

PETITIONER:
C.P. AGRAWAL

Vs.

RESPONDENT:
P.O. LABOUR COURT & ANR.

DATE OF JUDGMENT: 29/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATIANAIK, J.
Leave granted.

These appeals are by the employees of the Steel Authority of India and the grievance of the appellants in each of these appeals is that they were illegally not considered for promotion to the higher grade when their juniors were being promoted. They had approached the Labour Court under Section 33-A of the Industrial Disputes Act (hereinafter referred to as "the Act") alleging therein that their service conditions have been altered to their disadvantages while the Reference Case No. 39 of 1973 was pending. The Labour Court passed an Award on 17.1.1991 holding that the application under Section 33-A of the Industrial Disputes Act was maintainable and there has been alteration in the conditions of service while a reference was pending before the Labour Court. Ultimately the Labour Court gave direction in the case of Shri C.P. Agarwal, appellant in Civil Appeal No. 11360 of 1995 to promote him to the post of construction supervisor Grade I with effect from 6.6.1971. Additional, Divisional Engineer with effect from 30.6.87 with all consequential benefits. The said Award of the Labour Court in favour of Shri Agarwal has been given effect to and due promotion has been given to him. The Steel Authority of India, however, approached the High Court of Patna against the aforesaid Award of the Labour Court. The Authorities also approached against the similar Award which are the subject matter in other connected appeals. The High Court by judgment dated 8.9.1995 came to hold that the provisions of Section 33-A of the Act will not be attracted since promotion does not fall within the expression 'conditions of services' and any change in the rules of promotion will not tantamount to the alteration in conditions of service during the pendency of the dispute before the Labour Court. Writ Application filed by the Steel Authority of India having been allowed and the Award of the Labour Court having been set aside the employees approached this Court in these appeals.

The learned counsel for the appellants in different appeals

reiterated their contention that the High Court committed gross error in coming to the conclusion that the promotion cannot be held to be condition of service and alteration in the Rules of promotion does not tantamount to change in conditions of service attracting Section 33-A of the Industrial Disputes Act. Dr. A.M. Singhvi, learned senior counsel appearing for the respondents, on the other hand apart from supporting the conclusion of the High Court contended on merits that the case of each of the appellants were dully considered whenever the promotion fell due and on being considered they having been found unsuitable have not been promoted and their juniors were promoted. Accordingly it is contended that there has been no infringement of the appellants' constitutional right of being considered enshrined under Article 16 of the Constitution and consequently on merits the appeals are liable to be dismissed. When these appeals were heard for considerable length of time on 1.5.1996, this Court passed the following order :-

"After hearing counsel on both sides for considerable time, we find that Rule 11 of Part II of the Seniority & Promotion Rules prescribes for promotion. Rule 11(1) prescribes procedure for promotion and selection grade post namely, post in the scale of Rs. 550-1100/- and Rs. 1450-1750/- and above on the basis of merit-cum-seniority. Under sub-rule (ii) for non-selection posts, promotion subject to the elimination of the unfit. The Tribunal in the award in CA Nos. 11567-73/95 at page 191 of the paper book pointer out the names of ten employees and their dates of initial appointment as C.S. Grade III and promotion to the post of CS Grade II and I respectively from the years 1971 to 1986. It is not in dispute that the promotion from CS Grade I to E-I, E-II and E-III are based on merit cum seniority covered by clause (1) of Rule 11 of Part II. The question arises whether their cases have been considered and were not promoted according to merit cum seniority basis. The Tribunal, unfortunately, without making any distinction whether it is a selection post or a seniority post had given directions to promote the appellants from the dates in which their respective immediate juniors stood promoted to E-I post. The High Court has not dealt with this aspect of the matter in particular but proceeded on the ground of limitation and non-maintainability of the application filed under section 33-A and also omission to implead the persons who were promoted superseding the appellants.

Dr. A.M. Singhvi, the learned senior counsel appearing for the respondent has pointed out to us placing a chart in which all the persons have been considered by the Departmental Promotion Committee in the years 1988, 1990, 1992 and 1994 and either they were found or not found eligible, found qualified and promoted from the respective cadres. This contention was based upon the averments made in the additional counter affidavit filed in this court to which rejoinder affidavit was filed denying those averments. In view of the denial by the appellants, it becomes necessary to peruse the record of the consideration by the DPC in the respective years mentioned hereinbefore. Dr. Singhvi is directed to produce the record with an affidavit explaining how they have been dealt with. Dr. Singhvi is also directed to supply a copy of the affidavit to the appellants. He seeks for and is granted six weeks time to do the needful. Thereafter, the counsel for appellants are at liberty to file the affidavit on the basis of the allegations in the affidavit. List the matters immediately after vacation."

Pursuant to the aforesaid direction necessary records were produced alongwith affidavits indicating how the case of each of the appellants has been duly considered. The counsel appearing for the appellants were also granted inspection of those records. Reply affidavit has been filed on behalf of the appellants, not disputing the fact of their consideration, as alleged by the respondents but alleging that the records produced were not the original records and as such, no reliance can be placed on these records. We are unable to accept this submission made by the learned counsel appearing for the appellants. We have ourselves perused the records produced and we have no hesitation to come to the conclusion that the records indicate consideration of the appellants case for promotion whenever it fell due and the appropriate authorities have found them unsuitable on some occasion whereas on some other occasion the appellants themselves have not applied for promotion and as such there has been no limitation of Article 16 of the Constitution in the matter of consideration of appellants for promotion. We find no force in the submission made by the learned counsel for the appellants that the records produced are manufactured ones and are not original. It is not possible for a Public Undertaking to manufacture records and that also in relation to the years 1977 to 1983. It is apparent from the order of this Court dated 1.5.1996 the High Court did not consider the question as to whether the cases of the appellants were considered on the principle in the executive cadre from the Grade E-1 to E-II and E-III and disposed of the matter merely on the ground of non maintainability of application filed under Section 33-A of the Industrial Disputes Act. The respondents were called

upon by this Court, and to appreciate, the stand taken by the respondents to the effect that on each and every occasion the case of the appellants has been duly considered but on account of their unsuitability no promotion has been given to them. The records having been produced before us and on perusal of the said records we are satisfied that the case of promotion of the appellants has been duly considered whenever it fell due and the Appropriate Authority has found them unsuitable for promotion. Though there is some force with regard to the promotion of one R.B. Prasad who had been given a jump from L-6 in non-executive cadre to e-I in the executive cadre and the explanation offered by Dr. Singhvi, learned senior counsel appearing for Steel Authority of India on that score is not very satisfactory yet we are not prepared to annul the said promotion made in the year 1975 after lapse of 20 years.

Mr. Krishnamani, learned senior counsel appearing for the appellant in Civil Appeal No. 11360 of the 1995 as well as the learned counsel appearing for the respective appellants in other appeals in course of their arguments urged that the stand taken by the respondents-Steel Authority of India before the Labour Court was something different from the stand they have taken in this Court to examine the question as to whether infact the appellants were considered for promotion and were found unsuitable, as urged by Dr. Singhvi, learned senior counsel appearing for the respondents. We are unable to appreciate this contention in view of our earlier order dated 1.5.1996. The earlier order clearly indicates the respective stand of the parties and called upon the respondents to produce the relevant record to find out whether infact the appellants were considered for promotion at different point of time, as urged by Dr. Singhvi, learned senior counsel appearing for the respondents or not. Apart from filing affidavit of one Anupam Anand, Manager (Personnel) of the Steel Authority of India and explaining through different charts, annexed as Annexures 1 to 3 to the said affidavit, indicating the details of each occasion how the case of each of the appellants has been duly considered, we have also gone through the relevant records produced before us and going through the same we are satisfied that the case of each of the appellants has been duly considered whenever they have applied for promotion but they were found unsuitable and as such they have not been promoted. On some occasion they have not applied for promotion and, therefore, the question of consideration of their case at that point of time did not arise. In the aforesaid premises we find no infraction of Article 16 of the constitution in the matter of promotion to different grades both in the non executive and executive cadre, as alleged by the learned counsel appearing for the appellants and we are also of the opinion that the constitutional rights of the appellants for being considered has not been infringed in any manner. We, therefore, do not find any substance in these appeals for our interference under Article 136 of the Constitution. In view of our aforesaid conclusion while we are dismissing all the appeals but so far as appellant C.P. Agarwal is concerned, he having already been promoted pursuance to the order of the Labour Court, the said promotion may not be interfered with and he may not be reverted to any lower post from the post to which he has already been promoted. But his order of ours in relation to Shri Agarwal may not be treated as a precedent for other employees similarly placed. The appeals are dismissed with the aforesaid observation but in the

circumstances there will be no order as to costs.

JUDIS