

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Nand Lal Jangid v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.3520/1995
under Article 226 of the
Constitution of India.

Date of Order : 29th July, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Nand Lal Jangid, petitioner in person.
Mr. Sangeet Lodha, for the respondents.

BY THE COURT :

By this petition for writ the petitioner has
claimed relief against the respondents in following
terms:-

“(i)sub-rule(11-A) of Rule 18 of the Rules
of 1971 may kindly be struck down;

(ii)a positive direction/mandate be issued
to the respondents to provide entire
monetary benefits to the petitioner with
effect from a date on which he was promoted
as A.C.T.O, C.T.O, C.T.O. (Sr.Scale) and
Dy.Commissioner (Selection Scale);

(iii)the monetary benefits arising therefrom
be ordered to be paid to the petitioner

alongwith the interest @ 18% P.A. The respondents be further directed to compute the pensionary benefits while treating his qualifying service commencing from 1.4.1958 and to redetermine the monetary benefits as if the petitioner has served the Department for 35 years and 10 months; the difference of pensionary benefits resulting from the aforesaid reliefs be ordered to be paid to him alongwith interest @ 18% P.A.

(iv)any other appropriate relief(s) which this Hon'ble High Court deems just and proper in the facts and circumstances of the case be passed in favour of the petitioner;

(v)writ petition of the petitioner may kindly be allowed with costs."

The facts giving rise to present petition are that the petitioner entered in the services of State of Rajasthan being appointed as Inspector in the Department of Commercial Taxes on 19.10.1964. There were certain disputes with regard to determination of seniority of Inspectors in the Department of Commercial Taxes, therefore, number of writ petitions were filed before this Court by the persons similarly situated to the petitioner for determination of their seniority from the date of their initial appointment. The writ petitions filed by the persons similarly situated to the petitioner were accepted by this Court by judgment dated 22.8.1990. The petitioner after disposal of those writ petitions also approached this

Court by way of filing a writ petition which came to be decided on 11.10.1993. This Court while disposing of the writ petition preferred by the petitioner observed and directed the respondents as under:-

“In view of the decision referred hereinabove this writ petition is disposed of with the direction that the petitioner should approach the Departmental authorities by making a representation for grant of similar relief. If such representation is made by the petitioner, the Departmental Authorities should give relief to the petitioner by way of confirmation as Commercial Taxes Inspector and promotion as Assistant Commercial Taxes Officer as have been given to other persons on the basis of directions given by this Court. It is expected that such order will be issued within three months of the date of submission of copy of this order.”

In view of the directions given by this Court the petitioner submitted a representation to the respondents and the respondents allowed the relief as allowed to other similarly situated persons to the petitioner also. The petitioner, therefore, was confirmed as Inspector Gr.II w.e.f. 1.9.1967 by an order dated 6.4.1994 and was by an order dated 6.5.1994 promoted to the post of Assistant Commercial Officer on urgent temporary basis w.e.f. 27.12.1967. By order dated 6.5.1994 though the petitioner was promoted w.e.f. 27.12.1967 but actual payment of pay pertaining to promotional post was not made to him. By

an another order dated 18.7.1994 regular promotion was given to the petitioner to the post of Assistant Commercial Taxes Officer against the vacancies of 1982-83 as a consequence of recommendations made by a competent departmental promotion committee constituted under the Rajasthan Commercial Taxes Service Rules, 1971 (hereinafter referred to as "the Rules of 1971"). The order dated 18.7.1994 too was passed in compliance of the directions given by this Court by judgment dated 11.10.1993. Promotion was given to the petitioner under an order dated 18.7.1994 against the vacancies of the year 1988-89 for the post of Commercial Taxes Officer (Jr.Scale). The promotion to the post of Commercial Taxes Officer (Jr.Scale) was given to the petitioner after his retirement as the petitioner stood retired from services on achieving the age of superannuation on 31.1.1994.

Prior to disposal of writ petition (SBCWP No.5509/93, decided on 11.10.1993) preferred by the petitioner an order dated 4.6.1993 was passed by respondent State giving promotion to one Shri Narendra Singh Bordia as Dy.Commissioner (Selection Scale) Commercial Taxes as a consequence of recommendation made by a competent departmental promotion committee constituted under the Rules of 1971. Though the promotion to Shri Narendra Singh Bordia was given on regular basis but in view of directions given by this Court in SBCWP Nos.2632/93, 331/85 and 178/84 the

recommendations made by the departmental promotion committee as a consequence of which promotion was given to Shri Narendra Singh Bordia were reviewed and by an order dated 16.7.1994 Shri Shivram Shivir and Shri P.C.Jain were promoted as Dy.Commissioner (Selection Scale) against the vacancies of the year 1993-94. Shri Narendra Singh Bordia was promoted to the post of Dy.Commissioner (Selection Scale) under review and revision. Subsequently, Shri Bordia was promoted on regular basis as Dy.Commissioner (Commercial Taxes) against the vacancies of the year 1994-95.

This petition is preferred to claim actual payment of pay pertaining to the post on which the petitioner was promoted by the respondents with retrospective effect by various orders referred above.

It is contended by the petitioner that promotion was denied to him for no just and valid reasons by the respondents and, therefore, for the fault of the respondents he cannot be put to loss of his property i.e. the pay pertaining to the promotional post. The petitioner has also given challenge to the provisions of sub-rule(11-A) of Rule 18 of the Rules of 1971 which reads as under:-

“18(11-A).-If in any subsequent year, after promulgation of these Rules, vacancies

relating to any earlier year are determined under sub-rule(2) of rule relating to determination of vacancies which were required to be filled by promotion, the Departmental Promotion Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relate irrespective of the year in which the meeting of the Departmental Promotion Committee is held and such promotions shall be governed by the criteria and procedure for promotion as was applicable in the particular year to which the vacancies relate, and the service/experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted, shall be counted. The pay of a person who has been so promoted shall be re-fixed at the pay which he would have derived at the time of his promotion but no arrears of pay shall be allowed to him."

According to sub-rule(11-A) of Rule 18 of the Rules of 1971 a person promoted to higher post for any period during which he has not actually performed the duties of the post to which he would have been promoted shall be counted for determination of seniority and such person shall be re-fixed at the pay which he would have derived at the time of his promotion but no arrears of pay shall be allowed to him.

The contention of the petitioner is that the provision is in violation of Article 300-A of the Constitution of India which extends a constitutional right that no citizen shall be deprived of his property without any authority of law.

I have considered the contention raised by the petitioner and found the same absolutely misconceived. The arrears were denied to the petitioner in pursuance of the provisions of sub-rule (11-A) of Rule 18 of the Rules of 1971, therefore, the same was having an authority of law. The validity of provisions of sub-rule(11-A) of Rule 18 of the Rules of 1971 by no stretch of imagination can be challenged being in violation of provisions of Article 300-A of the Constitution of India.

No other contention has been made by the petitioner to support the contention that the provisions of sub-rule(11-A) of Rule 18 of the Rules of 1971 are bad. In view of it the decision of the respondents not to make payment of arrears to the petitioner for the period he has not worked on the promoted post is valid.

The petitioner though has not challenged in the writ petition promotion given to Shri Narendra Singh Bordia, however, he has strenuously urged that the promotion was wrongly accorded to Shri Narendra

Singh Bordia as Dy.Commissioner as he was junior to him. I am dealing with this contention as the petitioner himself is appearing before the Court and he appears to be deeply aggrieved with the promotion given to Shri Narendra Singh Bordia as Dy.Commissioner and sufficient reply is given by the respondents to this effect.

It is contended by the petitioner that promotion was given to Shri Narendra Singh Bordia on 4.6.1993 as a consequence of recommendation made by the departmental promotion committee. On that day the petitioner was in service and his candidature should have been considered by the respondents for promotion as Dy.Commissioner Commercial Taxes.

It appears that the petitioner while giving challenge to the order dated 4.6.1993 has over looked the order dated 16.7.1994 whereby promotion was given to Shri Shivram Shivir and Shri P.C.Jain as Dy.Commissioner (Selection Scale) against the vacancies of the year 1993-94 and Shri Narendra Singh Bordia was allowed to continue as Dy.Commissioner (Selection Scale) merely under review and revision. On 16.7.1994 it was not possible to promote the petitioner even under review and revision as he stood retired from service on 31.1.1994. The petitioner also appears to have over looked the fact that the right accrued in his favour to be considered for promotion

only after disposal of representation submitted by him in pursuance of the judgment dated 11.10.1993. The respondents decided the representations submitted by the petitioner in the month of April, 1994. In view of it even at the time of issuance of the order dated 4.6.1993 whereby Shri Narendra Singh Bordia was promoted as Dy.Commissioner Commercial Taxes there was no occasion for the respondents to consider the candidature of the petitioner.

In view of whatever discussed above, I do not find any merit in the writ petition. The same, therefore, is dismissed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps .