

(2010) 07 SHI CK 0104
In the High Court Of Himachal Pradesh

Chura Mani Thakur

APPELLANT

Vs

H.P. High Court and Another

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 SHI CK 0104

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner and respondent No. 2, alongwith one Tarun Mahajan, were posted as Judgment Writers/Personal Assistants in this Registry. All of them fell in the zone of choice for promotion to the post of Private Secretary in the year 2009. Promotion to the post of Private Secretary is made on the basis of merit-cum-seniority. A Committee was constituted by the Hon'ble Chief Justice for assessing the merit and making recommendation. The Committee recommended the name of respondent No. 2 for promotion as Private Secretary, superseding the present petitioner, who was senior to her.

2. Grievance of the petitioner is that even according to the procedure adopted by the Committee, he could not have been superseded, inasmuch as he had three "Very Good" and two "Good" Confidential Reports, during the past five years, while respondent No. 2 had four "Very Good" and one "Good" Confidential Reports, during the same period, and the Committee, while devising the procedure, decided to award four marks for "Very Good" report and three marks for "Good" report and that as per the procedure, which is normally adopted after awarding marks for the five Confidential Reports, average marks are worked out and the average marks of the petitioner work out to be 3.6, while that of respondent No. 2, 3.8 and after rounding off, both of them could be said to have scored the same marks, i.e. 4, and the petitioner being senior could not have been superseded.

3. Petitioner made a representation to the Registrar General. He was intimated, vide letter dated 14th May, 2009 Annexure P-6, that his representation had been

rejected by the authorities.

4. It is not denied by the respondents that the petitioner had three "Very Good" and two "Good" Confidential Reports, during the past five years, while respondent No. 2 had four "Very Good" and one "Good" Confidential Reports and that four marks were earmarked for "Very Good" report and three for "Good" report by the Committee. It is stated that the representation made by the petitioner already stands rejected by the competent authority.

5. I have heard the learned Counsel for the parties and gone through the record.

6. It is not in dispute that five Confidential Reports, for the period immediately preceding the date of assessment of the merit of the candidates, falling in the zone of choice, were taken into consideration. Normally, the procedure followed, in assessing merit in cases where promotions are made on the basis of merit-cum-seniority, is that marks, earmarked for each category of overall assessment in the Annual Confidential Reports, are aggregated and then average marks are worked out by dividing the total marks by the number of Annual Confidential Reports. From the record produced by the High Court, it is made out that the kind of aforesaid normal practice was followed in the case of promotions to the posts of Deputy Registrars, which are selection posts, and the promotions are made on the basis of merit-cum-seniority or say the same basis as in the case of Private Secretary, the post, in question. In the present case, this procedure was probably not followed. Had this procedure been followed, both the petitioner and respondent No. 2 would have been in the same benchmark, i.e. "Very Good".

7. Abovestated position apart, I find from the record that no order was passed by the Competent Authority on the representation of the petitioner. Registrar General submitted a note to the Competent Authority for perusal, consideration and orders. The Competent Authority did not pass any order, but only put its initials below the aforesaid note. Therefore, it cannot be said that the representation of the petitioner has been rejected. Communication dated 14th May, 2009, Annexure P-6, sent to the petitioner is contrary to the record.

8. In view of the abovestated position, writ petition is disposed of with the direction that the Competent Authority (Hon'ble Chief Justice) shall consider the representation of the petitioner, dated 5th February, 2009, Annexure P-5, and pass appropriate orders thereon.

In view of the disposal of the main petition, pending application(s), if any, stand disposed of as having become infructuous.