

(1959) 12 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 379 of 1958

B.C. Tiwari

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-12-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1960 MP 216 : (1960) 1 FLR 263 : (1959) ILR (MP) 858 : (1960) JLJ 266 : (1960) 2 LLJ 419 : (1960) 5 MPLJ 365

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir, S.C. Dube and H.L. Verma, for the Appellant; H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

In this application under Article 226 of the Constitution of India, the petitioner states that on 1-4-1949 he entered the Madhya Pradesh Superior Forest Service in the grade of Rs. 250-250-25-400-EB-25-500-600-25-850. He was confirmed as Assistant Conservator of Forest on 21-11-1952. In 1952 he was appointed to officiate as Deputy Conservator of Forests in higher grade and posted as Divisional Forest Officer, Durg. In 1954 a departmental enquiry was held against the petitioner on charges of misconduct and inefficiency in the discharge of his duties.

As a result of this enquiry the Government made an order on 18-12-1954 censuring the petitioner in regard to one of the charges and on the others reverting him to the post of Assistant Conservator of Forests "for a period of one year" with the direction that his future promotion thereafter would depend upon "the good reports from the Chief Conservator of Forests". The petitioner further avers that when after 18-12-1955 the Government did not again promote him to

the higher grade as contemplated by the order of 18-12-1954, he made repeated representations to the Government in 1959 about his promotion but without any success until 18-6-1958 when he was appointed to officiate as Deputy Conservator of Forests.

The petitioner's grievance is that the failure of the Government to promote him after 18-12-1955 entailed the imposition of further penalty on him in that he was deprived of the pay and allowances of the higher grade to which he was entitled from 18-12-1955 and postponement of his future chances of promotion because in the meantime persons junior to him were promoted to higher posts, and that he was not given any opportunity to show cause against this further penalty. He prays that an order in the nature of mandamus be issued directing the opponent State to treat him as promoted to the higher rank on 18-12-1955 and as such entitled to all the pay or allowances and rank from that date.

Shri Dabir, learned counsel appearing for the petitioner, put forward the argument that the order, which the Government made on 18-12-1954 reverting the applicant to the post of the Assistant Conservator of Forests, expressly mentioned that his reversion was to be for a period of one year with effect from that date; that under the terms of the order the applicant was as a matter of right entitled to be promoted to the higher grade on 18-12-1955; that even if the applicant's promotion was dependant on the good reports from the Chief Conservator of Forests about his work, such good reports having been actually made after 18-12-1955, the Government was bound to act on them and promote the applicant, but the Government by its inaction did not promote him until 18-6-1958; and that the loss of additional pay and allowances and seniority involved by this delay amounted to 3 penalty and the applicant was entitled to seek redress under Article 226 for quashing that penalty.

We are unable to accede to these contentions. It is quite true that the last paragraph of the order, which the Government passed on a consideration of the report of the departmental enquiry against the applicant, stated that the Government was pleased to impose the penalty of reversion to the post of Assistant Conservator of Forests for a period of one year with effect from 18-12-1954. But this direction has to be read and construed in the context of the decision of the Government embodied in paragraph 4 of the order and consistent with it.

That paragraph says that the Government had decided that the petitioner should be "reverted to* the post of Assistant Conservator of Forests for a period of one year, his future promotion thereafter depending upon the good reports from the Chief Conservator of Forests". The order is no doubt not very happily worded. But it is clear that the effect of the order was that the petitioner was reverted to his substantive rank viz. Assistant Conservator of Forests with the clarification that he would not be considered for promotion for one year at least from 18-12-1954 and that thereafter he might be if the Chief Conservator of Forests gave good reports about him.

That the order of the Government reverting the petitioner from the officiating post of Deputy Conservator of Forests to his substantive post of Assistant Conservator of Forests cannot be construed in any other manner and did not entitle the petitioner to claim as of right promotion to the higher rank after one year becomes clear, when it is appreciated that a civil servant is not entitled as of right to be promoted from a lower rank to the higher rank and once a person is reverted to a lower rank, then his promotion is governed by the rules regulating promotions in his service. Promotion to a post is done according to seniority and efficiency. Clearly, as the petitioner was only officiating in the higher post of Deputy Conservator of Forests, he cannot say that he had a right to the higher rank and therefore, after the period of one year from the date of the order reverting him he was entitled to reinstatement in the higher rank as a matter of right, without any considerations of efficiency, merit or good reports from superior officers.

It is worthy of note that the petitioner was reverted to his substantive post on account of misconduct and irregularity in the discharge of his duties. The factors about the petitioner's efficiency, ability and good behaviour thus became necessarily material in the case of his future promotion. When the petitioner was only officiating in the higher rank and when he had no right to the post of the Deputy Conservator of Forests and further when he had been sent down to his substantive post because of his misconduct and irregularity in the discharge of his duties, it would have been altogether unreal and contrary to the principles on which promotion is done to a higher rank, to predicate that the petitioner would give a good account of himself during a certain period and that, therefore, at the end of that period he would be as of right re-instated in the higher rank. In our view, the only reasonable and sensible construction that can be put on the order reverting the petitioner is the one indicated by us earlier.

The petitioner cannot also claim that as he crossed the efficiency bar in the substantive grade and as the Chief Conservator of Forests gave good reports about him, the Government was bound to promote him. The crossing of the efficiency bar in the substantive rank would at the most prove the petitioner's efficiency in that rank. But that fact cannot be taken as displaying) his merit, ability and efficiency entitling him to promotion, The Chief Conservator of Forests may have given good reports about the petitioner. But the Government, who was the competent authority to decide whether the petitioner should or should not be promoted, cannot be compelled to give effect to the reports made by the Chief Conservator of Forests and promote the petitioner.

The determination of an employee's ability, merit and performance in a job inherently involves differences of judgment and opinion among those called upon to evaluate his suitability for a particular post or a rank. The matter is one in which the discretion and judgment of the officer or authority concerned must prevail. The decision of an officer or an authority about the suitability of a, person for promotion may be open to review by an administrative agency. But it

cannot appropriately be a matter for judicial review.

For all these reasons, we are of the opinion that the petitioner's claim .that he was entitled as of right to be promoted to the higher rank after 18-12-1955 is without any basis and this petition must be and is rejected. In view of the fact that the applicant could have had no cause for coming up to this Court, if the order of reversion had been properly worded, we make no order as to costs. The outstanding amount of security deposited by the petitioner be refunded to him.