

(2010) 11 SHI CK 0267
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6415 of 2008

Bikram Chand

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0267

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed for grant of the following substantive relief vide para 7(i):

(i) That the promotion of the Respondent No. 4, Mast Ram as Assistant Superintendent Jail be ordered to be as the same is unconstitutional, illegal, null & void and the same is against the principles of natural justice, equity and good conscience.

2. In reply on behalf of Respondents No. 1 and 2, the following averments have been set up vide paras 3(iv) and 6(b) & (k):

3(iv) That in reply to this sub para, it is emphatically denied that the Departmental Promotion Committee recommended the name of Sh. Mast Ram Rana, Respondent No. 4 and promoted him to the post of Assistant Superintendent jail in the pay scale of Rs. 5480-8925, vide Office Order No. 2-5/90-Jails-IV dated 26/4/99 (Annexure A-I of application, thereby ignoring the claim of the applicant. In this connection it is submitted that actually the meeting of the Departmental Promotion Committee for promotion to the post of Assistant Superintendent Jail for filling up two vacancies was held on 28/12/98. Out of the said two vacancies one was to be filled up from amongst the Headwarders and one from amongst the Clerks. The Departmental Promotion Committee in its meeting referred to above considered the following officials from amongst the Headwarders and Clerks on the basis of the provisions laid down under Column

No. 11 (i) & (ii) of the Recruitment and Promotion Rules Notified by the Government vide Notification No. Home-B(A)2-5/84-Jails dated 1-3-88 (Annexure R-1), for promotion to the post of Assistant Superintendent Jail:

(A) Head Warders

Sr. No. Name of official Date of joining Qualification Remarks the post (1) (2) (3) (4) (5) 1. Sh. Sewa Chand 21/11/90 Middle - 2. Sh. Lal Chand 14/11/90 Middle - 3. Sh. Rajmul 26/10/90 Middle - 4. Sh. Amarjit Singh 5 /11/90 Middle - 5. Sh. Rattan Chand 4/11/90 Middle - 6. Sh. Chuni Ram 21/9/92 Middle - 7. Sh. Longu Ram 19/9//92 Middle - 8. Sh. Bhagwati Parsad 22/9/92 7th - 9. Sh. Jagdish Chand 4/5/64 4th - 10. Sh. Narain Singh 18/3/95 Matric Officiated against the post of Head warder on basis w.e.f 29/8/85 to 17/3/95 Clerks: 1. Sh. Kalyan Chand Sood 9/9/72 B.A. 2. Sh. Bikram Chand 15/2/80 Matric 3. Sh. Som Parkash 1/9/80 Matric 4. Sh. Karan Singh 12/3/81 Matric 5. Sh. Mast Ram 9/3/82 B.A 6. Sh. Viresnder Kumar Sood 11/5/84 Intermediate 7. Sh. Swajt Gill 21/3/85 B.A The Head Warders from Sr. 1 to 6 and 8 to 9 are not Matriculates and as such were not found fit by the Departmental Promotion Committee as per provision laid down in column No. 11(ii) of the Recruitment and promotion Rules referred to above. Similarly "Sh. Longu Ram Head Warder at Sr. No. 7 above, though Matriculate had not completed requisite 10 years service as Headwarder, as such was not eligible for promotion. Therefore, Sh. Narain Singh Headwarder Headwarder at Sr, No. 10 above being Matriculate and possessing 10 years of regular service combined with adhoc service was found fit for promotion to the post of Assistant Superintendent Jail. Similarly for promotion from amongst the clerical category, the Departmental Promotion Committee recommended the name of Sh. Kalyan Chand Sood, who was the seniormost Graduate Clerk of the department. Accordingly both the said officials on the recommendations of the Departmental Promotion Committee ,w ere given offer of promotion vide Office Order No. 2-5/90-Jails dated 9/12/98(Annexure R-2), Sh. Kalyan Chand Sood had also opted for promotion to the post of senior Assistant/Assistant in the pay scale of Rs. 5800-9200 vide his option dated 1/8/98 (Annexure R-3). Therefore the Departmental Promotion Committee, recommended the name of Sh. Mast Ram Rana, Junior Assistant, Respondent No. 4, the next Graduate in the Seniority List of Clerical cadre, in the panel for promotion to the post of Assistant Superintendent Jail so that in the event Sh. Kalyan Chand Sood had forgone the offer, Sh. Mast Ram Rana was to be given offer of promotion to the post of Assistant Superintendent Jail. But the said Sh. Kalyan Chand Sood accepted the offer and joined as such on 28/12/98. After joining the post of Assistant Superintendent Jail, Kanda, the said Sh. Kalyan Chand Sood expired on 20/2/99 and as such the Respondent No. 4, Sh. Mast Ram Rana who was already recommended by the Departmental Promotion Committee in the panel was given offer of promotion to the post of Superintendent Jail vide Office Order No. 2-5/90-Jails-4 dated 26/4/90 (Annexure A-1) of application), and he joined accordingly on 28/4/99. It is admitted that he applicant who is at Sr. No. 3 of the Seniority List is senior to the Respondent No. 4, Sh. Mast Ram Rana, but as per column

No. 11(i) of the Recruitment and Promotion Rules for the post of Assistant Superintendent Jail (Annexure R-1) the provision for promotion to the post from amongst the clerical cadre is as under:

(i) By promotion from amongst the Senior Clerks/Clerks with B.A. as educational qualification having at least 5 years regular service or regular combined with continuous adhoc (rendered upto 31/12/83) served as such, failing which from amongst Senior Clerks/Clerks with Matriculation as educational qualification and having 10 years regular service or regular service combined with adhoc (rendered upto 31/12/83) service as such.

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Therefore, keeping in view the provision in the Recruitment and Promotion Rules referred to above, the applicant who is a Matriculate though senior has been superseded by the Respondent No. 4, Sh. Mast Ram Rana, who is a Graduate and promoted to the post of Assistant Superintendent Jail.

6(b) That the contents of this sub para are admitted to the extent that the applicant was promoted as Clerk with effect from 15/2/80 from the post of Warder but it is denied that he was misled by the department by promoting him from the post of a Warder to that of Clerk. As admitted by him, he was working as Warder in the department w.e.f 27/7/74. He being an employee of the department was well conversant with the Pay Scales, nature of duties and responsibilities of the post of Warder and Clerk. Moreover while the applicant was promoted to the post of Clerk vide this office order No. 2-8/72-Jails dated 16/1/80, (Annexure R-4) the pay scale of the Clerk was specifically mentioned in the Promotion orders. If the applicant felt that there was a financial and promotional loss to him in the said promotion, he could have forgone the same. It is pertinent to submit here that the category of Headwarders only became feeder category for promotion to the post of Assistant Superintendent jail after the notification of Home Department (Prisons) Recruitment and Promotion Rules, 1988 (Annexure R-1) dated 1/3/88. Prior to the notification of these Rules only Clerks and Sub Assistant Superintendent Jails with seven years service were in the feeder category for promotion to the post of Assistant Superintendent Jail as per Himachal Pradesh Jails Department (Class III executive) Subordinate (Non-Gazetted) Services (Recruitment, Promotion and Certain Conditions of Service) Rules, 1968 notified by the Govt. of H.P. vide notification No. H(J)14-929/58-II dated 6/1/69, (Annexure R-5). Therefore, it is evident that the applicant at the time of his promotion from the post of Warder to that of Clerk willingly joined offer for the sake of coming in the clerical care, which was a feeder category for promotion to the post of Assistant Superintendent Jail at that time. If the applicant is now feeling any harm in any way, it's not the fault of the department. However it is denied that no academic qualification is required for promotion of a Headwarder to the post of Assistant Superintendent Jail. As per Column No. 11(ii) of the Recruitment and Promotion Rules, a Headwarder with B.A as educational qualification and 5 years regular service, failing which

Headwarder with Matric as educational qualification and 10 years regular service is eligible for promotion to the post of Assistant Superintendent Jail.

6(k) That in view of the foregoing submissions, the contents of this sub para are emphatically denied. The Respondent No. 4, Sh. Mast Ram Rana was promoted to the post of Assistant Superintendent Jail in accordance with the provisions of Recruitment and Promotion Rules. It is denied that special favour has been shown towards the Respondent No. 4, Sh. Mast Ram Rana to change his option. He changed his option at his own will vide his application dated 14/2/96 much earlier before, the meeting of the Departmental Promotion Committee which was held on 4/12/98 and he was free to do so under the rules. Moreover the Respondent No. 4 was working in the ministerial category which constitutes a feeder category for promotion to the post of Assistant Superintendent Jail. As clarified by the Govt vide letter No. Home-B(B)4-10/86-Jails dated 10/11/86, (Annexure R-12), in a separate case, all eligible have to be considered for promotion unless an incumbent gives in writing not to consider him for promotion to the post. It is denied that the applicant was condemned unheard.

3. Reply filed by Respondent No. 3 is akin to that on behalf of official Respondents No. 1 and 2. The remaining Respondents have not filed any reply.

4. In view of the above reply, in case the Petitioner still has any surviving grievance with regard to the factual and legal position, it will be open to him to approach the first Respondent along with certified copy of this judgment within one month from today, in which case the said Respondent will look into the matter and take appropriate action in accordance with law and justice after giving personal hearing to the Petitioner and appropriate orders thereon shall be passed within next four months.

5. With these observations the writ petition is disposed of so also the pending application(s), if any.