
(1994) 10 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1461 of 1993

Govind Ram Sharma

APPELLANT

Vs

High Court of H.P. and Others

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32

Citation : (1995) 2 ShimLC 173

Hon'ble Judges : Gulab C. Gupta, C.J.; S.N. Phukan, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; D.D. Sood, for the Respondent No. 1 and Inder Singh, General for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—The Petitioner feels aggrieved by the promotion of Respondent No. 3 as Addl. District and Sessions Judge w.e.f. 30-9-1986 in preference to him and challenges its legal validity in this writ petition filed under Article 226 of the Constitution.

2. The Petitioner and Respondent No. 3 were selected as Sub-Judges in the same selection and were appointed on the same date i.e. 30-7-1974. The Petitioner was, however, senior to Respondent No. 3 because of his rating in the merit list. Both the Petitioner and Respondent No. 3 were considered for promotion to the Higher Judicial Service in accordance with principle and procedure prescribed by the High Court for selection for promotion to the said service as per Annexure P-7/A. It appears that the said procedure also provides for calling for a special report from the District and Sessions Judge in Annexure A showing the quality of judgment, knowledge of law and procedure, attitude, administrative capacity and general reputation regarding integrity etc. The special reports about all the eligible candidates were called and taken into consideration by a Committee of two Hon'ble Judges of this Court, while assessing the ACRs and the special report. The report of the District and Sessions Judge in relation to the Petitioner

is said to be containing adverse remarks, which were not communicated to him and hence he had no opportunity of making representation against the same. Those remarks were, however, taken into consideration by the Committee. The Petitioner was interviewed by yet Anr. Committee and ultimately the marks given to each of the eligible candidates by the two Committees were totalled to decide their respective merit. The Petitioner unfortunately could not be selected in that selection Respondent No. 3, however, was selected and given his promotion w.e.f. 30-9-1986. It appears that the Petitioner's case received consideration subsequently and he was promoted as Additional District and Sessions Judge w.e.f. 18-1-1989. It, further, appears that one Ms. Kiran Aggarwal was also considered in the selection in 1984 and not selected. She felt aggrieved by her non-selection and challenged the same before the Supreme Court of India by filing a writ petition under Article 32 of the Constitution, wherein it was the subject-matter of writ petition No. 910 of 1987. The Supreme Court by its order dated 6-4-1988 looked into the confidential reports and the entire record of the Selection Committee and held that the said Ms. Kiran Aggarwal was entitled for promotion as Additional District and Sessions Judge. The State of Himachal Pradesh was directed to create a post in the Higher Judicial Service, which was done and she was accommodated against the said post. It is perhaps because of this judgment of the Supreme Court that the Petitioner also started feeling aggrieved and claimed his promotion w.e.f. a date prior to 30-9-1986 and since the said request was not acceded to, the present writ petition has been filed challenging the legal validity thereof.

3. The first submission of the learned Counsel for the Petitioner is that the principle and procedure developed by the High Court for making selection of candidates for promotion to the Higher Judicial Service is illegal and arbitrary inasmuch as it not only takes into consideration the ACRs of last five years but also special reports of the District and Sessions Judges. It is particularly submitted that the reports of the District and Sessions Judges cannot be the criteria for determining the suitability for such a promotion, as the relationship between the Sub-Judge and the District Judge is not likely to be what it should be. It is particularly submitted that in the instant case the District and Sessions Judge i.e. Respondent No. 4 was not in happy terms with the Petitioner and had given adverse ACRs to him. In such a situation, the report of the said District Judge would be a factor prejudicial to the interest of the Petitioner. Assuming that the facts stated above are correct and yet this Court for this reason would not hold that principle and procedure, developed by the High Court is in any manner arbitrary or unjustified. Possibility of mis-use of any particular procedure or hardship because of the same cannot be the reason for holding the procedure arbitrary and violative of Article 14. If the said principle and procedure is examined in detail, it would be clear that only 10 marks out of 100 marks are allotted for special reports. Clearly, therefore, the said report plays only an insignificant role in the entire selection process. If the selection was based on the said report alone, one might have considered the argument with little more

seriousness. That not being the case, the argument cannot be accepted. Then this Court can also not ignore the fact that when the case of Ms. Kiran Aggarwal came to the notice of the Supreme Court, the said Court itself followed this particular procedure and came to its own independent conclusion. It did not find fault with the procedure and did not hold the procedure to be arbitrary. The procedure, in our opinion, is just and fair. It not only involves an assessment by one Committee and interview by Anr. , both the Committees being headed by the Hon'ble Judges of this Court, but also gives definite and detailed guidelines so as to avoid any personal factor intervening the selection process. The procedure, in our opinion, is just and fair, and for that reason, cannot be impugned as violative of Articles 14 and 16 of the Constitution.

4. It was thereafter submitted that though the special report contained adverse remarks against the Petitioner, he was not given an opportunity to make representation against the same. No rule has been brought to our notice that entitled the Petitioner to obtain the copy of the said report and make his representation against the same. The special report is called for assessing the ability and general reputation of the Judge concerned. In such cases, the principle of natural justice would not be applied. Application of principle of natural justice would have the effect of stalling the selection itself as the Petitioner may even claim right to make representation against recommendations of each of the two Committees.

5. The learned Counsel for the Petitioner has, however, placed reliance on the decision of the Supreme Court in *Brij Mohan Singh Chopra v. State of Punjab* 1987 (2) SLR 54 ; to submit that uncommunicated adverse remarks contained either in the ACRs or otherwise cannot be taken into consideration for compulsorily retiring a Government servant. There is no dispute between the parties that the principle relevant for compulsory retirement will also be relevant for the present purpose. A reading of the aforesaid judgment would, without doubt, support the claim of the Petitioner. But the said judgment does not seem to be current law on the subject. The matter has received detailed consideration of the Supreme Court in *Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another*, wherein it has been held that the law on the subject is that even uncommunicated adverse entries or remarks can be taken into consideration for deciding whether a Government servant deserves to be compulsorily retired. The learned Counsel has not been able to bring to our notice any subsequent decision of the Supreme Court taking a contrary view of the matter. In the circumstances, earlier decision in *Brij Mohan Singh Chopra's* case cannot be accepted as the law on the subject. For this reason, even if the special report contained some adverse remarks against the Petitioner and those un-communicated adverse remarks were taken into consideration by the Committee, the selection process will not become illegal or un-constitutional.

6. The learned Counsel for the Petitioner, thereafter, drew our attention to the decision of the Supreme Court in the case of Ms. Kiran Aggarwal and requested

us to go through the entire record of the Selection Committee, consider his case de novo and grant him promotion with retrospective effect. We have declined to accept this request. This Court while exercising its jurisdiction in cases of promotion does not promote a Government servant. It can, at the most, direct reconsideration and that too in cases where the selection process is held to be illegal or unconstitutional. We do not think that Ms. Kiran Aggarwal's case lays down any rule of universal application conferring jurisdiction on this Court to sit over the judgment of the Selection Committee and reach its own independent conclusion on the material collected by it.

7. In view of the discussion aforesaid, we find no substance in the writ petition, which fails and is dismissed.