

(2010) 07 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 4097 of 2010

Amrish G. Parekh

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : (2010) 07 GUJ CK 0069

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : I.S. Supehia, for the Appellant; Nikunt K. Raval, Asstt. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—Rule. Learned A.G.P., Mr. Raval, waives service of notice of rule for the respondents.

2. The petitioner came to be appointed as a Clerk in the Office of Superintendent of Stamps on 25.10.1993 and at present he is working in the office of Deputy Collector, Stamp Duty Valuation, Bhavnagar. It appears that his Annual Confidential Report ["ACR" for short] for the years 2006-2007 and 2007-2008 carried adverse remarks made by the Reviewing Authority, which ultimately resulted into his supersession for promotion to the post of Inspector of Stamps when his juniors came to be promoted. The adverse remarks were communicated to the petitioner on 13.5.2008. The case of the petitioner is that the Reporting Officer had not made any adverse remarks in the petitioner's ACR. The Reviewing Authority also did not disturb the said remarks and while agreeing with the grading given by the Reporting Officer, passed adverse comments. There is no other reason for not promoting the petitioner and, therefore, the adverse remarks have prejudiced the interest of the petitioner. The petitioner had to collect the information with the help of Right to Information Act, which has caused some delay in approaching this Court. The petitioner has approached this Court making the following prayers:

(21) The petitioner therefore prays that this Hon"ble Court may be pleased to issue a writ of mandamus or any other writ, direction or order:

A) Expunging the adverse remarks made by the Reviewing Officer in the Annual Confidential Reports of the petitioner for the years 2006-2007 and 2007-2008 as communicated by the letter dated 13.5.2008. In the alternative, restraining the Respondents from taking into consideration the above adverse remarks at the time of promotion of the petitioner.

B) Directing the Respondents to consider or reconsider the case of the petitioner for promotion to the post of Inspector of Stamps with reference to the date when the case of his next junior was considered, ignoring the adverse remarks made by the Reviewing Officer in the Annual Confidential Reports of the petitioner for the year 2006-2007 and 2007-2008 and, if not found unfit, to promote him w.e.f. 12.2.2009 with all consequential benefits including difference of pay with 10% interest.

C) During the pendency and final disposal of this petition, the Respondents may be directed to consider the case of the petitioner for promotion to the post of Inspector of Stamps ignoring the adverse remarks made by the Reviewing Officer for the years 2006-2007 and 2007-2008 and if found fit to promote him from due date.

D) To grant such and further relief as may be deemed fit and proper.

2. Heard learned advocate Mr. Supehia for the petitioner and learned A.G.P. Mr. Raval for the respondents.

3. Mr. Supehia submitted that if the copies of ACRs are seen, for the year 2006-2007, for all columns, he is graded as either "Outstanding" or "Good". The Reviewing Authority has made the following remarks:

I agree, grading good, not suitable for public dealing post.

Similarly, for the year 2007-2008, for all columns, he is graded as "Good" and the Reviewing Authority has remarked "Agree by grading Good, Not suitable for field posting."

4. Having taken a look at these remarks, this Court is at loss to understand as to how and on what basis the remarks are made that the petitioner is not suitable for either field posting or public dealing post when the Reviewing Officer himself agrees with the Reporting Officer's remarks that his work is either good or excellent relating to all the columns. It is not possible to know whether the petitioner was discharging any duties involving public dealing or field working during the period when he was found to be not suitable. There are no such Ephemeral Rolls or remarks coming on record. The adverse remarks, not supported by any contemporaneous material and the Reviewing Officer having chosen not to file any affidavit-in-reply, are, therefore, ex facie without basis and appear to have caused prejudice to the interest of the petitioner. They, therefore,

deserve to be expunged.

5. The petition is allowed. The adverse remarks, "Not suitable for public dealing post", and "Not suitable for field posting" made in the Annual Confidential Reports of the petitioner for the years 2006-2007 and 2007-2008 respectively, are expunged. The petitioner's case for promotion to the post of Inspector of Stamps will be considered by the respondent-authorities, without taking into consideration the aforesaid adverse remarks, as they are expunged by this order. In case the petitioner is otherwise found to be fit for promotion, he will be considered for promotion from the date on which his juniors are promoted, or from the date he was otherwise eligible to be promoted, whichever is later.