

(2003) 02 AHC CK 0146

Allahabad High Court

Case No: Writ Petition No. 279 of 2003

Tanuj Kumar Verma

APPELLANT

Vs

Director, Defence Estate, Central
Command and Others

RESPONDENT

Date of Decision: Feb. 21, 2003

Acts Referred:

- Cantonments Fund Servants Rules, 1937 - Rule 5B(8)

Citation: (2003) 5 AWC 3811 : (2003) 1 UPLBEC 729

Hon'ble Judges: S.K. Singh, J

Bench: Single Bench

Advocate: Ashok Khare and V.D. Chauhan, for the Appellant; B.N. Singh, Standing Counsel, Shaktidhar Dubey, P.K. Ganguly, A.P. Sahi, G.K. Singh and V.K. Singh, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Singh, J.

By means of this writ petition, the petitioner has prayed for quashing of the Resolution No. 18 passed by the Cantonment Board, Varanasi (hereinafter referred to as the Board) in its meeting date 18.12.2002 and also the consequential dated 19.12.2002 issued by then Executive Officer, Cantonment Board, Varanasi (Annexures 20 to 22 to the writ petition). A further prayer has been made that the respondents be restrained from interfering in the functioning of the petitioner as Accountant in the Board.

2. At the time of filing of the writ petition itself, all the respondents appeared and they took time to file counter-affidavit. On filing counter-affidavit, learned Counsel for the petitioner made statement that he do not propose to file any rejoinder affidavit and the matter may be heard and decided, upon which, arguments were heard and as prayed, it is being decided.

3. Brief facts, for the purpose of decision can be summarised. The petitioner was initially appointed as Junior Clerk in the Board on temporary basis for a period of six months by appointment dated 27.7.1984 and thereafter, he was confirmed on the aforesaid post by the dated 16.8.1986. It is claimed that on account of voluminous work in the accounts of the Board and there being no proper arrangement for its disposal, the authorities desired, some senior employee to undertake the aforesaid work and as senior employees to the petitioner did not accept that request and declined to discharge any such function, the petitioner has given consent for doing the work in the accounts and thus by of the Executive Officer dated 22.9.1999, the petitioner was directed to take over the work pertaining to the accounts . It is claimed that as the petitioner satisfactorily worked in the accounts of the Board and brought the work up to date, a recommendation was made by the Office Superintendent by note dated 5.7.2001 (Annexure 7 to the writ petition) for regular/permanent appointment of the petitioner as Accountant. It is claimed that the respondent No. 4 to 6 declined to undertake the work of Accountant as is mentioned in the note dated 5.7.2001 and thus the aforesaid proposal/recommendation in favour of the petitioner came in the meeting of the Board dated 10.7.2001 and a resolution was passed to that effect, pursuant to which respondent No. 3/Executive Officer issued appointment/ promotion for the post of Accountant in favour of the petitioner. It is stated that it is on 26.7.2002, two s were passed by respondent No. 3 by which the respondent No. 4 was granted promotion on the post of Accountant in place of the petitioner and simultaneously the petitioner was directed to hand over the charge to respondent No. 4. Simultaneously, an was issued on that very date directing the revision of the petitioner from the post of Accountant to the post of Junior Clerk. The aforesaid dated 26.7.2002 was challenged by the petitioner before this Court by filing Writ Petition No. 31817 of 2002, which was allowed by this Court by its judgment dated 9.8.2002 and the dated 26.7.2002 passed by respondent No. 3 was quashed on the ground that the was passed in violation of the principle of natural justice. It was directed that proper show cause notice should be given to the petitioner and after an opportunity, decision afresh may be taken. It appears that pursuant to the decision of this Court, a show-cause notice dated 11.11.2002 was issued to the petitioner calling upon him to submit his reply. The reply was submitted and it is thereafter, the matter was considered by the Board in its meeting dated 18.12.2002 and vide Resolution No. 18, the Board resolved that the petitioner is not entitled to be continue on he post of Accountant and thus it was decided that he has to reverted on the post of Junior Clerk and it was resolved that the respondent No. 4 be promoted on the post of Accountant and respondent No. 6 be promoted on the post of Senior Clerk as per the seniority list. Pursuant to the aforesaid resolution of the Board dated 18.12.2002, respondent No. 3 issued two s on 19.12.2002 directing reversion of the petitioner on the post of Junior Clerk and promotion of respondents No. 4 and 6 on the post of Accountant and Senior Clerk respectively. It is thus, the petitioner being aggrieved with the resolution of the Board dated 18.12.2002 and

consequential s of respondent No. 3 dated 19.12.2002, has come to this Court.

4. Heard learned Counsel for the parties and perused materials as has come on record.

5. Learned Counsel for the petitioner submits that the petitioner was rightly given promotion on the post of Accountant as respondents. No. 4 to 6 declined and they gave consent in favour of the petitioner, which is clear from the note of Officer Superintendent dated 5.7.2001 and therefore, decision to revert the petitioner, on facts, is not at all justified. It is then argued that under Cantonment Fund Servants s, 1937, the feeder cadre for promotion to the post of Accountant is the Junior Clerk and no promotion on the post of Accountant is permissible from the post of Senior Clerk and thus, two persons namely respondent Nos. 4 and 5 who were working as Senior Clerk, they were outside the zone of consideration for promotion on the post of Accountant. It is argued that although some amendment under s have been proposed on 24.8.2002 by which the Senior Clerk can be said to be entitled to get promotion on the post of Accountant but the same has not yet been approved and therefore, promotion of the petitioner which has already taken place in the year 2001 cannot be nullified even if the proposal for amendment is accepted to have become operative. It is then argued that recital in the that office note dated 5.7.2001 showing consent of the respondents No. 4 and 6, is not available is incorrect and is against the record and in fact, the has been passed on account of persistent intervention of the Director, Central Command, Lucknow and solely on his dictate. On all these aforesaid grounds, the impugned exercise has been prayed to be quashed.

6. In response to the aforesaid arguments, learned Counsel appearing on behalf of the respondents No. 2 and 3 argued that the work of the petitioner has never been satisfactory as he was issued warning letter on 8.10.2001 and entries were made accordingly in his service book. It is submitted that the petitioner was illegally given work of Accountant on 22.9.1999, which was seriously objected by the respondents No. 4 and 6 by filing objection on 20.10.1999. It is submitted that the respondents No. 4 to 6 never consented in favour of the petitioner to work as Accountant and they never declined to work as such. It is submitted that as the petitioner was illegally given promotion on the post of Accountant, that was set aside and thereafter when the matter came to this Court, a direction was given that the petitioner be given opportunity to show cause and thereafter, decision may be taken. It is thereafter, a show cause notice was given to the petitioner and after getting his reply on a detail consideration of the matter, decision has been taken by the Board on 18.12.2001 to the effect that the petitioner is not entitled to continue on the post of Accountant. It is argued that the submission of learned Counsel that the feeder cadre for the post of Accountant is Junior Clerk and, therefore, respondents No. 4 and 5 being Senior Clerks are outside the zone of consideration, is totally misconceived and is legally untenable. It is submitted that the Cantonment

Board, Varanasi was upgraded from Class II to Class I vide letter dated 5.12.1982 having been issued by Lieutenant General, Central Command, Lucknow (GOC-in-Chief) with the date of sanction and accordingly sanction was accorded. Before the upgradation of Varanasi Cantonment Board, feeder cadre of promotion of Accountant was the Junior Clerk and Cashier as before upgradation the pay scale of Accountant and Senior Clerk was the one and same. It is submitted that thereafter, change in pay scale took place and now feeder cadre for the post of Accountant is the Senior Clerk, Revenue Inspector and for the promotion to the post of Senior Clerk, feeder cadre is the Junior Clerk. It is pointed out that same is the situation of Allahabad Cantonment Board. It is submitted that as admittedly, the petitioner has been working as Junior Clerk, he being Junior to the respondents and otherwise also, the alleged note dated 5.7.2001 being not on record, the resolution as has been passed by the Board on 18.12.2002 cannot be said to be illegal or faulty in any manner and the petitioner is not entitled to get any relief.

7. Learned Counsel appearing for respondents No. 4 to 6 besides adopting all the arguments as has been advanced on behalf of respondents No. 2 and 3, in addition submitted that criteria for promotion under s is "seniority subject to rejection of unfit", and the respondents No. 4 to 6 being admittedly senior to the petitioner, and there being nothing against them, so as to render them unfit for the post in question, the alleged claim of the petitioner of his promotion is totally uncalled for. It is submitted that the respondents being senior to the petitioner cannot be bye-passed and the submission that the respondents have declined for the post in question and they consented in favour of petitioner is totally baseless, false and mischievous. It is submitted that it is only for the purpose of giving undue benefit to the petitioner, a reference has been made to the alleged office note dated 5.7.2001 which does not exist and since it came to the notice of the respondents, they file detail objection against the alleged promotion and it is now after the direction of this Court, the petitioner has been given full opportunity of showing cause and hearing, and then decision has been taken by the Board. The submission of learned Counsel for the respondents No. 2 and 3 have been reiterated to the fact that in the year 1982, Cantonment Board, Varanasi was also upgraded to Class I as a result of which, the post of Accountant was also upgraded and the pay scale also of the post of Accountant became higher than the post of Senior Clerk. It is pointed out that the Cantonment Board, Allahabad, Meerut and Lucknow etc. are also Class I Cantonment Boards and the post of Accountant are being filled by promoting the Senior Clerk and the post of Senior Clerk is being filled up by promoting the Junior Clerks and Cashiers. It is then submitted that taking any view of the matter, so far as respondents No. 4 and 5 are concerned, they happened to be Senior Clerks but so far as respondent No. 6 is concerned, he happened to be the Junior Clerks but admittedly senior to the petitioner and, therefore, in no case the petitioner can stick to the claim of his promotion on the post of Accountant over and above respondent No. 6. It is argued that on the facts, the petitioner is not entitled to get any relief.

8. In view of the arguments as has come from both sides, the matter has been examined. On scrutiny of the matter, there appears to be no dispute about the fact that the petitioner was working as Junior Clerk and the respondents Nos. 4 and 5 are working as Senior Clerks and although the respondent No. 6 is working as Junior Clerk but he is admittedly senior to the petitioner. There appears to be two strong basis of the petitioner for sticking to his claim :

(i) the respondents No. 4 to 6 have declined to be placed on the post of Accountant and they consented in favour of the petitioner which is clear from the office note date 5.7.2001.

(ii) promotion to the post of Accountant is to be made only from the post of Junior Clerk and, therefore, the respondents No. 4 and 5 being working as Senior Clerk happened to be outside the zone of consideration.

9. So far as the contention/claim of the petitioner of there being no objection on behalf of respondents No. 4 to 6 and consent in favour of the petitioner is concerned, suffice it to say that except office note dated 5.7.2001, Annexure 7 to the writ petition, in which there is reference about declining by the respondents No. 4 to 6, there is no other documents or any other material. There appears to be serious dispute about the genuineness of the aforesaid note dated 5.7.2001 from the side of the private respondents as well as from the side of the Board itself. The respondents No. 4 and 5, as has come on record, on coming to know about the promotion of the petitioner, has immediately filed detail objection questioning the promotion of the petitioner and laying their claim upon which, the impugned exercise started. In the counter-affidavit filed by respondents No. 2 and 3 and also in the finding as has been given by the Board in its resolution dated 18.12.2001, there is clear recital that the alleged note dated 5.7.2001 is non-existent and that is not available in the rec It is clear that the petitioner is laying his claim of his promotion on the premises that the respondents have declined to take up the post in question but the Court do not find any convincing proof or any such admission on behalf of private respondents. The matter of promotion to any particular post, is a vested right/interest of any employee and that can only be taken away when either he is not eligible or there is something adverse to him and he is not found fit and therefore, in view of the fact that the petitioner could not point out any adverse thing against the private respondents i.e. either any adverse entry against them or there being any admission contained in any document on account of which they may be bye-passed, the petitioner's claim of being placed over and above the respondents, cannot be accepted. It has also come in the resolution of the Board that the Cantonment Fund Servants s, 1937, reference of which has been made by the petitioner in the writ petition, do not provide for out of turn promotion ignoring the claim of senior employees against whom there is no adverse entry or warning at all. It has also come in the resolution of the Board that 5-B(8) of the provides that the appointment to the promotional post shall be made on the basis of "seniority subject to rejection

of those considered unfit." In view of the clear finding as has been recorded by the Board and in view of specific objection having been taken by the respondents No. 4 and 5 as soon as they came to know about the promotion of the petitioner, questioning the validity of the promotion of petitioner and in view of the fact that the Board is denying the genuineness of the alleged office note dated 5.7.2001, there appears to be no justification for acceptance of claim of the petitioner for the post of Accountant in suppression of the claim of the respondents who admittedly, happens to be senior to the petitioner. In respect to the contention of the petitioner that the feeder cadre for the post of Account being Junior Clerk, the respondents No. 4 and 5 were outside the zone of consideration, suffice it to say that the respondents have placed on record, the documents from which it is clear that the Cantonment Board, Varanasi has already been resolved to be Class I Board, upon which, the pay scale of the Accountant and Senior Clerk have been upgraded and now the promotion to the post of Accountant is to take place from the post of Senior Clerk, Revenue Inspector and on the post of Senior Clerk, from the post of Junior Clerk and Revenue Collector and it is, thereafter, on the post of Office Superintendent from the post of Accountant. Same is the provision in relation to other Class I Cantonment Boards i.e. Allahabad, Meerut, Lucknow etc. Otherwise also, the Court finds difficulty in accepting the petitioner's contention that the post of Accountant which is admittedly higher in rank than the post of Senior Clerk is to be filled from the employees working as Junior Clerk but the Senior Clerks are not eligible to be considered for the promotion on the post of Accountant. The arguments of learned Counsel for the petitioner that although the resolution was passed for upgrading the Cantonment Board, Varanasi as Class I Board, but the same has not been approved and implemented and, therefore, the post of Accountant is to be filled by promotion from the person working as Junior Clerk, deserves rejection for the simple reason that it has been stated on behalf of respondents No. 2 and 3 that in view of the amendment as has been resolved per resolution of the Board, the pay scale for both posts i. e. Accountant and Senior Clerks have been upgraded. There appears to be another strong reason for rejecting the petitioner's claim inasmuch as, on own admission of the petitioner, so far the respondent No. 6 is concerned, he is admittedly senior to the petitioner in the cadre of Junior Clerk itself and, therefore, so far the claim on the post of Accountant is concerned, the petitioner cannot claim any preference qua respondent No. 6. The contention of the petitioner that the respondents No. 4 to 6 have given their consent for promotion of the petitioner and they declined to take up the post, having been rejected for the reasons stated above, the petitioner cannot get out of turn promotion ignoring the claim of atleast respondent No. 6 against whom the petitioner has not been able to point out any adverse entry or any ground showing him to be unfit for the post of Accountant.

10. In view of the aforesaid discussions, it appears that so long the petitioner is not able to demonstrate that the respondents No. 4 to 6 are unfit on account of any

adverse thing against them for being promoted on the post in question, they being admittedly, senior to the petitioner, they cannot be deprived of their vested right which is legitimate expectation of every employee, otherwise, it will amount to punishing rather awarding of their good work and conduct. Pursuant to the direction of this Court, referred above, the concerned authority has given adequate opportunity to the petitioner to file his response and to place his version, which has been considered in great detail and by assigning cogent reasons, the impugned decision has been taken in which the Court do not find any arbitrariness, perversity or any kind of illegality. The impugned s challenged before this Court are neither faulty on facts nor in . Even on arguments of the petitioner about the respondents No. 4 and 5 being outside the zone of consideration, the respondent No. 6, being admittedly senior to the petitioner on the post of Junior Clerk, in view of the objection being raised on his behalf also and there being no admission in writing, declining to take up the post, the petitioner cannot be permitted to be placed on the post of Accountant merely on the basis of an office note dated 5.7.2001, the genuineness of which happens to be in serious dispute. The record of the Cantonment Board, is not having aforesaid note and thus, the copy of note as filed before this Court cannot take away the valuable right of respondents in view of specific denial by them and specially of respondent No. 6. As the petitioner has not been able to lay his claim for the post in question the submission that respondent No. 4 has been promoted in place of respondent No. 6 also deserves rejection for various reasons indicated above.

11. In view of the aforesaid analysis, this Court feels that the petitioner is not entitled to get any relief as prayed in this petition

12. Accordingly, this writ petition fails and is hereby dismissed.