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(1994) 07 GAU CK 0010

Gauhati High Court

Case No: Civil Rule No. 168 of 1994

Md.Akiluddin Ahmed — APPELLANT

Vs

Union of India and Ors. — RESPONDENT

Date of Decision: July 14, 1994

Citation: (1994) 2 GLJ 472

Hon'ble Judges: M.Sharma, J

Bench: Single Bench

Advocate: B.Rajkhowa, B.P.Kataki, B.J.Talukdar, B.D.Goswami , A.M.Bujar Barua, D.K.Talukdar, D.N.Choudhary, D.Das, D.P.Chaliha, Advocates appearing for Parties

Judgement

1. These six writ petitioners with some others filed a writ petition being Civil Rule No. 2592 of 1992 on the same subject matter relating to this petition, alleging that without considering the appointment of the petitioners at required under notifications issued under the Recruitment and Promotion Regulation, 1980, applications were invited by publishing advertisement in the news papers. In that writ petition (CR No. 2592 of 1992) this Court directed the respondents/concerned authority to consider the appointments of the petitioners and other similarly situated persons in pursuance of the Rule regarding direct recruitment and the office order dated 6.11.87 and further direction was given that if some vacancies remained, outside persons would .be recruited through advertisement.

2. The petitioners, Diploma Holders in different disciplines in Engineering were appointed in various posts in Oil and Natural Gas Commissio (ONGC) on different dates. Petitioner No. 1 to 5 initially were appointed m Helper Grade III during the period from 1981 to 1985 and the petitioner No. 6 was appointed as Assistant Technician (Production) in the ONOC in the month of June, 1985. The petitioner Nos. 1, 2 and 3 thereafter were promoted to the post of Assistant Technician (Drilling) and was subsequently promoted further to the post of Junior Technician (Drilling) with effect from 1.1.89, the petitioner No. 4 was promoted to Assistant Technician (Production) on 18.1.89. Similarly petitioner No. 5 was promoted to Drilling Assistant on 6.5.92 and petitioner No. 6 to Rigman (Production) on 28.3.91 and they were holding respective posting peacefully.

3. With a view to implement the ONGC Recruitment and Promotion Regulation, 1980, with regard to placement at appropriate level of existing employees the respondents issued an office order under the signature of the Director (Personnel) vide No. 2(22)/80RPl dated 25.4.80 stipulating that in case of vacancies to be filled in by direct recruitment, departmental candidates, fulfilling the requisite qualifications shall be given first consideration and in the event of non availability of required number of suitable departmental candidates, the unfilled vacancies are to be notified for recruitment from outside. The petitioners claim that under the said office order dated 25.4.80 the petitioners being departmental candidates, having requisite qualification and experience for being appointed as Junior Engineers have to be considered first by the ONGC. before filling up the said posts by recruitment from outside.

4. The Deputy Director (P&A), Regional Recruitment Section, respondent No. 4 in pursuance to the notification dated 25.4.80 (referred as Annexure D to the CR No. 2592 of 1992), issued a departmental circular dated 25.1.92 (Annexure B to the writ petition) inviting applications from amongst the departmental candidates having Diploma in Electrical, Mechanical, Civil Petroleum Engineering for appointment in respective discipline. Petitioners having requisite qualifications and experiences for being appointed as Junior Engineers (Mechanical) applied for said posts and while waiting for interview, they came across an advertisement on 8.2.92 (Annexure C to the writ petition) for filling up of 18 posts of Junior Engineers (Mechanical) amongst other posts by outside candidates. Petitioner No.2 who is similarly qualified as the petitioners submitted applications in response to the advertisement (Annexure C to the writ petition) and was called for interview as outside candidate on 30.11.92 but the date of said interview was deferred. The General Manager (P) respondent No. 5, vide office order dated 4.11.87 (Annexure D to the writ petition) in consonance with the office order dated 25.4.80, directed the Regional Director (P) and Administrative Heads of all region and also Deputy General Manager (P&A), Recruitment to follow the instructions contained in toe office order dated 25.4.80. As aforesaid for noncompliance of the provisions of ''Regulation, 1980 and office order dated 25.4.80 and against the advertisement (Annexure C to the writ petition) the petitioners filed the above, mentioned Civil Rule No, 2592 of 1992 (Annexure E) and the High Court disposed of the Civil Rule as mentioned earlier.

5. In this writ petition, petitioners'' only allegation is that although in compliance with the order of the High Court the respondents authority called the petitioners alongwith two other, total being 8 in number, for interview as departmental candidates for the posts of Junior Engineers vide call letter dated 19.10.93 for appearing in interview on 27.10.93 and accordingly they were interviewed, the respondents have not published or communicated the results of the said interview keeping the petitioners in uncertain position.

6. As it transpires the present petitioners are left out departmental candidates, who were not appointed in the posts claimed for; though this Court in earlier Civil Rule No. 2592 of 1992 directed the respondents to consider their appointment as departmental candidates

and not to fill up the posts by outsiders till the departmental candidates are considered,

7. Admittedly, in compliance of the High Court order petitioners were interviewed. Now the only grievance remained it that without considering the appointment of petitioners who are departmental candidates respondents have conducted interview of outside candidates for the said posts of Junior Engineers (Mechanical) on 10.1.94 and 11.1.94 at Gauhati, on the basis of written test, held earlier in 19.11.92 in pursuance of the advertisement (Annexure C) and appointment letters were issued depriving the petitioners to the said posts.

8. As it emerges from the counter affidavit and submissions made by Mr. DK Talukdar, learned counsel for the respondent ONGC, the petitioners and other similarly situated employees were taken for consideration and was under process as they have to appear for a test/interview for appointment by selection and accordingly process was made to constitute Selection Committee. But the petitioners did not wait till the completion of the process undertaken by the competent authority and approached this Court and obtained the order in Civil Rule No. 2592 of 1992. Strenuous attempt has been made by the respondents to show that the posts held by the petitioner Nos. 1 to 5 are Class IV posts and petitioner No. 6 belong to Class HI are promotional posts and their avenues of appointment is as follows the posts of Helper Grade III, II and I are Class IV posts. Assistant Technician, Junior Technician arid Chargeman are Grade III posts. Helper Grade III in Class IV and Assistant Technician in Class III are induction level posts (initial appointment as Helper III). Helper Grade II and I in Class IV, Junior Technician and Chargeman in Class III are promotional posts. Chargeman post is at the top of Class III posts from which the employees, subject to fulfillment of experience criteria, laid down for the posts of Class II, ie, Assistant Engineer, are promoted to the post of Class II Engineer post. Another post at the top of Class III, which is an induction level post with requisite higher qualification then that required for the other Class III post, is Assistant Technician post. The employees in the post of Junior Engineer which is Class III post and induction level post, also subject to fulfilment of experience criteria laid down for the post of Assistant Engineer (Class II) can be promoted to the post of Assistant Engineer. The post of Assistant Engineer (Class II) is filled up by promotion from amongst the employees in post of Chargemaa, ie, from Class III and IV post on percentage basis in the ratio prescribed in the Regulation, from each category (Chargeman and Junior Engineers), to the post of Assistant Engineer making the Assistant Engineer post promotional post. A Chargeman need not work as Junior Engineer and his promotion to the post of Assistant Engineer is straight. In other words from the two categories the post of Assistant Engineer is filled up by selection or otherwise on percentage basis and after fulfilling the post of Assistant Engineers from the two streams/ classes the promotional avenue starts. As it transpires the petitioners appointment by promotion to Helper Grade I has also pro notional avenues by selection process on percentage basis and after reaching the top point from two independent streams in different line one can be promoted to Assistant Engineer. Apparently, to be selected to Assistant Engineers, the two categories in lower

hierarchy has to be selected on merit/experience criteria and the post of Assistant Engineer for which percentage for promotion of each stream has been fixed under the Regulation. From the above discussion as it emerges, the Class IV employees can be considered for appointment to the post of Assistant Engineer, if they are found fit on the basis of experience and qualifications with merit, which shows that Class IV post holders can not be considered for the posts of Junior Engineer (Class II) which is an induction level post and obviously Class IV employees'' appointment would be direct appointment to the Junior Engineer post. Other aspect of this is that both the Grade IV employees can apply for direct appointment to the post of Junior Engineers as per notification dated 25.4.80. That being the position, petitioners can be appointed as direct recruitees to the posts of Junior Engineer on induction level. The crux of the question is whether all the Chargemen and Assistant Technicians irrespectively can be appointed directly to the posts of Junior Engineers on the strength of the notification in question (25.4.80).

9. The stand of the respondents is that as per the direction of the High Court and under the provision of Recruitment and Promotion Regulations, 1980, petitioners alongwith other petitioners in CR 2592 of 1992 were interviewed by the Selection Committee. As the departmental candidate were less and requirement for filling up the post of Junior Engineers from Diploma Holders are more in many disciplines of the Engineering wing, advertisement was issued accordingly. The petitioners in the above Civil Rule were appointed as found eligible by the Selection Committee and as the petitioners in the instant Civil Rule were not found qualified by the Selection Committee they were left out but their scope for future consideration has not been blocked and in future vacancies they will be considered. Further stand of the respondents is that recruitment from Class IV or Class III is not a promotional grade to the Junior Engineer and it is not a right for appointment to any direct recruitment/induction post, unless they fulfill the requisite qualifications and other criteria prescribed for by the Regulation, 1980. The only privilege as conferred by internal instructions of the respondents is that the departmental candidates, subject to fulfilment of criteria, are to be considered first and outside candidates shall be considered next for unfilled vacancies. Accordingly after considering the candidature of the departmental candidates, including the petitioners, interview for outside candidates were held on 10/11.1.94 who succeeded on 29.11.92 test for consideration for remaining vacancies. Fifteen (15) candidates out of the candidates from outside were selected on qualifications/merit and were offered appointment dated 4.2.94. It is alleged that the petitioners who are declared not successful by the Selection Committee obtained interim stay order on 12.1.94 restraining the respondents from appointing those outside candidates.

10. As per the office order No. 2 (22)/80RPl dated 25.4.80 issued by the ONGC for fitment of existing employees and other matters connected therewith consequent upon introduction of Recruitment and Promotion Regulation, 1980, all the vacancies which are to be filled up by direct recruitment the departmental candidates fulfilling the requisite qualification shall have to be considered first and only in the event the required number of

suitable candidates is not available from amongst the departmental candidates the remaining vacancies are to be notified for recruitment from outside.

11. The ONGC in the present writ petition has taken a new plea that the petitioners are not selected as they are not Diploma Holders in Mechanical Engineering, the said plea was never taken in the earlier writ petition (Civil Rule No. 2592 of 1992) though the ONGC filed the affidavit in that case also and as such cannot take that plea in support of their case.

12. The non departmental candidates, ie, outside candidates for direct recruit made appearance and filed affidavit countering the claim of the petitioners. Their stand, as averred, is that after receipt of offer of appointment they have resigned from their earlier posts and have been put in hardship hanging their future prospects in uncertainty.

13. From the discussion above the point for decision is whether petitioners claim for their appointment as per the notification (Annexure D) is sustainable. Petitioners were recruited as Helper which is a Class IV post. Their promotional avenue to the Top post is a lengthy process and most of them have to retire as Grade I in Class IV category. Petitioner No. 6 who was appointed as Assistant Technician has promotional avenue to the top as Chargeman which is Class III post and they can be promoted" to Assistant Engineer Class II post, without being appointed as Junior Engineer which isa Class III post, directly on the basis of experience and merit. Respondent"s clumsy stand regarding the claim of the petitioners in this writ petition shows an attempt to deny the existence of the notification which is the sole base of the petitioners to agitate their claim. There may be a recruitment procedure or policy of the respondents to fill up the post of Junior Engineers by direct recruitment but the notification (Annexure D) which has been issued under the Regulation, 1980, has force, since appointments have been made under the notification. It is not disputed that petitioners" appointment to Junior Engineer is not on promotion, but the notification has created a claim for appointment to the post of Junior Engineer which was issued under the Regulation, 1980. As disclosed by the petitioners, similarly situated person were to appointed to the post of Junior Engineers on the basis of the "notification"1, only the petitioners were left out arbitrarily on extraneous reasons.

14. Petitioners, as submitted by Mr. Talukdar, learned counsel for the respondents, were found not fit for selection, and also the petitioners were not found qualified as they obtained Diploma from unrecognised institution, is not sustainable as similarly situated persons were appointed to the post of Junior Engineer who obtained Diploma from the same institution. This discrepancy in their stand puts the respondents in a position which shows that they arc sometimes guided by policy of duplicity and there is no clear cut policy or norms in the appointment to the posts of Junior Engineer from Class IV and Class III employees, which gives the scope of arbitrariness and choose and pick policy in such appointments. The respondents) have not come forward to counter the allegations made against them, that in earlier cases Automobile Diploma Holders were taken in the stream of Mechanical stream and many such persons were appointed. When

consideration is made respondents should follow a clear cut policy for recruitment of the department employees like the petitioners in view of the earlier appointments made without making difference between Automobile Diploma holders with other streams.

15. The respondents, as submitted, complied with the order of this High Court passed in Civil Rule No. 2592 of 1992 and two of the petitioners in the said Civil Rule were found suitable for selection by the Selection Committee and the present petitioners who are Automobile Diploma holders could not be absorbed to the post, as there is no post for Junior Engineer presently vacant for Diploma holders in Automobile and assures that they shall be considered as and when such post is found vacant or sanctioned.

16. Accordingly the respondents are directed to consider the petitioners, Appointment to the post of Junior Engineer, in immediate available vacancies in Automobile/Mechanical section subject to fulfilment of qualifications for selection as they have a right to be considered for such appointment.,

17. Respondents, as discussed above, should evolve a clear out scheme to appoint the Class IV (Helper Grade) employees so that lowest straight of the set up of the Commission shall not find a scope for grumbling and dissatisfaction. Stay order passed on 12.1.94 is vacated.

18. With the above directions, the petition. is allowed. No costs.