

## **Vinod Kumar Sangal vs Union Of India And Ors on 25 April, 1995**

**Equivalent citations: 1995 (4) SCC 246, 1996 AIR SCW 58, 1996 LAB. I. C. 760, 1995 SCC (L&S) 963, (1995) 3 SERV LJ 143, (1995) 30 ATC 262, (1995) 2 LAB LN 328, (1995) 3 SCT 694, (1995) 2 SCJ 272, (1995) 2 SERV LR 695, (1995) 3 SCR 734 (SC), (1997) 10 JT 514 (SC)**

**Author: S.C. Agrawal**

**Bench: S.C. Agrawal, S. Saghir Ahmad**

CASE NO.:

Appeal (civil) 4721 of 1995

PETITIONER:

VINOD KUMAR SANGAL

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 25/04/1995

BENCH:

S.C. AGRAWAL & S. SAGHIR AHMAD

JUDGMENT:

JUDGMENT 1995 (3) SCR 734 The Judgment of the Court was delivered by S.C. AGRAWAL, J. Leave granted. We have heard the appellant who is appearing in person and the learned counsel for the respondents.

The appellant joined the Geological Survey of India (for short 'GSI') as Drilling Assistant on July 12, 1965. The said post was re-designated as Junior Technical Assistant. As per recommendation of the Departmental Promotion Committee (for short 'the DPC'), by order dated November 12, 1978, he was promoted and posted as Senior Technical Assistant in the North Eastern Region at Shillong. The appellant requested for a posting in the Central Region at Nagpur itself but the said request was not accepted. The said promotion of the appellant was kept upon for the appellant to join at Shillong Office till February 22, 1980 on which date the said offer was cancelled by the competent authority. In August 1980 the appellant was granted ad hoc promotion to the post of Senior Technical Assistant and he was posted in the Central Region at Nagpur. He continued to hold the said post till the order dated February 18, 1985 whereby he was reverted to the post of Junior Technical Assistant with effect from February 28, 1985. The said order of reversion was passed on account of the appellant having not been selected for promotion on regular basis to the post of Senior Technical Assistant by the DPC which met in 1985. Feeling aggrieved by the said order of reversion the appellant filed a Writ Petition (Writ Petition No. 395 of 1985) in the High Court at Bombay, Nagpur

Bench. The said Writ Petition was transferred to the Central Administrative Tribunal, Bombay Bench (hereinafter referred to as 'the Tribunal') and it was registered as Transfer Petition No. 343 of 1987. Before the Tribunal the appellant submitted that according to the Rules the DPC should meet every year but in the present case the DPC did not meet during the period from 1979 to 1984 and, therefore, proceedings of the DPC which met in 1985 were liable to be quashed. The Tribunal, however, rejected the said contention and dismissed the said petition by judgment dated August 8, 1990. Feeling aggrieved by the said judgment of the Tribunal the appellant has filed this appeal.

The appellant has placed reliance on the Office Memorandum dated December 24, 1980 of the Government of India, Ministry of Home Affairs (Department of Personnel and Administrative Reforms) on the subject "Principles for promotion to 'Selection' posts" wherein it is stated that in a number of cases the meeting of the DPC are not held annually as required even though there were vacancies resulting in the bunching of vacancies which in turn enlarged the field of choice and upset the relative seniority positions in the higher grade on account of supersessions and after considering the various points which were raised by various Ministries/Departments the following instructions were issued:

"3. Zone of consideration for promotion to posts filled by Selection:

Reference is invited to the Ministry of Home Affairs (New Department of Personnel and A.R.) O.M. No. 1/4- 55/-RPS dated 13.5.1967 laying down certain principles for promotion. In the operation of these principles it has been observed that the absence of clearly defined limits on the context of the field of choice has led to lack of uniformity in the practices being followed by the DPCs. Similarly, it is felt that a large field of choice might result in excessive supersessions. Again, despite repeated instructions of the Government to hold DPCs annually there have been quite a few cases of delays resulting in vacancies being bunched. This would enlarge the field of choice and upset the relative seniority positions in the higher post with reference to the positions which would not have resulted had the DPCs met at the appropriate time. In view of these considerations it has been decided in consultation with the UPSC as under in supersession of this Department's O.M. No. 1/4/55-RPS dated 16.5.1957 and all other documents having any bearing on the matter herein dealt with.

(a) The Departmental Promotion Committee (DPC) shall for the purpose of determining the number of officers who should be considered from out of these eligible officers in the feeder grade(s) restrict the field of choice as under, with reference to the number of clear regular vacancies proposed to be filled in the year.

No. of Vacancies	No. of Officer to be considered.
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(1)

(2)

4 or more

Three times the number of vacancies

(b) Where, however, the number of eligible officers in the feeder grade(s) is less than the number of Col.(2) above, all the officers so eligible should be considered.

(c) Where adequate number of SC/ST candidates are not available within the normal field of choice as above, the field of choice may be extended to 5 times the number.

4. Preparation of year wise panels by DPC where they have not met for a number of years.

Instructions already exist that DPCs should meet at regular annual intervals for the preparation of select list and where no such meeting is held in any year, the appointing authority should record a certificate that there were no vacancies to be filled during the year. Administrative Ministries should obtain periodical information/certificates on the regular holding of DPCs.

(b) Where, however, for reasons beyond control, DPC could not be held in any year(s) even though the vacancies arise during that year (or years), the first DPC that meets thereafter should follow the following procedure:

(i) Determine the actual number of regular vacancies that arose in each of the previous year/years immediately and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Selection list' for each of the years starting with the earliest year onwards.

(iv) Prepare a consolidated 'Select list' by placing the select list of the earlier year above the one for the next and so on."

The submission of the appellant is that apart from the fact that no DPC was held during the year 1979 to 1984, the DPC which met in 1985 did not make the selection according to the vacancies which occurred in each year during the period 1979 to 1985 and it bunched together all the vacancies that occurred during the years 1979 to 1985 and made the selection for all those vacancies which resulted in enlarging the field of choice and thereby prejudicially affecting the chances of selection of the appellant. On behalf of the respondents it has been submitted that GSI actively considered the regionalisation of the Department in view of the all India character of the Department and that the question of allocation of posts of different categories to the different appointing authorities under each Region was under process and hence no promotion could be proposed or effected but, as a matter of nature of work and in public interest, ad hoc appointments were made in various cadres according to the requirement as per local seniority and accordingly the appellant was also given ad

hoc promotion to the post of Senior Technical Assistant (Drilling) in August 1980 and that such ad hoc appointments were cancelled in 1985 when the Department could arrive at actual regular vacancies in the Department after reorganisation and regular selection was made by the DPC for the vacancies. In the counter affidavit of Anil Joshi filed on behalf of the respondent it is stated that out of 86 posts of Senior Technical Assistant which were available in the Central Region of GSI, 6 posts occurred in the Central Region Office as per letter dated December 22, 1984 of the head Office of GSI and that out of those 6 posts one post was reserved for SC/ST candidate and as per the Recruitment Rules in force the post of Senior Technical Assistant (Drilling) is to be filled in the ratio of 20% by direct recruitment and 80% by promotion from the grade of Junior Technical Assistant (Drilling) with 5 years regular service in the grade and that the name of the appellant at serial no. 1 along with other candidates was placed before the DPC which was constituted by letter dated January 8, 1985.

In view of the aforesaid explanation that has been offered by the respondents for non-holding of the DPC during the period the reorganisation of the Department was under process may be justified. But when the DPC met in 1985 was it not required to make the selections on yearly basis for the vacancies of each particular year? The Office Memorandum dated December 24, 1980 clearly postulates that where the DPC is unable to meet on regular intervals for reasons beyond control the first DPC that meets thereafter shall determine the actual number of regular vacancies that arose in each of the previous year/years and the actual number of regular vacancies proposed to be filled in the current year separately and consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards and prepare a selection list for each of the years starting with the earliest year onwards and on that basis prepare a consolidated select list. From the affidavit of A.K. Bhandari, Director, GSI dated March 23, 1995, filed on behalf of the respondents, it appears that one regular vacancy occurred in the year 1980 which was filled by ad hoc appointment of the appellant and the next single vacancy occurred in 1982 which was also filled up on ad hoc basis and that three vacancies occurred in the year 1983 which were also filled up on ad hoc basis. It has also been stated in the said affidavit that on December 22, 1984 the Central Region got allotment of seven vacancies of Senior Technical Assistant (Drilling) - 6 promotion and one direct recruit - on account of regionalisation of Group 'C' cadre and that for making selection for 6 posts to be filled by promotion the DPC met on January 15, 1985 and made selection for all 6 promotional vacancies.

It is not the case of the respondents that the DPC made separate selection for the vacancies for the years 1980, 1982 and 1983 and the DPC appears to have bunched together all the vacancies for the years 1980 to 1985 and has made one selection for the 6 promotional vacancies and this has resulted in enlargement of the field of choice for the purpose of selection. The grievance of the appellant is that this mode of selection in disregard of the instructions contained in the Office Memorandum dated December 24, 1980 operated to his prejudice appears to be justified because if separate selection had been made for the vacancies which occurred in the years 1980, 1982 and 1983 the field of choice would have been much more restricted and the appellant would have had better chances of being selected.

The 6 persons who were selected by the DPC in 1985 for promotion to the post of Senior Technical Assistant (Drilling) are not parties in these proceedings. Their selection cannot, therefore, be disturbed. Therefore, without disturbing the selection of the 6 officers who were selected by the DPC in 1985 for the post of Senior Technical Assistant (Drilling), the respondents are directed to convene a DPC for considering the appellant for selection for promotion to the post of Senior Technical Assistant (Drilling) against the vacancies which occurred in the years 1980, 1982 and 1983. The said DPC shall consider the appellant for such selection for the vacancies for each of these years separately as per the Office Memorandum dated December 24, 1980. In case the appellant is selected for such promotion against any of these vacancies, the reversion of the appellant made by order dated February 18, 1985 would stand revoked and he would be regularly promoted on the post of Senior Technical Assistant (Drilling) with all consequential benefits with effect from the date when 6 persons who were selected by the DPC in 1985 were so promoted on the post of Senior Technical Assistant (Drilling). In case the appellant is not selected by the DPC for any of the vacancies, his reversion under order dated February 18, 1985 would remain undisturbed. The DPC should be convened within a period of four months.

The appeal is disposed of accordingly. The appellant would be entitled to his costs. The said costs are fixed at Rs. 5000.

Appeal allowed.