
(2010) 08 MP CK 0036

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1453 of 1998

Balbir Singh Sidhu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 5 MPHT 269

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Petitioner, Deputy Commandant, CRPF, being eligible for promotion to the rank of Second-in-Command was considered by the Departmental Promotion Committee convened on 11-2-1998 along with officers. The Petitioner since could not make the benchmark of "very good" as prescribed by the DPC, was not recommended for promotion; though, Respondent Nos. 5 to 11 along with other officers who could make the benchmark were recommended for promotion. The non-promotion of the Petitioner is the causes of grievance in this petition wherein the Petitioner seeks quashment of promotion order dated 23-3-1998 and a direction that the Petitioner be promoted Second-in-Command from the date his juniors were promoted.

2. Few facts necessary for proper appreciation of the grievance put-forth briefly are that the Petitioner was initially appointed as Deputy Superintendent of Police (Company Commander/Quarter Master) (Currently designated as Assistant Commandant) in Central Reserve Police Force vide notification dated 4-12-1986 w.e.f. 17-11-1986. The Petitioner thereafter was promoted as Deputy Commandant vide order dated 17-1-1992 in pursuance whereof he took charge on 21-1-1992.

3. Promotion from the post of Deputy Commandant is to that of Second-in-

Command and is based on merit-cum-seniority; the DPC where for was convened on 11-2-1998, wherein, the benchmark prescribed was "very good" and the assessment of merit was to be on the basis of the ACR of preceding five years, viz., 1992-93 to 1996-97. The Petitioner since was assessed "good" was not recommended for promotion.

4. As per the record of DPC which has been placed for perusal at the time of hearing. The DPC convened on 11-2-1998 was for 61 existing vacancy of Second-in-Commands and 36 anticipated vacancies (due to retirement and chain promotions). Thus, 97 posts of Second-in-Command fell for consideration in the year 1998-99 and as per the eligibility condition prescribed by MHA vide letter No. I.45026/5/82-Pers.II, dated 29-10-1987, Deputy Commandants with 12 years Group "A" service were eligible for promotion to the rank of Second-in-Commands. As per the Zone of consideration vide DOP & T OM No. 22911/1/90-Estt (D), dated 12-10-1990 for 97 vacancies 198 personnel were to be considered. However, only 109 Deputy Commandants were found eligible for consideration. The criteria for selection was the benchmark prescribed by Govt. vide MHA DO No. 145220/21/88-Pers.II, dated 8-5-1990 was "very good". The Petitioner since could be assessed "good" was not recommended for promotion. During pendency of the petition, though Petitioner has been promoted as Second-in-Command vide order dated 28-4-2000. The grievance of the Petitioner, however, is that he has been wrongly suspended on the basis of faulty assessment of the AC Rs by the DPC.

5. Learned Counsel for the Petitioner submits that since the benchmark for selection was "very good" and the Petitioner was assessed as "good" the Respondents ought to have communicated the AC Rs as the same resulted in adverse consequence. To substantiate the proposition that even if the AC Rs are not adverse but is having adverse consequence qua the benchmark for promotion, such AC Rs must be communicated, on the judgment of Dev Dutt Vs. Union of India (UOI) and Others, and Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others,

6. The Respondents on their turn; however, justify the supersession of the Petitioner on the ground that he was not found suitable as per the assessment by the DPC. It is further urged that since there were no adverse entries in the ACR and "good" ACR being not adverse ACR was not communicated. It is further contended that the petition being devoid of substance deserves to be dismissed.

7. Considered the rival submissions.

8. The legal position in respect of the issue as to whether an employee is entitled for communication of remarks/grading recorded in Annual Confidential Roll even when the same are not adverse has come to be settled. Recently, the Apex Court in the case of Dev Dutt (supra), after considering the catena of judgments was pleased to hold that every entry must be communicated to the employee concerned so that he may have an opportunity of making a representation

against it if he is aggrieved. Their Lordships were pleased to observe:

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State Service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its up gradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or Government orders.

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

9. In *Abhijit Ghosh Dastidar* (supra), it was held:

8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the Appellant. The entry of "good" should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the Annual Confidence Report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (*Dev Dull* case, SCC P. 738, Para 41) relied on by the Appellant. Therefore, the entries "good" if at all granted to the Appellant, the same would not have been taken into consideration for being considered for promotion to the higher grade.

The Respondent has no case that the Appellant had ever been informed of the nature of grading given to him.

10. The facts of the present case are nowhere different than that of Dev Dutt and Abhijit Ghosh Dastidar (*supra*).

11. In the present case also, the benchmark being "very good" and the "good" ACR of the Petitioner being not upto benchmark came in way of the promotion; therefore, the same ought to have been communicated otherwise the same should not have been taken into consideration.

12. In view whereof the petition is allowed. Respondents are directed to communicate the entry recorded in ACR of the Petitioner of the relevant period taken into consideration by DPC convened on 11-2-1998, within a period of 15 days from the date of communication of this order. The Petitioner on receiving the said communication is at liberty to represent within a period of 15 days. The Respondents on receiving the said representation shall dwell upon the same and decide it by a reasoned order within a period of 15 days thereof. In case, the entries of relevant year are upgraded then the Respondents are directed to consider the claim of the Petitioner for promotion to the post of Second in Command from the date when his immediate junior was considered by holding a review DPC.

13. The said exercise of holding review DPC be completed within a period of 30 days and if the Petitioner is found eligible, he shall be entitled for all consequential benefits.

14. The petition is allowed to the extent above.