
(2005) 01 MP CK 0024

In the Madhya Pradesh High Court

Case No : M.P. No's. 371, 1345 of 1992 and 1805 of 1993

Deo Singh Warkade

APPELLANT

Vs

Managing Director, M.P. Rajya Van Vdcas Nigam Ltd. and
another

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 4 MPLJ 549

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Praveen Dubey in M.P. No. 1345 of 1992, for the Appellant; S.L Saxena, with M.L. Choubey, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In these writ petitions involved is about the promotion to the post of Project Range Officer, Shri Sone Lal Dohre was promoted wrongly in the quota of scheduled tribe candidate whereas admittedly he belongs to scheduled caste category. Further question is about validity of promotion of Shri R.K. Tikam on reversion of Shri Sone Lal Dohre.

Owing to wrong promotion of Shri Sone Lal Dohre in the category of scheduled caste, Shri Deo Singh Warkade has filed M. P. No. 371/1992 in which prayer has been made that he belongs to scheduled tribe category. Post was reserved for scheduled tribe candidate. Shri Sone Lal Dohre's promotion ordered on 26-12-1991. to the post of Project Range Officer, is thus bad in law.

After notice was issued in M. P. No. 371/1992 by this Court, respondents M. P. Rajya Van Vikas Nigam Ltd. realized its mistake and recall (led order of Shri Sone Lal Dohre as he was wrongly promoted treating him to be a scheduled tribe candidate on the strength of a wrong entry made in the seniority list against his

name of his caste being scheduled tribe. The order (P-1) of recall of promotion was passed on 30-3-1992 in M. P. No. 1345/1992. Shri Sone Lal Dohre has preferred M. P. No. 1345/1992 assailing the order of his reversion passed on 30-3-1992. It is submitted by Shri Sone Lal Dohre in M. P. No. 1345/1992 that petitioner's name was mentioned in the promotion order (P-3) dated 26-12-1991 he was relieved on 1-1-1992, joined his new assignment as Project Range Officer. He submitted joining at Umariya, District Shahdol. He submitted joining report (P-5) dated 2-1-1992. Thereafter petitioner received a notice on (P-6) dated 24-1-1991. Petitioner had submitted caste certificate, which was required as per memo dated 1-2-1991 in which petitioner Shri Sone Lal Dohre has been shown to be scheduled caste. He has submitted that he was selected out of the category of scheduled caste. The order mentions that there is erroneous promotion and the petitioner was promoted under the category of scheduled caste thus order of cancellation is bad in law. There is infringement of Articles 14 and 16 of the Constitution of India. There is violation of principles of natural justice also, hence the order of reversion be quashed.

In the return filed by respondents No. 1 to 3, it is submitted that order of promotion was erroneously issued as caste of the petitioner was erroneously mentioned in the seniority list as scheduled tribe as on 1-7-1986. Name of the petitioner finds place in the seniority list at Sr. No. 115. Petitioner Shri Sone Lal Dohre was aware of the defective seniority list. It was his duty to point out the fact but he kept quiet. Admittedly he belongs to scheduled caste category. Thus erroneously petitioner was promoted as per order dated 26-12-1991 against the post reserved for schedule tribe not against the post reserved for member of scheduled caste. On the basis of erroneous order, petitioner Shri Sone Lal Dohre has joined the promotion post which is meant for scheduled tribe" candidate. There were 20 posts of Project Range Officer out of which promotions were to be made of 3 scheduled caste candidates and 3 scheduled tribe candidates. Petitioner was erroneously promoted as against the post reserved for scheduled tribe candidate as apparent from document (R-3). The post in question on which petitioner was promoted was reserved for scheduled tribe category. Reversion is not by way of punishment. Error has been corrected after calling the caste certificate of the petitioner Shri Sone Lal Dohre of his being scheduled caste.

In M. P. No. 1805/1993 Shri Deo Singh Warkade has assailed the fresh order of promotion of Shri R. K. Tikam as Project Range Officer, which has been issued on reversion of Shri Sone Lal Dohre. It is submitted by Shri Deo Singh Warkade that in the seniority list his name finds place at serial number 97 and name of Shri R.K. Tikam was at serial number 121 in the scheduled tribe category. Thus petitioner Shri Deo Singh Warkade being senior to Shri R.K. Tikam ought to have been promoted. Promotion of Shri R. K. Tikam after reversion of Shri Sone Lal Dohre is thus bad in law and deserves to be quashed. It is further submitted by the petitioner that order dated 30-3-1992 passed with respect of promotion of Shri R. K. Tikam in scheduled tribe category as Project Range Officer be quashed as Shri R. K. Tikam was junior to the petitioner. The case of the petitioner was

not considered for promotion whereas he was eligible. He has been discriminated vis-a-vis to Shri R. K. Tikam.

In the return filed by respondent No. 1 M.P. Rajya Van Vikas Nigam Ltd. in M. P. No. 1805/1993, it is pointed out that case of the petitioner Shri Deo Singh Warkade and Shri R. K. Tikam were considered by the Departmental Promotion Committee. The criteria for promotion is merit cum suitability with due regard to seniority. Though the petitioner Shri Deo Singh Warkade was senior to Shri R. K. Tikam, his name was at serial number 97 whereas name of Shri R. K. Tikam was at serial number 121 in the seniority list. However, Departmental Promotion Committee considered the merit on the basis of the entries of preceding four years in the ACR. The Committee took a decision that the candidate who could secure 65 marks or above shall only be fit for promotion. The Committee fixed 25 marks for "?" + 20 marks for "?" 15 marks for "?" 10 marks of "?" and 0 mark for "?" The entries in the service record of the petitioner, in the year 1988 were "?" equal to 10 marks, in the year 1989 "?" equal to 15 marks, in the year 1990 "?" equal to 10 marks and in the year 1991 "?" equal to 15 marks. Thus petitioner Shri Deo Singh Warkade obtained total 50 marks on the basis of his ACRs. Petitioner failed to secure the criteria fixed by the Departmental Promotion Committee of 65 marks or above. He was not found suitable for promotion whereas respondent No. 2 was able to secure the requisite marks on the basis of entries in the service record. Thus no discrimination has been done. The case has been considered in the meeting held on 11-12-1991 by the DPC as such there is no merit in the petition.

First coming to the petition M. P. No. 371/1992 filed by Shri Deo Singh Warkade as against the promotion of Shri Sone Lal Dohre. The relief itself has been granted by M.P. Rajya Van Vikas Nigam Ltd. Order of promotion which was erroneously issued, has been recalled. Reversion of Shri Sone Lal Dohre has been ordered. Error has been corrected, hence in M. P. No. 371/1992 the relief itself has been granted by the Department.

In. M. P. No. 1345/1992 the main plank of the submission of Shri Sone Lal Dohre is that he was duly promoted in the scheduled caste quota. Principle of natural justice has been violated. Thus order of reversion dated 30-3-1992 deserves to be set aside.

Shri S. L. Saxena, Sr. Counsel with Shri M.L. Choubey appearing on behalf of M.P. Rajya Van Vikas Nigam Ltd. has submitted that order was rightly recalled as in the seniority list name of the petitioner was erroneously shown as scheduled tribe candidate. Admittedly petitioner belongs to scheduled caste category. He has placed reliance on availability of posts as per document (R-3) to contend that order of promotion was erroneously issued. It is not a case of punishment, hence principles of natural justice are not attracted. Petitioner was called to produce his caste certificate by issuance of notice in connection with the order of his promotion as he was erroneously given promotion as against the schedule tribe category post on the basis of wrong mention of caste in seniority list. Order has

been rightly recalled.

After hearing the learned counsel for the parties, in my opinion in M. P. No. 1345/1992 there is no merit in the petition preferred by Shri Sone Lal Dohre. It is clear and has not been rightly disputed by Shri Praveen Dubey that petitioner Shri Sone Lal Dohre was promoted as against the quota of scheduled tribe candidate. Admittedly the caste of Shri Sone Lal Dohre is scheduled caste. It is apparent from document (R-3) that post as against which Shri Sone Lal Dohre was promoted was reserved for scheduled tribe candidates. On M. P. No. 371/92 being preferred by Shri Deo Singh Warkade, mistake has been realized, order of promotion of Shri Sone Lal Dohre has been rightly recalled. Petitioner Shri Sone Lal Dohre was given notice to produce his caste certificate. He knew very well that for what purpose his caste certificate has been called for. It is not a case of punishment. The impugned order is speaking one and facts are writ large, hence I find that petitioner Shri Sone Lal Dohre was erroneously promoted as against the post reserved for scheduled tribe candidates, order of his reversion is proper, hence I find no merit in M. P. No. 1345/1992.

Coming to M. P. No. 1805/1993, the submission of the petitioner is that he is senior to Shri R. K. Tikam. Pursuant to reversion of Shri Sone Lal Dohre, he should have been promoted not Shri R. K. Tikam. It is not in dispute that Shri R. K. Tikam was placed at serial number 121 and petitioner Shri Deo Singh Warkade was placed at serial number 97. It is clear from the stand of the respondent that criteria for promotion is merit cum suitability with due regard to seniority. As the DPC has considered the case of Shri Deo Singh Warkade and Shri R. K. Tikam both and obtaining of 65 marks were fixed as criteria for promotion on the basis of ACR performance as mentioned above, Shri Deo Singh Warkade could obtain only 50 marks whereas Shri R. K. Tikam was able to secure the marks as per the criteria fixed by the DPC. Thus it cannot be said that petitioner Shri Deo Singh Warkade has been discriminated with while promoting Shri R. K. Tikam. I find no merit in M. P. No 1805/1993.

In M. P. No. 371/1992 relief stands granted by the respondents by recalling of the order of Shri Sone Lal Dohre. I find no merit in M. P. Nos. 1345/92 and 1805/93. Shri R. K. Tikam is held entitled for promotion w.e.f. the date on which he was deprived of the promotion by ordering the promotion in scheduled tribe category of Shri Sone Lal Dohre and all other consequential relief.

Writ petitions are disposed of in terms of the above order. Costs on parties.