that NALCO Recruitment and Promotion Rules for Executives, 1997 (Annexure P-9 filed in this Court) have come into force superseding the 1984 Rules. Rule 16.1 of the 1997 Rules says that all executive posts in the Company shall be classified in different grades including E-0 level. Thus, having regard to all the aspects we find it difficult to sustain the impugned orders passed by the High Court.

In this view the appeals are allowed. The impugned orders are set aside. Consequently the writ petitions stand dismissed. There shall be no order as to costs.

.....J.
[S. Rajendra Babu]

.....J.
[Shivaraj V. Patil]
New Delhi;
July 25, 2001.

JUDIS