(2016) 11 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition No. (C) No. 2877 Of 2013

Comptroller & Auditor General Of India — APPELLANT

Vs

Sri. Hlawndo Vanlalhuta — RESPONDENT

Date of Decision : 21-11-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLT 324 : (2016) 5 NEJ 278

Hon'ble Judges : Mr. Hrishikesh Roy and Nelson Sailo, JJ.

Bench : Division Bench

Advocate : Mr. G Baishya, Ms. P. Goswami, Mr. A. Hassan, Advocates, for the Petitioners; Mr. M.K. Choudhury, Sr. Adv. Amicus Curiae, Mr. A. H. Hazarika, Mr. M.K. Boro, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J. (Oral) - Heard Mr. G Baishya, the learned counsel appearing for the petitioners. Mr. MK Choudhury, the learned Senior Counsel has appeared as the Amicus Curiae on behalf of the respondent/applicant and we have heard him in the matter. We also note the presence of Ms. Rs. Das, the learned Counsel, who is substituting for the engaged lawyer, Mr. M.K. Boro for the respondent.

2. The respondent has now retired but while he was serving in the Senior Administrative Grade in the establishment of the Comptroller & Auditor General of India, was aspiring for promotion to the post of Principal Accountant General. But he was ignored and his juniors were promoted, on account of the adverse entry ''good'' in the ACR of the applicant, for the years 2006-2007, 2005-2006 and 2004-2005, respectively. Thus the aggrieved aspirant approached the Central Administrative Tribunal, Guwahati Bench, herein after referred to as the "Tribunal". It is relevant to mention that grading of ''very good'' is the bench mark for promotion and thus the ''good'' recorded in the concerned ACRs was the reason, for overlooking the applicant.

3. The Original Application No. 263/2010 was disposed of on 11.12.2012 (Annexure-11). The learned Tribunal examined the service records and found that in all the preceding years, the applicant was graded ''very good''. Even for the concerned three years, the reporting officer gave positive report about the performance of the applicant but notwithstanding this, he was graded as ''good'' and thus for want of the bench marking grade (very good), the officer was denied promotion.

4. The Tribunal concluded that the below bench mark grading was unreasonably recorded and thus the assessment failed the touchstone of Wednesbury principle propounded, in the case of Associated Provincial Picture House Ltd. v. Wednesbury Corporation (1948) 1 KB 223. It was observed that due care was not taken in assessing the performance of the officer. Consequently the entry ''good'' for the purpose of promotion for the concerned 3 (three) years was expunged and the respondents were directed to upgrade the same to ''very good'', on the basis of the assessment report prepared by the reporting officer. Direction was thus issued for convening a Review Departmental Promotion Committee for considering the applicant for promotion to the post of Principal Accountant General grade w.e.f. the date on which, his immediate juniors were promoted.

5. Assailing the legality of the impugned verdict of the learned Tribunal, Mr. G Baishya, the learned counsel submits that the Tribunal overstepped its jurisdiction by ordering up gradation of the ACR entry and should have left this exercise, to the supervisory authorities. He submits that even when a particular entry in the ACR is found to be unreasonably recorded, the Tribunal could have expunged that entry and then should have referred back the matter for recording of the appropriate entry against the officer. But in this case, the Tribunal not only expunged the below bench mark entry but also decided to upgrade the entry to ''very good'' in the ACR and this could not have been done by the Tribunal.

6. On the other hand, Mr. MK Choudhury, the learned Senior Counsel submits that when the Tribunal had concluded that the ACR entry ''good'' was unmerited and he deserved better grading and since this was the reason for the applicant being over looked for promotion, the specification of the deserving grading for the officer was the proper decision. The senior counsel submits that intervention by the High Court is not warranted since the responsibility for considering promotion through review DPC, was left to the competent authorities, by the learned Tribunal.

7. The remarks recorded in the ACR is intended for assessing the performance and also to consider further advancement of the employee in his service career. Hence accurate appraisal of performance is an important function of the Supervisory authorities and this cannot be done arbitrarily and unreasonably. Therefore, when the unmerited gradings are recorded in the ACR, those can surely be expunged by the Court and for support on this count we can refer to the judicial authority in ST Ramesh v. State of Karnataka & Anr., reported in

(2007) 9 SCC 436 also M.A. Rajasthan v. State of Karnataka & Anr., reported in (1996) 10 SCC 369.

8. But while expunction of undeserved ACR entries is seen in several reported verdicts, the up gradation or specification of the correct entry by the Tribunal or Court is not seen. The recording of ACR is the function of the competent Supervisory authorities and scrutiny of the Tribunal should therefore be confined to examination of whether a particular entry is recorded as deserved or unreasonably without due justification. The Court shouldn''t however specify what should be the ACR grading as that is for the supervisory authorities to decide.

9. In this case, the applicant was not found fit for promotion as he failed to secure the bench mark grading of ''very good'', in the concerned 3 (three) years, i.e., 2006-2007, 2005-2006 and 2004-2005. The Tribunal after due assessment of the service record and weighing the views of the reporting officer found that, the negative entry for the purpose of promotion, was not warranted by the standard of performance, rendered by the employee. On this basis the Tribunal found justification for upward correction of the grading in the ACR of the applicant. But then what should be the appropriate grading was decided by the Tribunal itself without relegating the matter for the decision of the competent authorities in the organization. We must bear in mind that theoretically, it is possible that because of reappraisal of the performance, the employee could be graded even higher then ''very good'' which was the ACR entry specified by the impugned verdict. But this exercise is surely within the domain of the Supervisory authorities and was not the job of the Tribunal.

10. The expunging of the unmerited entry by the Tribunal was justified but then, the correction of the ACR grading should have been left to be decided by the Supervisory authorities of the employee and on this aspect, we find that the Tribunal had overstepped its domain.

11. For the forgoing discussion and conclusion, the expunging of the ACR grading ''good'' for the years 2006-2007, 2005-2006 and 2004-2005 is left undisturbed. But, the consequential up gradation of the entry is ordered to be done by the Supervisory authorities. Then the Review DPC be convened to reconsider the case of the applicant for promotion to the post of Principal Accountant General w.e.f. the date on which, his immediate juniors were promoted to the higher grade. The corrective exercises are ordered to be carried out within a period of 3 (three) months from today. It is ordered accordingly. Since the respondent has already reached the age of superannuation, the resultant will be only notional service benefits for the purpose of increment, pension, etc.

12. With the above limited intervention with the impugned verdict of the Tribunal, the case stands disposed of in the manner indicated. For the assistance rendered to the Court by the Amicus Curiae, the fee of the Senior counsel Mr. M.K. Choudhury is quantified at Rs.10,000/-, to be paid by the Assam State

Legal Service Authority.