

Supreme Court of India

Union Of India (Uoi) And Ors. vs Purnendu Mukhopadhyay And Ors. on 5 August, 1993

Equivalent citations: (1994) 1 CALLT 15 SC, JT 1993 (4) SC 455, 1993 LabIC 2171, (1994) ILLJ 127 SC, 1993 (3) SCALE 348, 1993 Supp (3) SCC 659, 1993 Supp 1 SCR 496, 1993 (3) SLJ 94 SC

Author: R Sahai

Bench: S Agrawal, R Sahai

JUDGMENT R.M. Sahai, J.

1. In this appeal directed against the judgment and order of the Central Administrative Tribunal, Calcutta Bench hereinafter referred to as 'CAT' the short question that arises for consideration is if the tribunal committed any error of law in directing the appellants to re-fix the notional seniority of Supervisors Grade 'A' in ordinance factories, 'and fix their pay-scale and all benefits attached thereto as per rule on the basis that all the applicants came out successful in the selection tests for promotion to the post of Chargeman Grade II from their respective dates of examination'.

2. In 1950 the Union of India, in the Ministry of Defence, introduced Apprenticeship Training Scheme for supervisory posts, in Ordinance Factories for efficient working and better supervision. After completion of successful apprenticeship the trainees were offered post-training employment by the Director General (D.G) to various posts including the posts of Supervisor Grade 'A' and Chargeman Grade II on gradation secured by them in the examination conducted by the Central Selection Board. In November 1965 the D.G. suggested that in border line cases of apprentices graded as Supervisor Grade 'A' it would be fair to give them another chance to appear within six months in the next examination for grading as Chargeman Grade II since they might have been graded as Supervisor Grade 'A' due to slightly different standards of marking. The suggestion materialised in 1967 and the scheme was amended as under:

The Supervisory Apprentices who secure 5% marks less in the aggregate than prescribed by the Central Selection Board for gradation as Chargeman Grade II in a particular gradation examination will be graded as Supervisor Grade A/or equivalent but will be allowed to take another chance at the next gradation examination and on the basis of their performance may be graded by the D.G.O.F. as fit for appointment as Chargeman Grade II and appointment as such with effect from a date after they are so graded in the subsequent gradation examination.

This will have retrospective effect to cover the past cases in which the DGOF has already allowed the Supervisory Apprentices another chance to appear in the gradation examination.

3. Although formal instructions were issued in 1967 the D.G. permitted some of the apprentices graded as Supervisor Grade 'A' in the examination conducted in 1965 to appear in the next examination in 1966, in which many succeeded and were appointed as Chargeman Grade II. Some of the Supervisors Grade 'A' who were working from before and satisfied the eligibility criteria and others who were denied similar opportunity even though they had secured 5% less in the aggregate approached this Court by way of writ petition and claimed that they too should have been given another opportunity to improve their gradation as was done in case of others. When the petitions came up for hearing this Court permitted them to be withdrawn and they approached the High

Court of Delhi by way of writ petition under Article 226 of the Constitution. The High Court held that the action of the appellant in denying similar opportunity to Supervisor Grade 'A' who had appeared in the examination prior to 1965 or even thereafter and were in the field of eligibility as provided by the modified scheme was discriminatory and violative of equal guarantee under Article 16(1) of the Constitution. It consequently issued following directions :

The Government is granted liberty to consider the dispute afresh. In case the Government is not able to arrive at a reasonable workable solution acceptable to the petitioners within six months from today, I am inclined to issue a writ of mandamus and hereby issue directing the respondents 1 to 6 to give another chance to the ex-Supervisory apprentices i.e. such of the petitioners who secured 5% less marks in the aggregate than prescribed by the Central Selection Board for gradation as Chargeman Grade II in a particular examination and who have been graded as Supervisor Grade 'A' or its equivalent, to appear at a gradation examination specially constituted for this purpose, Petitioners 33, 34, 37, 38 and 40 who were given an opportunity vide letter dated 26th November 1971 but did not appear in the next gradation examination held in December 1971 will also be afforded an opportunity to appear in the gradation examination specially held for this purpose. Reasonable time will be given to the eligible persons to appear in the gradation examination and the syllabus will also be settled and communicated within a reasonable time. Such of the petitioners who are found fit for appointment as Chargeman Grade II would be appointed notionally with effect from date six months later than the date of their original gradation. In other words, the appointments will take effect prospectively, but notional seniority will be allowed to them with effect from the date six months later than the date of original gradation. There will be no retrospective financial obligations on the Government.

4. It is not disputed that the first alternative given to Government by the High Court was not carried out and no workable solution was arrived therefore the only way to comply with the order of the High Court was to hold an examination for all those supervisors who were working in Grade 'A' and were in the field of eligibility. Unfortunately, however, no examination was held and the respondents who had succeeded before the Delhi High Court approached the Calcutta High Court for a direction to the appellant to grant them the same benefit and determine their seniority as Chargeman Grade II six months from the date of the examination. The petition was transferred to the Central Administrative Tribunal which decided the same on 9th July 1990. Before the Tribunal it was conceded that Supervisor Grade 'A' post was abolished as far back as 1980 and therefore there was no question of holding the examination as directed by the Delhi High Court. It was also admitted that all those who were petitioners before the Tribunal had been confirmed in their respective higher posts. The only ground on which the petition was contested was that it was filed after a lapse of long time. The Tribunal, however, did not agree with it and held that the appellant in not calling the petitioners for appearing in the examination acted discriminately and since it was conceded that it was not possible to hold the examination a direction was issued to the authorities to re-fix the notional seniority of the applicants and fix their pay scale and all benefits attached thereto as per rule on the basis that all the applicants came out successful in the selection tests for the post of Chargeman Grade II. It is against this order that the appeal was filed and an interim order was also obtained.

5. Having heard the learned Counsel for appellant we must confess our inability to appreciate the attitude of the Union of India for approaching this Court by way of Special Leave Petition and delay the matters by another three years. Once it was admitted that no examination could be held and further that all those persons who were working as Supervisor Grade 'A' have become Chargeman Grade II where was the difficulty in determining the notional seniority of these persons in accordance with the directions issued by the High Court. Needless to say that despite appointment of every Supervisor Grade 'A' Chargeman Grade II the discrimination which occurred due to enforcement of the modified scheme since 1965 permitting only few Supervisors Grade 'A' to appear in the next examination persisted so far those Supervisor Grade 'A' were concerned who were appointed prior to coming into force of this scheme and were denied similar opportunity even though they came in field of eligibility. The injustice arose as if the policy of permitting Supervisors Grade 'A' to improve their grade would not have been introduced then the seniority amongst the Supervisors would have remained the same and those appointed in one year would have remained senior to those appointed in latter year. It is not the appointment of petitioners as Chargeman Grade II from 1980 but also the determination of their seniority which was material as it is admitted that the higher posts are available for promotion on the basis of seniority-cum-merit. The question of seniority therefore was of utmost importance and unless there was some such difficulty which could not be resolved the appellant should have taken care to see that the order of the High Court was complied. In any case the Tribunal in directing the respondents to be granted notional appointment as Chargeman Grade B from the date of their first examination, in the peculiar circumstances of the case, does not appear to have committed any error of law. In our opinion this was the only possible manner in which the injustice could have been remedied.

6. In the result this appeal fails and is dismissed with costs. It is, however, clarified that the placement of all those Supervisors Grade 'A' who came in the field of eligibility namely of securing 5% less marks in aggregate fixed for selection as Chargeman Grade II, should be fixed by directing that they were selected for that post six months from the date of their gradation examinations.