



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 10718/2015

Dr. Mukesh Sharma

----Petitioner

Versus

State of Rajasthan through Principal Secretary, Department Of
Medical Education, Government Of Rajasthan, Secretariat, Jaipur.

----Non-petitioner



For Petitioner(s) : Ms. Anita Agarwal
For Respondent(s) : Dr. Vibhuti Bhushan Sharma, learned
AAG with Ms. Malti & Ms. Kratima
Divakar

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved on :: **January 19, 2024**
Pronounced on :: **February 28, 2024**

1. The factual matrix of the case is that the petitioner was appointed as Assistant Professor (Lecturer) Ophthalmology vide order dated 22.01.1998 after due process of regular selection and the recommendations made by the Rajasthan Public Service Commission (for short 'the RPSC'). In pursuance to the appointment order, the petitioner joined the duty on 14.02.1998.

The petitioner was extended the benefit of first career progression on completion of ten years of service as an Assistant Professor w.e.f. 14.02.2008.

Vide order dated 29.10.2009, the petitioner was accorded promotion to the post of Associate Professor and joined on the said post on the very same day.



On a request made by the petitioner for voluntary retirement under Rule 50(1) of the Rajasthan Civil Service (Pension) Rules 1996 (for short 'the Rules of 1996'), the same was accepted by the respondent and the petitioner was voluntarily retired from the service vide order dated 30.10.2013 w.e.f. 01.11.2013.

2. During the period when the petitioner was in service of the respondent, a Notification dated 06.01.2012 was issued by the Government of Rajasthan, Department of Personnel, whereby new provisions i.e. Rules 24B and 24BB were added in the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (for short 'the Rules of 1962').

3. As per the newly added provisions, the Associate Professor was made eligible and entitled for promotion as Professor on completion of four years of regular service as an Associate Professor as given in the table incorporated in Rule 24B of the Rules of 1962.

4. After inserting the new provisions i.e. Rules 24B and 24BB in the Rules of 1962, the respondent has issued an order dated 14.06.2013 whereby certain Associate Professors were promoted to the posts of Professors in view of the provisions of Rule 24B of the Rules of 1962 and on the basis of recommendations of the Selection Committee constituted under sub-Rule 5 of Rule 24BB of the Rules of 1962.

5. Ms. Anita Aggarwal, counsel appearing for the petitioner submitted that the petitioner was promoted to the post of Associate Professor vide order dated 29.10.2009 and on completion of four years of service as an Associate Professor, he is



entitled for promotion to the post of Professor in view of newly added provisions of Rule 24B with Rule 24BB of the Rules of 1962. Counsel further submitted that the respondent has allowed promotions to other persons including one Dr. Nagendra Singh Shekhawat on completion of his four years service as an Associate Professor vide order dated 14.06.2013. The action of the respondent in not allowing the promotion to the petitioner on the post of Professor on completion of his four years service as an Associate Professor is contrary to the Rules as well as violative of Article 14 of the Constitution of India.

6. Counsel appearing for the petitioner also submitted that in view of sub-rule 4 of Rule 24BB of the Rules of 1962, if there is no vacancy for granting DACP available, the post held by the candidate shall be converted on the post on which the candidate is to be promoted till he/she will hold that post. Counsel further submitted that in view of the aforesaid provision even in case there is no vacancy available, the petitioner was entitled for promotion on completion of four years of service as an Associate Professor by converting the post being hold by the petitioner into the post on which he is to be promoted.

7. Dr. V.B. Sharma learned AAG assisted by Ms. Malti and Ms. Kratima Divakar- AGCs submitted that as per the provisions of the Rule 24BB of the Rules of 1962, the respondent shall have to prepare a list of the members of the service who are eligible for DACP in the year on 1st April of every year. He further submitted that in view of the said provision, the eligibility of a person for promotion to the higher post is to be taken into consideration as on 1st April of the year in which the promotion is to be made on



the basis of his/her qualification and experience. He further submitted that since the petitioner was promoted to the post of Associate Professor on 29.10.2009, the petitioner has completed experience of four years as an Associate Professor on 28.10.2013 and was entitled for promotion to the post of Professor on 01.04.2014 but since the petitioner sought voluntary retirement which was accepted w.e.f. 01.11.2013, in such circumstances the claim of the petitioner for promotion to the post of Professor is not tenable.

8. Considered the submissions advanced by both the counsels appearing for the respective parties and gone through the entire material made available to the Court.

9. The facts stated above are not disputed from any of the sides. The petitioner was appointed as Assistant Professor (Lecturer) Ophthalmology vide order dated 22.01.1998 and was promoted to the post of Associate Professor vide order dated 29.10.2009 and joined the duties on the very same day. The petitioner was voluntarily retired from the service under the provisions of Rule 50 (1) of the Rules of 1996 w.e.f. 01.11.2013.

10. As per the Notification dated 06.01.2012, whereby a new provision '24B' was inserted in the Rules of 1962, which provides for promotion under Dynamic Assured Career Progression (for short 'DACP') Scheme. Rule 24B of the Rules of 1962 is quoted as under:-

"24B. Promotion under Dynamic Assured Career Progression (DACP) Scheme.- (1) Notwithstanding anything contained in rule 25 and subject to the provisions of rule 24BB, members of the service shall be granted promotions under Dynamic Assured



Career Progression Scheme, herein after referred to as the DACP Scheme, as under:-



S.No.	Promotion under DACP Scheme		Number of years of regular service required for promotion
	From	To	
1.	Assistant Professor	Associate Professor	By promotion from amongst substantively appointed Assistant Professor of the concerned specialities who have completed 6 years regular service from the date of joining on appointment to the said post.
2.	Associate Professor	Professor	By promotion from Associate Professor of the concerned specialities who have completed 4 years regular service on the said post.
3.	Professor	Senior Professor	By promotion from Professor of the concerned specialities who have completed 4 years regular service on the said post.

Note.- 1. Associate Professor who has completed 14 years of service including four years as Associate Professor as on 01.04. 2011 and promoted as Professor under DACP Scheme from 01.04.2011 shall be granted grade pay of Rs. 10,000/- as Senior Professor on completing two years of service as Professor i.e. with effect from 01.04.2013.

2. Professor regularly promoted before 01.04.2011 and who has completed total service of 14 years as on 01.04.2011 but has not completed two years of service as Professor as on 01.04.2011 shall also be granted grade pay of Rs. 10,000/-as Senior Professor with effect from 01.04.2013.

(2) The promotion under DACP Scheme shall be made whether vacancy is available or not.

(3) For the purpose of this rule, regular service means and includes service by a government servant on the appointment after regular selection in accordance with the provisions contained in the relevant recruitment rules for that post. The period of service rendered on adhoc basis/ urgent temporary basis shall not be counted as the regular service. In other words, the period of service



which is countable for seniority shall only be counted as regular service.

- (4) *After 01-04-2011 the members of the service who are entitled for benefit of DACP Scheme shall not be eligible to take benefit of the rule 24 and 24A of these rules."*



In view of aforementioned provision, an Associate Professor, who has completed four years regular service, becomes entitled for promotion to the post of Professor. The petitioner was promoted to the post of Associate Professor on 29.10.2009 and joined the said post on the very same day. In view of the fact that the petitioner joined on the post of Associate Professor on 29.10.2009 and voluntarily retired from service w.e.f. 01.11.2013 and he completed four years service as an Associate Professor prior to his voluntarily retirement. Thus, the petitioner becomes entitled for promotion to the post of Professor in view of the period of experience.

11. The objection which has been raised by the counsel appearing for the respondent State is that the eligibility of an Associate Professor for promotion to the post of Professor is to be looked into as on 1st April of the year in which the promotion is to be made as provided under Rule 24BB (1) of the Rules of 1962. It is not the case of the respondent that no post is lying vacant. However in view of the provisions of Sub-rule 4 of Rule 24BB of the Rules of 1962, if there is no vacancy for granting DACP available, the post held by the candidate shall be converted into the post on which the candidate is to be promoted till he/she will hold that post. Meaning-therby, the availability of a vacancy is



not the issue for grant of promotion to the petitioner on the post of Professor under the DACP Scheme. As per the facts and documents available on the record, one Dr. Nagendra Singh Shekhawat was promoted from the post of Assistant Professor to the post of Associate Professor vide order dated 02.07.2008 against the vacancies of the year 2008-09. Dr. Nagendra Singh Shekhawat has thereafter been promoted to the post of Professor vide order dated 14.06.2013 on the recommendations of the Screening Committee constituted under the provisions of Rule 24BB of the Rules of 1962 w.e.f. 11.07.2012. In view of the facts so stated, Dr. Nagendra Singh Shekhawat also was not having four years working service experience on the post of Associate Professor as on 01.04.2012, however he has been allowed promotion which might be in view of the power of the State Government relaxing the Rules.

12. Since Dr. Nagendra Singh Shekhawat has been accorded promotion on completion of four years service as an Associate Professor vide order dated 14.06.2013 w.e.f. 11.07.2012 i.e. in the mid of the year, the petitioner is also claiming the same benefits on the ground of parity.

13. The Hon'ble Apex Court in the case of ***Union of India and Ors. Vs. Munshi Ram (in Civil Appeal No. 2811/2022)***, decided on 31.10.2022 has observed as under:-

"7. It cannot be disputed that employees working in different divisions/zones in the Railways are under the very same employer – Railway Board which is under the Ministry of Railways. There are 16 Zones and 68 Divisions in the Railways.



Therefore, the employees working under the same employer - Railway Board working in different Zones/Divisions are required to be treated similarly and equally and are entitled to similar benefits and are entitled to the same treatment. As rightly submitted on behalf of the respondents, there cannot be any discrimination inter se. Under the circumstances, on the ground of parity, the Commission Vendors/bearers working in the Northern Railway are entitled to the same benefits which are held to be entitled to all the similarly situated Commission Vendors/Bearers working under different Zones/Divisions. There cannot be different criteria/parameters with respect to similarly situated employees - Commission Vendors/bearers working in different Zones/Divisions, but working under the same employer.

8. The Railways/UOI/Railway Board cannot be permitted to repeat the same arguments which were raised before different Tribunals, High Courts and also before this Court. Under the circumstances, the respondents - Commission Vendors/bearers working in the Northern Railway shall also be entitled to the same benefits which the other Commission Vendors/bearers working in different Zones/Divisions are held to be entitled to. There cannot be discrimination among the similarly situated Commission Vendors/bearers. To deny similar benefits would tantamount to discrimination and in violation of [Articles 14](#) and [16](#) of the Constitution of India.



9. Now so far as the submission on behalf of the appellants - UOI/Railways that there shall be huge financial burden on the Railways is concerned, it is required to be noted that the issue is with respect to pensionary benefits. Once it is found that the respondents - Commission Vendors/bearers working in the Northern Railway are also entitled to similar benefits which are given to the similarly situated Commission Vendors/bearers working in different zones/divisions and since they are already being paid the pensionary benefits by counting the benefit of 50% of their services rendered prior to their regularization, there is no reason to deny the similar benefits to the respondents - Commission Vendors/bearers working in the Northern Railway being similarly situated.

10. Even the concept of negative equality submitted on behalf of the appellants also shall not be applicable in the facts and circumstances of the case, more particularly when the decisions of different High Courts which are held against the appellants have been confirmed by this Court and the special leave petitions have been dismissed on the ground of delay as well as on merits.

11. In view of the above and for the reasons stated above and even applying the doctrine of stare decisis, on the aforesaid ground alone, the present appeals deserve to be dismissed and are accordingly dismissed, by holding that the respondents - Commission Vendors/bearers working in the Northern Railway are entitled to have 50% of their services rendered prior to their regularization to be counted for pensionary benefits



like other office bearers/Vendors working under the Railway Board, working in different zones/divisions, namely, Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway.”



14. In view of the law of parity and the facts regarding to the working experience on the post of Associate Professor of the petitioner as well as Dr. Nagendra Singh Shekhawat, are similar, the petitioner is entitled for the same benefits as have been extended to Dr. Nagendra Singh Shekhawat.

15. The arguments as advanced by the counsel appearing for the respondent State is that the petitioner was not having the required working experience of four years on the post of Associate Professor as on 01.04.2013, and therefore, he was not entitled for promotion to the post of Professor under the DACP Scheme.

In similar situations, the respondent has accorded promotion to Dr. Nagendra Singh Shekhawat on the post of Professor vide order dated 14.06.2013 w.e.f. 11.07.2012 without he having four years' experience on 01.04.2012.

16. Rule 35 of the Rules of 1962 provides for power to relax the Rules, which is quoted as under:-

"35. Power to relax rules.- *In exceptional cases where the Administrative Department of the Government is satisfied that operation of the rules relating to age or regarding requirement of experience for recruitment causes undue hardship in any particular case or where the Government is of the opinion that it is necessary or expedient to relax any of the provisions of these rules with respect to age or experience of any person, it may with the concurrence of the Department*



of personnel and Administrative Reforms and in consultation with the Commission by order dispense with or relax the relevant provisions of these rules to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that such relaxation shall not be less favourable than the provisions already contained in these rules. Such cases of relaxation shall be referred to the Rajasthan Public Service Commission by Administrative Department Concerned.

Provided that relaxation in the prescribed period of service or experience under this rule shall only be granted to the extent of 1/3 period of the service or experience prescribed for promotion to any post before holding the meeting of the Departmental Promotion Committee.

Provided further that where the prescribed period of experience for promotion to any post is less than 6 years, a committee headed by the chief Secretary comprising of Principal Secretary Finance, Principal Secretary/Secretary Department of Personnel and Principal Secretary/Secretary of the Administrative Department, may consider the cases where forty five percent or more posts are vacant. The committee is empowered to suggest the quantum of relaxation in experience which may be granted in such cases to address the issue of large number of vacancies in promotional posts subject to condition that such relaxation in experience shall not be more than two years."

17. Since Dr. Nagendra Singh Shekhawat has also been accorded promotion on the post of Professor as soon as he



completed four years experience on the post of Associate Professor under the DACP Scheme, the petitioner also became entitled for the same benefit of promotion to the post of Professor as soon as he completes the four years experience on the post of Associate Professor i.e. on 28.10.2013. It is not the case of the respondent that the case of Dr. Nagendra Singh Shekhawat is different than the case of the petitioner.



18. It is a legitimate expectation of an employee that whatever the benefits are being extended to an employee who is similarly situated to him/her, the same benefits be also allowed to him/her. The respondent has no authority to make a discrimination among the similarly situated employees for no good reason. Sometimes the promotions are accorded to the employees after providing relaxation in the prescribed period of experience to the 1/3rd period of service or experience prescribed for promotion to any post as reflected from the contents of Rule 35 of the Rules of 1962. In case the respondent has provided promotion to Dr. Nagendra Singh Shekhawat, may be by allowing relaxation to him in the experience and Dr. Nagendra Singh Shekhawat was allowed promotion on the post of Professor as soon as he completed four years working experience on the post of Associate Professor. In order to maintain the parity and to fulfill the legitimate expectation of an employee, the respondent authority is bound to extend the same benefits to the petitioner as soon as he completes four years experience on the post of Associate Professor. The promotion of the petitioner as well as Dr. Nagendra Singh Shekhawat to the post of Professor may be treated to be



given after relaxation to them under the provisions of Rule 35 of the Rules of 1962.

19. In view of the discussions made above, the writ petition deserves to be allowed and is accordingly allowed.

20. The respondent authority is directed to allow the promotion to the petitioner on the post of Professor under the DACP Scheme from the date he completes four years' experience on the post of Associate Professor i.e. from 28.10.2013. The petitioner would be entitled for all consequential benefits including pay and retiral benefits.

21. The order in regard to grant of promotion, pay and retiral benefits- qua the petitioner, as observed above, be passed within a period of two months from the date of this order.

22. Pending applications, if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Deputy Registrar

