
(2005) 08 MP CK 0125

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5997 of 2003

Awadh Behari Shrivastava

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

Citation : (2006) 2 J LJ 408 : (2006) 1 MPLJ 79

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : Praveen Verma, for the Appellant; Samdarshi Tiwari, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

This petition was originally filed before the State Administrative Tribunal at Jabalpur on 5.1.1990. However, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

By this petition, the Petitioner is seeking relief of consideration of his case for his promotion to the post of SLR from the date when his juniors have been promoted with all consequential benefits.

In brief the case of Petitioner is that he was directly recruited on the post of Revenue Inspector in the year 1957 and after completing requisite training he joined his services in the revenue department as Revenue inspector on 17.12.1957. The Petitioner was promoted to the post of Assistant Superintendent of Land Records on 8.6.1963 and thereafter on 20.4.1988 the Commissioner, Land Records and Settlement, Gwalior, declared him as permanent Assistant Superintendent of Land Records w.e.f. 1.4.1986. The Petitioner also passed departmental examination in Accounts, Revenue Law in the year 1975 as prescribed by the Land Records Department. He further cleared the examination as prescribed by the Home Department in the field of Civil Law (Practice and

Procedure) and Criminal Law (Practice and Procedure) in the year 1978. The case of Petitioner is that the employees junior to him were promoted to the post of Assistant Superintendent of Land Records and some of his juniors are holding the post of Superintendent of Land Records on promotion. The Petitioner on 10.1.1975 submitted representation but it was not decided nor he was given promotion.

On 31.12.1977 he again made representation (Annexure A) for his promotion on the post of Superintendent of Land Records and the seniority on the said post. The Petitioner also submitted abstract of gradation list along with his representation. The Respondent No. 2 intimated the Petitioner that his representation has been registered for consideration on 24.1.1978 at serial No. 13(3) but no decision thereupon was communicated to him. In the petition it has been pleaded that the Petitioner through his counsel further brought into the notice of the Government in regard to his promotion on the post of SLR and in response to it the Additional Secretary, Government of M.P., Land Records Department, vide memo dated 5.11.1979 intimated that the matter of the promotion of the Petitioner has been sent for approval to the PSC and as soon as the approval is received, the order would be issued accordingly. A copy of said letter dated 5.11.1979 has been placed on record as Annexure B. The Petitioner thereafter again submitted representation which was forwarded by Respondent No. 3 for consideration to Respondent No. 2 and in response to the same Respondent No. 2 intimated Respondent No. 3 that the representation in respect of promotion of Petitioner was sent to the Respondent No. 1 for consideration vide memo No. 168/A/iii/LR/78 dated 3.2.1978, but no action has been taken so far. A copy of memo dated 19.4.1979 of Respondent No. 2 addressed to Respondent No. 3 has been placed on record as Annexure C. The Petitioner, vide order dated 28.11.1978 of the Commissioner, Sagar Division, Sagar, was directed to be posted on the post of Naib Tahsildar and he accordingly joined the said post. AC Rs of the year 1978-79 and 1979-80 while Petitioner was serving on the post of Naib Tahsildar were forwarded by the Collector, Chhattarpur, to the Commissioner and the Commissioner thereafter forwarded these entires to the Government. The DPC was convened in the year 1980 for consideration of suitable candidates for their promotion to the post of SLR, but ACR of 1979-80 of Petitioner was shown to be missing and was not produced before the DPC and, therefore, he was denied the promotion. The contention of learned Counsel for Petitioner is that this fact is established vide Memo No. 16/80 dated 21.1.1985, a copy of which has been placed on record as Annexure D.

Gradation list of ASLR was published by the Department on 1.4.1986 and in this list the position of Petitioner is shown at serial No. 20. The abstract copy of the gradation list has been placed on record as Annexure E. In this list 64 ASL Rs who are junior to the Petitioner are shown as ad hoc SLR. According to the Petitioner, on bare perusal of the gradation list it is clear that juniors to the Petitioner have been promoted and he was ignored.

The Petitioner further submitted representation and claimed his promotion to the post of SLR vide representation dated 13.7.1989 (Annexure F). The representation was addressed to Respondent No. 1 and the Respondent No. 2 intimated that in the DPC held on 24.8.1987 for consideration of promotion of ASLR to the post of SLR, but in the said meeting ACR record of Petitioner was not available, as a result of which his name was not considered for promotion and it was also directed therein that his name is included in the list of such ASL Rs whose names have been proposed for consideration of promotion. A copy of the memo dated 16.10.1989 has been placed on record as Annexure G, but the Government did not promote the Petitioner till date of filing of the petition. The contention of learned Counsel for Petitioner is that since name of Petitioner in the gradation list was shown at serial No. 20 and his juniors were promoted on the post of SLR he should have also been promoted on the said post.

It has also been put forth by the learned Counsel that on the date of filing of the petition the age of Petitioner was 57 years and if this petition is allowed a notional promotion order only will be given to him and since the Petitioner had made out a case for promotion as his juniors were promoted, this petition be allowed.

In the return it has been submitted that DPC was convened in the year 1977 for considering eligible persons for promotion to the post of Superintendent of Land Records and the criteria in order to merit consideration was that the person concerned must have rendered minimum four years service on the post. Since the Petitioner was promoted on the post of ASLR on 8.6.1973 and the DPC met on 10.3.1977, therefore, on account of not having requisite number of year of service in the feeder cadre, his case was not considered by the DPC. The next DPC was convened in the year 1980 wherein the confidential reports of the year 1975 to 1979 were considered by the members of DPC and the case of Petitioner was also considered but as the grading in the ACR of the Petitioner was not upto the mark he was not recommended by the DPC for his promotion. Consequently, the persons who were junior to him, but who had better service record were promoted. The next meeting of the DPC took place in the year 1987 to consider cases as on 1.1.1987 and in this DPC, AC Rs of the year 1981 to 1985 were taken into consideration. However, since certain confidential reports of the Petitioner were not available, his case was not placed for consideration before the DPC and the persons who were found suitable were recommended for promotion and accordingly promotion orders were issued in respect of such persons.

The contention of Shri Tiwari, learned Dy. Government Advocate is that in the year 1993 again DPC was convened to consider the cases of those persons who could not be considered in the earlier DPC of the year 1987 on account of non-availability of the AC Rs and in the said DPC case of Petitioner was also considered. However, the members of DPC were of the opinion that the service record of the Petitioner was not upto the mark and hence he was not recommended for promotion. In the meantime, in the year 1991, the Petitioner

was already superannuated. On these premised submsisions, it has been submitted by the learned Dy. Government Advocate that the case of Petitioner was considered for promotion but he was not found fit.

After hearing learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

The view of this Court is that the DPC which was convened on 10.3.1977 the name of Petitioner was rightly not considered for the simple reason that he did not complete requisite qualifying service of four years as ASLR on 10.3.1977 because he was promoted on the post of ASLR on 8.6.1973. On going through DPC record of the year 1987 it is revealed that DPC was convened on 24.8.1987 and the case of Petitioner was not considered on the ground that his AC Rs were not available with the Department. However, on going through record of the DPC it is gathered that five years AC Rs immediately prior to the meeting of the DPC were taken into consideration. Since AC Rs of the Petitioner were not available, therefore, his case was not considered for promotion. The view of this Court is that if the AC Rs of the Petitioner would have been available, definitely his case would have been considered for his promotion.

According to the stand taken by the Respondents that the candidates whose cases were not considered for promotion in the year 1987 on account of non-availability of their AC Rs, their cases were considered by the DPC on 9.2.1993 and 10.5.1993 but the Petitioner was not found fit for promotion. On going through record of this DPC it is gathered that five years AC Rs w.e.f. 1986-87 to 1990-91 were considered. The view of this Court is that, here action of Respondents as well as the procedure adopted by the DPC was arbitrary for the simple reason that this DPC was convened in order to consider the cases of those candidates whose cases could not have been considered on account of non-availability of their AC Rs. Since case of the Petitioner was not considered by the DPC which was convened on 24.8.1987 and in the said DPC AC Rs of 1982-83 to 1986-87 were taken into consideration, in all fairness the DPC which was convened on 9.2.1993 and 10.5.1993 ought to have considered AC Rs of the year 1982- 83 to 1986-87 of the Petitioner. In order to consider the case of Petitioner his AC Rs of the year 1986-87 to 1990-91 should not have been considered because the case of the Petitioner for promotion was being considered as his case stood on 24.8.1987. In between, in the year 1991, the Petitioner stood retired. Thus, the view of this Court is that the action of Respondents is arbitrary since instead of considering AC Rs of Petitioner of those years which were the subject matter of the DPC which was convened on 24.8.1987, the AC Rs of the year 1986-87 to 1990-91 were considered, which ought not to have been considered.

For the reasons stated hereinabove, the view of this Court is that the Petitioner has made out a case for his promotion to the post of SLR w.e.f. the year 1987. The Respondents are hereby directed to convene a review DPC to consider the case of Petitioner as on 24.8.1987 by considering those AC Rs of his which were

subject matter of the consideration of the DPC convened on 24.8.1987. After holding the review DPC if the Petitioner is found fit for promotion in criteria laid down by the DPC which was convened on 24.8.1987, a notional promotion order may be issued in favour of Petitioner promoting him from the date when the recommendations of the DPC, which was convened on 24.8.1987 were given effect to with all consequential benefits including refixation of pay and payment of revised retiral difes including refixation of pension. In case AC Rs of the Petitioner for the period which was the subject matter of the DPC which met on 24.8.1987 i.e., 1982-83 to 1986-87 are not available, in that case also a notional promotion may also be accorded to the Petitioner because he is not at fault and he should not allow to suffer on account of laches and fault of the department. Let this exercise be done within a period of six months from today.

The petition is hereby allowed with costs. Counsel's fee Rs. 2,000/-, if pre-certified.