

(2011) 02 DEL CK 0347

In the Delhi High Court

Case No : Writ Petition (C) No. 5114 of 2005

C.D. Singh

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Conduct, Discipline and Appeal Rules, 1980 — Rule 29, 31, 31(1)
Constitution of India, 1950 — Article 12, 14, 16, 226
Oil Corporation (Discipline and Appeal) Rules — Rule 29

Citation : (2011) 02 DEL CK 0347

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Ranjan Mukherjee, for the Appellant; Rajat Arora, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—This writ petition has been filed by the Petitioner under Article 226 of the Constitution of India seeking quashing of the service record of the Petitioner for the period of 1966 to 1968 resulting in denial of suitable time scale to the Petitioner and to issue direction to the Respondent to allow the Petitioner the grade and pay scale from the date his juniors were promoted to that scale of pay w.e.f. 30.12.1970 and thereafter.

2. The facts of the case are that in the year 1969 the Petitioner was illegally removed from service by the Respondent and against this action of the Respondent the Petitioner filed a complaint being case B.S.E. Case No. 23 of 1969 before the Labour Court, Ranchi, u/s 26(2) of the Bihar Shops and Establishment Act, 1956. The Labour Court by its order dated 26.09.1973 set aside the dismissal of the Petitioner and directed reinstatement of the Petitioner with full back wages and all the other benefits.

3. The Respondent filed SLP No. 131 of 1974 against the aforesaid order of the Labour Court. The Supreme Court dismissed the said SLP of the Respondent in limine.

4. According to the Petitioner, inspite of the order of the Labour Court directing the Respondent to reinstate the Petitioner with all the benefits, the Petitioner was neither given his due seniority nor the proper scale of pay. As per the Petitioner during the period of his dismissal from service, i.e., from 03.09.1969 to 03.05.1974 some Sales Officers who were junior to him were promoted to higher grades in the pay scale of Rs. 1025/- to Rs. 1625/-. The dispute regarding this matter was referred to the Patna High Court which was partly quashed for not being properly worded. Therefore, another reference bearing No. 14 of 1980 was made by the State Government to Labour Court, Patna.

5. The Labour Court passed the award dated 11.03.1983 in favour of the Petitioner and held as follows:

In the gist of my foregoing discussion and findings, I hold that C.D. Singh could be allowed the pay scale of Rs. 1025-1625 from the date his juniors were promoted to that scale of pay, i.e. w.e.f. 30th December, 1970. I further hold that he should be promoted from Grade "B" to Grade "C" and should also be given the benefit of revision in the pay scale of those grades.

6. The Respondent filed a SLP against the said award which was also dismissed at the limine. Thereafter the Respondent filed writ petition No. 5877 of 1983 before the High Court of Patna. The Indian Oil Corporation Employees Union also filed writ petition challenging certain portions of the award which was registered as CWJC No. 4377 of 1984. Both these writ petitions were dismissed by the judgment dated 24.01.1985 as the prior dismissal of the SLP on similar issue by the Supreme Court could not be overlooked and it operated as a bar to the exercise of discretionary jurisdiction of the High Court.

7. The Respondent file an appeal before the Supreme Court against the judgment dated 24.01.1985 and the Supreme Court allowed the said appeal holding that the dismissal of a SLP by the Supreme Court by a non-speaking order did not operate as a bar against the Appellant in the matter of challenging the impugned award of the Labour Court by resort to proceedings before the High Court. Thus the aforesaid writ petition No. 5877 of 1983 was remanded back with a direction to dispose the said writ petition on merits. The High Court of Patna allowed the application of the Respondent and set aside the order of the Labour Court dated 11.03.1983 through its common judgment dated 30.03.1988 but directed the present Respondent to consider the case of the Petitioner for promotion to the higher scale of pay of Rs. 1025-1625/- on the basis of his service records for the period during which he became entitled for promotion.

8. Thereafter, the Petitioner filed a SLP against the judgment dated 30.03.1988. In the counter affidavit filed by the Respondent in the said Special Leave petition, it was stated that consequent to the above order of the High Court, the Respondent had formed a committee consisting of two General Managers and Financial Controller to consider the case of the Petitioner but after examining the annual performance, appraisals and service record of the Petitioner three years

prior to his dismissal and for the year when he rejoined the service on 03.05.1974 the said committee came to the conclusion that the Petitioner was not suitable for promotion. The said finding of the committee was communicated to the Petitioner by a letter dated 07.10.1988.

9. Denial of higher grade to the Petitioner on the basis of the committee's finding was challenged before the Supreme Court. The Supreme Court in SLP (C) No. 12375-76/1988 disposed of the case by order dated 18.01.1989 directing the Petitioner to challenge the said order before the appropriate forum.

10. Pursuant to the order dated 18.01.1989, the Petitioner filed the Writ Petition (C) 2641/1990 before this High Court for quashing the order dated 07.10.1988 which was disposed of by order dated 15.09.2004 with the liberty to the Petitioner to challenge the correctness of the service record and to advance his contention that average and below average remarks amount to a major penalty.

11. Thus, the Petitioner filed the present writ petition.

12. In the counter affidavit filed by the Respondent, it has been submitted that the Petitioner is seeking the relief for the cause which had been prayed by him in the earlier writ petition as well before this Court and it was dismissed. The Petitioner now cannot seek the same remedy from the court again. It has also been submitted that the Petitioner has already superannuated on 31.03.1997 and retirement dues as admissible to him have already been paid to him. Therefore, he should not be permitted to re-agitate the correctness of his service records for the period of 1966 to 1968. It has also been submitted that by order dated 15.09.2004, limited liberty was given to the Petitioner with regard to the correctness of the records, thus, the issues which have already been raised and decided by the earlier writ petitions cannot be allowed to be raised in the present writ petition.

13. It was argued by the learned Counsel for the Respondent that the Patna High Court while disposing of writ petition No. 5877/1983 vide order dated 30.3.1988 had only directed that the Petitioner be given a consideration and the same was given to him by Constituting a committee and considering his Annual Appraisal Reports, the Respondent found that the grading of the Petitioner was such that no persons with similar grading had been promoted and therefore, the Petitioner could not be promoted.

14. It was also argued that promotion is not a vested right and it is only a right of the Petitioner that he be considered for promotion which has been done in the present case. The Petitioner has been given a reasonable and fair consideration by the Respondent corporation. In support of his arguments, the learned Counsel for the Respondent referred to the following judgments:

1. Union of India and others Vs. K.V. Vijesh, .
2. Shankarsan Dash Vs. Union of India, .

3. Ashish Mohan v. Union of India (2002) 7 AD (Del) 488 (DB).

15. Thus, the Petitioner cannot claim promotion as his right. His right was only to be considered for the promotion and the same has been done. Now, there is no issue left to be settled.

16. Learned Counsel for the Petitioner has made the statement before this Court that in the present writ petition, the Petitioner confines his relief to the extend of challenging the correctness of the service record as directed by this Court in earlier Writ Petition (C) No. 2641/1990 disposed of by order dated 15.9.2004. He admits that Petitioner is not claiming any other relief except mentioned in the said order.

17. It is also argued by the Petitioner that it was incorrect on the part of the Respondent to compare the Petitioner's records with that of his junior as the present is a case of reinstatement and not of regular promotion. The submission of the Petitioner, no doubt, is fortified with the order passed by the Patna High Court where specific directions were passed to examine the Petitioner on the basis of Petitioner's service records for which the Petitioner was entitled as per finding of the Labour Court.

18. The Petitioner has challenged the committee's finding, by which the Petitioner was denied the grade, mainly on two grounds:

a. That withholding of grade is a punishment under service Rule No. 29 of Indian Oil Corporation (Discipline and Appeal) Rules and the said finding passed was also in violation of Supreme Court's order upholding the Petitioner's reinstatement with all the benefits. According to the Petitioner, withholding of grade is a major punishment and under Rule 29 of Indian Oil Corporation (Discipline and Appeal) Rules, no enquiry was held to impose this punishment on the Petitioner.

b. Further, the case of the Petitioner is that no adverse remark as mentioned in the committee report submitted by the Respondent regarding the Petitioner's service was ever communicated to the Petitioner.

It is challenged by the Petitioner that the committee ought to have considered records prior to 1970, that is, from 1964 to 1969, but, the Respondent considered the records for the years 1966, 1967, 1968 and 1974-1976 and left out the records for the years 1964, 1965 and 1969.

19. In support of his submission on this aspect, the learned Counsel for the Petitioner has referred to para 22 of the judgment delivered by Patna High Court dated 30.3.1988 wherein the following direction was given:

22. The result is that this application is allowed and the impugned order is hereby set aside. However in view of the findings that C.D. Singh has the right for being considered for promotion to the next higher scale of pay with effect from 30.12.1970. I direct the Petitioner Corporation to consider his case for

promotion to the higher scale of pay of Rs. 1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion. On the facts and in the circumstances of this case, the parties shall bear their own costs.

20. It is submitted by the Petitioner that the said judgment dated 30.03.1988 passed by the Patna High Court referred to the placement of the Petitioner in Grade "B" as on 30.12.1970, the day when his immediate juniors were put in Grade "B" and that the said placement in Grade "B" was to be done on the basis of his service records. This meant that the Petitioner's case was required to be considered based only on his service record. There was no scope for comparing his case with others, which has erroneously been done by the Respondent resulting in the loss of invaluable 11 years.

21. Learned Counsel for the Respondent has not denied the fact that for imposing major penalty under Rule 29 of the Conduct, Discipline and Appeal Rules, 1980 of the Respondent, the procedure as prescribed under Rule 31 of the Conduct, Discipline and Appeal Rules, 1980 for holding enquiry was not followed.

22. The relevant Rules 29 and 31 are as under:

29. Penalties:

The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons.

Minor Penalties:

(a) ...

(b) ...

Major Penalties:

(c) Withholding of increment of pay with or without cumulative effect.

(d) Withholding of promotion.

(e) Reduction to a lower grade or post, or to a lower stage in a time scale.

(f) Removal from service.

(g) Dismissal.

31. Procedure for Imposing Major Penalties:

(1) No order imposing any of the major penalties specified in Rule 29 shall be made except after an enquiry is held in accordance with this rule.

23. In view of the Rules of the Respondent i.e. Conduct, Discipline and Appeal Rules, 1980, it is clear that major penalty under Rule 29 could not be imposed without following the procedure as prescribed under Rule 31(1) for holding an

enquiry. Admittedly, in the present case no enquiry was held against the Petitioner before imposing the major penalty.

24. As regards the adverse remarks for the years 1966, 1967 and 1968 against the Petitioner is concerned, there is a force in the submission of the learned Counsel for the Petitioner that the Respondent could not have acted upon them without first communicating the same to the Petitioner. Since this procedure was not adopted by the Respondent in the present case, therefore, the same is also in violation of Rule 31 of the Conduct, Discipline and Appeal Rules, 1980.

25. It is cardinal principle of natural justice that before imposing an order of punishment upon an employee, the delinquent employee is required to be put to notice. However, in this case, the said compliance was not made.

26. In the similar circumstances, the Supreme Court in the following cases has held as under:

(1). In *Gurdial Singh Fijji Vs. State of Punjab and Others*, held as under:

17. The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the Appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the Appellant. The chain of reaction began with the adverse report and the infirmity in the link of causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the Appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-issuance of an integrity certificate to him.

18. We may also indicate, since the High Court saw the file and discovered that the Appellant was not brought on the Select List because he was "not found suitable otherwise", that regulation 5 which deals with the preparation of a list of suitable officers provides by Clause 7 that "if in the process of selection, review or revision it is proposed to supersede any member of the State Civil Service, the Committee shall record its reasons for the proposed supersession". While dealing with an identical provision in Clause 5 of regulation 5 of the same Regulations as they stood then, this Court observed in *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, that "rubberstamp" reasons given for the supersession of each officer to the effect that the record of the officer concerned was not such as to justify his appointment "at this stage in preference to those selected", do not

amount to "reasons for the proposed supersession" within the meaning of Clause 5. "Reasons", according to Beg J. (with whom Mathew J. concurred) "are the links between the materials on which certain conclusions are based and the actual conclusions". The Court accordingly held that the mandatory provisions of regulation 5(5) were not complied with by the Selection Committee. That an officer was "not found suitable" is the conclusion and not a reason in support of the decision to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court, but it must at least state, as briefly as it may, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the Select List. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another "reason" for not bringing the Appellant on the Select List.

(2). In *Dev Dutt v. Union of India and Ors.* AIR 2008 SC 2513 held as under:

9. We do not agree. In our opinion 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.

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 upgradation. 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.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India (UOI) and Another Vs. Major Bahadur Singh*, . But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).

(3). In *Abhijit Ghosh Dastidar Vs. Union of India (UOI) and Others*, held as under:

7. It is not in dispute that CAT, Patna Bench passed an order recommending the authority not to rely on the order of caution dated 22-9-1997 and the order of adverse remarks dated 9-6-1998. In view of the said order, one obstacle relating to his promotion goes.

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 him as he was having "very good" in the previous year. In

those circumstances, 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 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 Dutt case, SCC p. 738), para 41) relied on by the Appellant. Therefore, the entries "good" if at all granted to the Appellant, the same should 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 the grading given to him.

27. The Government of India has issued guidelines on promotion policy of employees of Public Sector Undertakings against whom disciplinary proceedings were started, and they were subsequently exonerated vide O.M. No. 39/4/56-Estt.(A) dated 3.11.1958. The para 3 of the said circular reads as follows:

In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position.

This is a mandatory provision and this order of Government of India is binding on the Respondent management as it is "State" under Article 12 of the Constitution of India.

Since this policy is being followed in the cases of other employees in similar situation and if not followed in this case, it will be discrimination under Articles 14 and 16 of the Constitution of India.

28. It is also argued by the Petitioner that an affidavit has been filed by Sh. Zahoor Mehadi on behalf of Respondent in Writ Petition (C) No. 2641/1990 which is available on the record of this case and according to para 6(d) of the affidavit, the basic requirements of the service records are as follows:

- (a) Length of service in Grade.
- (b) Seniority of the officer in the Grade.
- (c) Experience/Potential.
- (d) Educational Qualifications.
- (e) Clean record of Service.
- (f) Performance Rating's (APA's).

The marks are given on all above mentioned items to complete the service record. However, in the present case, out of above six items only one item i.e. APA (Annual Performance Appraisal) has been considered for assessing the case of the Petitioner as far as granting the promotion on the basis of service record is

concerned.

29. There is no force in the submission of the Respondent that since the Petitioner has now been superannuated, thus, no issue is left to be settled now. It is a matter of fact that the Petitioner was in litigation with the Respondent prior to his retirement and on his very petition for quashing the order dated 7.10.1988, this Court on 15.9.2004 passed directions to challenge the correctness of the service record for the period 1966 to 1968, thus, the present petition has been filed and, therefore, it can not be considered to have become infructuous on the ground of his retirement.

30. It is a matter of fact that the adverse remark passed was not communicated to the Petitioner which is as per the rules of the Respondent was a major penalty and no enquiry was conducted. Under these circumstances, this Court is of the considered view that adverse entry in the service record needs to be communicated.

31. The Petitioner is allowed to make the requisite representation in relation to its upgradation. In case his representation for upgradation of entry is allowed, as per his service record, he may get benefit in his pension, medical facilities and he will also get arrears.

32. The Petitioner shall make a representation for upgradation of his service record for the period from 1966 to 1968 within the period of two months. The Respondent is directed to decide the said representation within two months thereafter. If the upgradation is allowed, the Respondent is directed to give benefit of higher pension and balance of arrears and to pay the same with 6% p.a. interest.

33. With these observations, this writ petition is allowed. No costs.