**(1965) 11 SC CK 0013**

**Supreme Court of India**

**Case No:** Appeal (civil) 541 of 1964

| | | |
|---|---|---|
| Management of Brooke Bond India (P) Ltd. | | APPELLANT |
| | Vs | |
| Workmen | | RESPONDENT |

**Date of Decision:** Nov. 1, 1965

**Acts Referred:**

- Administrative Service (Recruitment) Rules, 1954 - Rule 5(3)

**Citation:** AIR 1966 SC 668 : (1966) 12 FLR 42 : (1966) 1 LLJ 402 : (1966) 2 SCR 465

**Hon'ble Judges:** P. B. Gajendragadkar, C.J; V. Ramaswami, J; P. Satyanarayana Raju, J; M. Hidayatullah, J; K. N. Wanchoo, J

**Bench:** Full Bench

**Final Decision:** Allowed

**Judgement**

Wanchoo, J.

This is an appeal by special leave in an industrial matter. The appellant-concern promoted two employees from grade A to grade B on April 1, 1959. These two employees were Manerikar and Dhume. As a result of this promotion, Manerikar superseded one employee while Dhume superseded six employees. A dispute was raised by the respondents-workmen on account of this supersession. This was based on an earlier award with reference to this very concern by the National Tribunal which provided as follows :-

"All things being equal, seniority shall count for promotion. If the senior person has been overlooked in the question of promotion, he is at liberty to ask the concern for the reason why he has been overlooked, in which case the concern shall give him the reasons, provided that it does not expose the concern or the officer giving reasons, to any civil or criminal proceedings."

2. It appears that when the supersession became known the management was asked to give the reasons and the management gave the same and said that in making promotions it took into consideration the merit, personality and suitability of the employees. This did not satisfy the employees who are superseded and a dispute was raised on their behalf by workmen which was referred to the industrial tribunal by the government of Mysore in these terms :-

"Whether the promotion of Sriyuths P. D. Dhume and Y. S. Manerkar, superseding Sriyuths G. N. Kamat, B. V. Kulkarni, H. S. Deshpande, G. R. Balgi and D. N. Naik is justified ? If not, to what relief are the affected workmen entitled ?"

3. It may be added that the name of Sri V. R. Kulkarni was added later in the list of persons superseded. The case of the workmen was that the action of the management was not bona fide and was taken to victimise the six employees on account of their trade union activities and that the reasons given for superseding the senior employees were vague and of a general character. The case of the appellant on the other hand was that seniority alone could not be the criterion for making promotion and that other factors like merit, personality, etc. have to be taken into consideration. The appellant asserted that all these facts had been taken into consideration when the two promotions in question were made. It was also asserted that promotions were made after considering the qualities and abilities of the employees concerned. The appellant further denied that there were any mala fides in the matter of these promotions or that the action was taken with a view to victimise those who were superseded.

4. The tribunal recognised that normally the question of promotion was a management function and had to be left mainly to the discretion of the management which had to make a choice from among the employees for promotion. But it was of the view that in a proper case the workmen had a right to demand relief when just claims of senior employees were overlooked by the management. It therefore first considered the question whether this was a case in which the workmen had the right particularly in view of the earlier decision in this very concern to demand that the two promotions made should be scrutinised by the industrial tribunal. It came to the conclusion that the action of the management was mala fide mainly because it took 11 weeks to reply to the query of the workmen asking for reasons for their supersession. It was of the view that the evasive replies and inordinate delay showed that the two promotions were mala fide. The tribunal also seems to have held that the six employees were superseded on the ground that they were more or less active members of the union and because of their trade union activities, though there is no specific finding to that effect. The tribunal further seems to have held that the delay made by the management in giving the reasons when asked to do so showed that the management had not considered the reasons for supersession prior to or at the time the promotions were made; that was why it took time to formulate reasons for supersession. Thereafter the tribunal went into the merits of the case and considered the records of the six employees which were produced before it and came to the conclusion that five of them were as good as those who had been promoted. Finally, it

ordered that these five employees should be promoted from grade A to grade B with effect from the date on which the other two persons were promoted. It further ordered that these persons be given their due place with respect to their seniority. It also ordered that they were entitled to increments which they would have got if they were promoted along with the two persons namely, Manerikar and Dhume.

5. The appellant has attacked the correctness of this award on two main grounds. In the first place it is urged that on the face of it the award cannot be sustained for there were only two promotions by the management and the tribunal has ordered the management to promote five more persons. It is urged that the tribunal could not do this even if it found that the promotions were not justified. In any event promotion of Manerikar could not be assailed as he was No. 2 in seniority and only the promotion of Dhume could be assailed. In any case it is urged that there was no occasion to promote seven persons from the date from which these two promotions were made, for on that date there were only two promotions to be made and what in effect the tribunal had done is to make seven promotions on that date. Secondly, it is urged that the tribunal''s finding that there were mala fides and victimisation is based on no evidence. Further it is urged that even if the tribunal found that there was case for interference with the promotions made, the tribunal should have set aside the promotion of Dhume for Manerikar in any case was entitled to promotion being No. 2 in the seniority list and should have directed the appellant to promote another person in place of Dhume after considering all relevant factors.

6. We are of opinion that both the contentions raised on behalf of the appellant are correct. Generally speaking, promotion is a management function; but it may be recognised that there may be occasions when a tribunal may have to interfere with promotions made by the management where it is felt that persons superseded have been so superseded on account of mala fides or victimisation. Even so after a finding of mala fides or victimisation, it is not the function of a tribunal to consider the merits of various employees itself and then decide whom to promote or whom not to promote. If any industrial tribunal finds that promotions have been made which are unjustified on the ground of mala fides or of victimisation, the proper course for it to take is no set aside the promotions and ask the management to consider the cases of superseded employees and decide for itself whom to promote, except of course the person whose promotion has been set aside by the tribunal.

7. Bearing these principles in mind we now turn to the contentions raised before us. In the first place only two promotions were made on April 1, 1959. Of these Manerikar was No. 2 and he in any case would have been promoted even if promotions went only by seniority. So it was only the case of Dhume which required serious consideration by the tribunal. Assuming that the tribunal came to the conclusion that Dhume''s promotion suffered from the infirmity of victimisation or mala fides that promotion alone should have been set aside and the management directed to promote some-one-else in his place after considering the records of all senior employees worth consideration. But there was in our opinion no justification for the tribunal to promote five persons in addition to the two

promoted by the management and to make those promotions retrospective from April 1, 1959. It is obvious that only two promotions were made on April 1, 1959 and the tribunal could not impose seven promotions on the management as from that date. The order therefore passed by the tribunal promoting five other employees is clearly wrong. It is true that one term of reference was with respect to the relief to be given to the workmen who were superseded. That however did not mean that the tribunal should promote five more persons from the same date as the two promoted by the management. The order of the tribunal therefore promoting these five persons in addition to the two already promoted by the management must be set aside on this ground alone.

8. Turning now to the question of mala fides, the only ground which the tribunal has given for coming to that conclusion is that the management made a delay of 11 weeks in giving its reply to the workmen''s query for reasons for their supersession. We are of opinion that this is hardly a reason for coming to the conclusion that the promotions were mala fide. Another reason given by the tribunal is that the replies were evasive and vague. Now the reply was that the promotions were made after considering the merits, personality and suitability of the employees concerned. We cannot agree that these reasons amount to evasive replies for after all promotion will depend upon merit, suitability and personality of the persons concerned. Nor do we think that initiative and efficiency which were later emphasised by the management before the tribunal as among the grounds for promotion can be said to be an after-thought for initiative and efficiency must be deemed to be included in the word "merit" which appeared in the replies given by the management. There was thus in our opinion no basis whatsoever for the tribunal to come to the conclusion that the promotions were mala fide.

9. Turning now to the question of victimisation, we have already said that there is no clear finding of the tribunal that there was victimisation. But it appears to be suggested in para. 53 of the award that the tribunal felt that there was victimisation. Of the six superseded employees we find that only one was an official of the union while the other five were merely members just like Manerikar. Dhume it appears was not a member of the union. But there was no evidence to show that there were any strained relations between the management and these six employees on account of their trade union activities. We have already said that five of them were ordinary members of the union like Manerikar and only one Balgi was an official of the union. But there is noting to show that because of that was any bed blood between Balgi and the management. We are therefore of the opinion that there is no evidence worth the name on which the tribunal could have come to the conclusion that these two promotions were as a result of victimisation of those who were superseded.

10. The management had stated in its reply that it had considered all the relevant factors and had also considered the cases of all senior employees due for promotion before promoting these two persons. We cannot see how the tribunal could come to the conclusion merely from the fact that there was some delay in giving the reply to the query as to the reasons that the management had not considered the relative merits of all

senior employees before making the promotion. We have no doubt that the finding of the tribunal that the relative merits were not considered or that there were mala fides or that there was victimisation are based on no evidence and must therefore be set aside. Once that conclusion is reached there was in our opinion no reason for the tribunal to interfere with the promotions made by the management.

11. We therefore allow the appeal, set aside the award of the tribunal and hold that the promotions of Y. S. Manerikar and P. D. Dhume were justified. No relief is therefore due to the other six employees. In the circumstances we pass no order as to costs.

12. Appeal allowed.