

(2012) 06 MP CK 0054

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14619 of 2003 (O.A. No. 341 of 2000)

Bajnath Prasad Jaiswal

APPELLANT

Vs

The State of M.P. and others

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Citation : (2012) 06 MP CK 0054

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : R.C. Tiwari, for the Appellant; Piyush Dharmadhikari, learned Govt. Advocate, for the Respondent

Judgement

Hon"ble Shri Justice K.K. Trivedi. J.

1 : This petition was filed in the Madhya Pradesh Administrative Tribunal as Original Application No. 341/2000, which has come to this Court on transfer after closure of the Tribunal and is registered as Writ Petition. The main grievance of the petitioner in the petition is that a departmental enquiry was initiated against him in which an order was passed imposing the penalty of withholding of one increment of pay without cumulative effect. Against such an order, an appeal was preferred by the petitioner, but the same was not decided expeditiously. During the currency of the punishment, a DPC meeting was held and juniors to the petitioner were promoted on the post of Deputy Ranger vide order dated 15.8.1987. The representation was made by the petitioner in reference to which it was intimated to him that since the punishment is continuing against the petitioner, he was not promoted on the post of Deputy Ranger as was not found fit for such promotion. Ultimately, the appeal of the petitioner was decided by the competent authority vide Annx.A/2 and an order was issued on 23.2.1999 reducing the punishment from withholding of increment without cumulative effect to Censure. According to the petitioner, it was necessary to review the claim of the petitioner for grant of promotion, but since this was not done, after making of representation before the authority, the petitioner was required to

approach the Tribunal. It is contended that as per the administrative instructions issued by the State Government, case of the petitioner was required to be considered for grant of "Kramonnati" as he was stagnating only on one post, yet that benefit was also not extended. In view of these submissions, the petitioner has claimed the following reliefs :-

(i) To issue a writ in the nature of certiorari with direction to quash the order No. 475 dated 4.10.1986 (Annx.A/1) passed by respondent No. 4 and order No. 137 dated 23.2.1999 (Annx.A/2) passed by respondent No. 3.

(ii) To issue a writ in the nature of Mandamus with directions to the respondents to promote the applicant on the post of Deputy Ranger with effect from 15.8.1987 when the junior incumbents respondent Nos. 5 and 6 were promoted.

(iii) To issue a writ in the nature of Mandamus with direction to the respondents to pass orders of the second promotion to the applicant under the time bound scheme (Annx.A/ 9) on the post of Forest Ranger w.e.f. 16.8.1999 after expiry of the 12 years service period on the post of Deputy Ranger.

(iv) To issue a writ in the nature of mandamus with direction to the respondents to fix the salary of the applicant on the post of Deputy Ranger treating him promoted with effect from 15.8.1987 and further to fix the pay on the post of Forest Ranger treating him promoted with effect from 16.8.1999 and to pay the arrears of salary with interest at 24% p.a. and release the consequential benefits of pay promotion and seniority.

(v) To issue any other directions or writ looking to the facts and circumstances of the case.

(vi) To award cost of the petition.

2 : In response to the claim made by the petitioner, a return has been filed by the respondents and it has been contended that in view of the combined seniority claim of the petitioner was to be considered, but since there was an order of punishment and even after consideration the petitioner was not found fit, he was superseded in the matter of promotion. It is categorically contended that there were two reasons of supersession of the petitioner; one his Annual Confidential Reports were not found upto the mark and the other ground is punishment, therefore, to say that only because the appeal was allowed in the year 1999, the claim of the petitioner was to be reviewed, is not correct. As far as the "Kramonnati" is concerned, it is contended that as per entitlement the claim of the petitioner would be considered and appropriate order would be passed as per turn of petitioner.

3 : Refuting such allegations, a rejoinder has been filed by the petitioner and it is contended that proper consideration of claim of the petitioner was not made as his Annual Confidential Reports were not properly examined. It is contended that there were no adverse Annual Confidential Reports communicated to the petitioner and, as such, it could not have been said that the petitioner was not

found fit for promotion on the basis of merits as his merits were not properly assessed. No additional return has been filed by the respondents in rebuttal to such claim made in the rejoinder.

4 : Though it is contended by the respondents in their return categorically that on assessment of merits, the petitioner was not found fit for promotion by the Departmental Promotion Committee, yet such a record is not made available for perusal of this Court. What were the criteria fixed by the Departmental Promotion Committee for consideration of merits of the employees who were to be considered for promotion has not been indicated in the return. The admitted position is that as per the Service Rules applicable to the department, the selection for inclusion in the merit list is based on merit and suitability in all respects with due regard to seniority. Specific criterias are to be laid down for consideration of merits and suitability. This particular aspect is not explained in the return and, as such, it cannot be said that suitability or merit of the petitioner was assessed appropriately. Even otherwise since the appeal against the order of punishment was pending and at the time when the Departmental Promotion Committee meeting was held, the punishment order was in force, it appears that such a fact has weighed the selection. Since the order of punishment was modified only in the year 1999, in all fairness, it was necessary to reconsider the case of the petitioner and review his merit and suitability as per the provision of the Rules which were in vogue on the date when the Departmental Promotion Committee was held.

5 : This being so, the writ petition is disposed of with a direction to the respondents to reconsider the case of the petitioner keeping in view the order passed by the competent appellate authority with respect to the punishment of the petitioner. If on consideration of his relevant service record, ignoring the order of punishment, the petitioner is found fit for promotion on the post of Deputy Ranger, the order be issued in accordance to law and communicated it to the petitioner. It will be necessary on the part of respondents to review the case of the petitioner also for the other Departmental Promotion Committee which have subsequently been held till the petitioner was in service so as to adjudge his suitability from a prospective date for such promotion. Needless to say that in case the petitioner is found fit for grant of promotion on the post of Deputy Ranger, he would be entitled to arrears of salary and other consequential benefits on account of his promotion on the said post. The necessary exercise be completed within a period of four months from the date of communication of the order passed today. With the aforesaid, the writ petition stands finally disposed of. There shall be no order as to costs.