
(2009) 12 JH CK 0080
In the Jharkhand High Court

Hari Singh

APPELLANT

Vs

The Union of India (UOI), The Director General, Boarder Security Force and The Deputy Inspector General and Commandant, Boarder Security Force

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Citation : (2009) 12 JH CK 0080

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. Petitioner, in this writ application, has prayed for issuance of a writ of certiorari for quashing the office order No. 17292-95, dated-01.09.2005 (Annexure-4), whereby the petitioner's claim for promotion on the post of Sub-Inspector (Clerk) with effect from 08.10.2003, has been rejected. A further prayer has been made for issuance of a writ of mandamus for a direction to grant promotion to the petitioner with effect from 08.10.2003, in view of the fact that persons junior to the petitioner have been granted promotion.

3. The petitioner was appointed as an Assistant Sub-Inspector (Clerk) under the Respondent No. 3 on 20.01.1994.

A seniority list was prepared in which the petitioner's name had appeared at Serial No. 375.

On 09.10.2003, the Departmental Promotion Committee considered the cases of several officers but while recommending promotion of several other colleagues of the petitioner including those who were junior to him in the gradation list, the Departmental Promotion Committee did not recommend the petitioner's case for promotion, declaring that he was not found fit.

4. The petitioner's grievance is that the decision taken by the Departmental

Promotion Committee (D.P.C.) is totally misconceived and misleading and not in consonance with the Rules stipulated for promotion.

5. Learned Counsel for the petitioner explains that as it appears from the counter affidavit of the Respondents, the Departmental Promotion Committee (D.P.C.) had found the petitioner not fit for promotion on the ground that during the preceding five years prior to the date of considering his case, the petitioner had earned adverse remarks and after assessing the petitioner's performance on the basis of the adverse remarks, the petitioner was found "not yet fit".

6. Learned Counsel submits that even as declared in the counter affidavit of the Respondents, the records of annual confidential reports of the petitioner, pertaining to the years 1997-98 to 2001-02 are as follows:

1997-98 Good/Adverse. 1998-99 Average. 1999-2000 Good/Adverse. 2000-2001 Very Good. 2001-2002 Very Good.

7. Learned Counsel argues that the performance of the petitioner cannot be stated as "Good" and "Adverse" at the same time and even otherwise, if the remark is considered to be adverse remark against the petitioner, it was incumbent upon the Respondents to communicate the adverse remarks to the petitioner within a reasonable time so as to enable him to file his representations for expunging such remarks. Referring to the Service Rules regarding promotions, learned Counsel submits that the Rules regarding adverse remarks in the A.C.Rs. as laid down in Clause 12.1 of the Rules, declare that "where the Departmental Promotion Committee find that the adverse remarks in the Confidential Report of an Officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the Committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CRs pertaining to three immediately preceding years prior to the year in which the D.P.C. is held and direct the cadre controlling authority concerned to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. Where the communicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the D.P.C. may proceed with the consideration of the case but may ignore the remarks while making the assessment".

8. Learned Counsel explains that since the adverse remarks were never communicated to the petitioner at all, it was incumbent upon the D.P.C. to direct the controlling authority of the petitioner to first communicate the adverse remarks to the petitioner and to postpone the consideration of the petitioner's case for his promotion, if the D.P.C. had considered the purported adverse remarks to be serious in nature. On the other hand, if the remarks were not serious enough, then the same ought to have been ignored while making the

assessment.

9. Refuting the contention of the Respondents as appearing in the counter affidavit that the purported adverse remarks were communicated to the petitioner by postal dispatch, learned Counsel submits that such contention is totally misleading and imaginary. Referring to Annexure-R-4 to the counter affidavit of the Respondents, learned Counsel submits that the documents (Annexure-R-4), dated 14th June, 2005, is an internal communication, which at best communicates that certain adverse entries were recorded in the petitioner's A.C.R., but it does not confirm that the petitioner's remarks were in fact communicated to him.

Referring to the extracts of the Dispatch register enclosed with Annexure-R-4, learned Counsel submits that the first entry in the Dispatch Register pertaining to the petitioner is that of 07.08.2000 under Serial No. 614-15. Almost three days later, under the same Serial number, another entry has been shown to suggest that adverse remarks were communicated to the petitioner. This, according to the learned Counsel, apparently demonstrates that the claim that the petitioner's remarks were communicated to him in the month of August, 2000, itself, is false and misleading. Learned Counsel explains further that these extracts of the Dispatch Register cannot be relied upon in view of the fact that it does not contain either any postal stamp or postal receipt nor does it confirm that any adverse remark was communicated to the petitioner.

10. Learned Counsel argues further that a misleading stand has been taken by the Respondents in their counter affidavit that the benefit of relaxation in the matter of assessment for promotion, merely because he belongs to the Schedule Caste Category is not available to the petitioner. The circular issued by the D.O.P.&T office, dated-22.07.1997, referred to by the Respondents in their counter affidavit to deny the benefit of relaxation to the petitioner, has been withdrawn by the Department itself by a subsequent Notification/Circular (Annexure-7), issued on 03rd October, 2000, by which the relaxation to be granted to the members of the reserved category, was restored. Learned Counsel argues that had the benefit of relaxation been extended to the petitioner, then the Bench remark based upon the A.C.R. entries of the petitioner, could have enabled him a better position, sufficient enough to make him eligible for the grant of promotion.

11. Per contra, the stand taken by the Respondents is that the D.P.C. in its meeting held on 20.05.2003, had considered the petitioner's A.C.R. and found that the petitioner had earned adverse remarks and upon assessment made, the D.P.C. had found that the petitioner is not fit for promotion. A further stand has been taken that the adverse entries were communicated to the petitioner even in the month of August, 2000 and in support of such contention, reference has been made to Annexure-R-4 to the writ application. It is also stated that the petitioner was not entitled to any relaxation in the matter of assessment merely on the ground of his being in the Reserved category, since by Circular

dated-22.07.1997, issued by the office of the D.O.P.&T, no relaxation was available to any of the candidates in the matter of their promotion on the basis of reservation.

12. From Annexure-7, which is a Circular, issued by the same office, namely, the D.O.P.&T, it is apparent that the earlier Circular by which the relaxation was made not applicable, was withdrawn and the benefit of relaxation has been restored to candidates pertaining to the Reserved category.

Referring to Annexure-R-4, relied upon by the Respondents, it appears that the confidential letter is of 14th June, 2005, and that too, the same is an internal communication between the D.I.G., B.S.F. and the Deputy Commandant. No copy of the aforesaid internal correspondence appears to have been forwarded to the petitioner. As regards the extracts of the Dispatch Register for postal address, enclosed to Annexure-R-4, as rightly pointed out by the learned Counsel for the petitioner, it appears that under the same Serial number, it is suggested that the communication was addressed to the petitioner on two different dates, the first being on 07.08.2000 and the other being on 10.08.2000. It is not understood as to how under the same serial number, the letters could be addressed on two different dates that too by post. It also appears that the extracts of the Dispatch Register do not bear any postal stamp. Even otherwise, no such copy of the letter of purported communication has been placed on record with the corresponding postal dispatch number to confirm that any letter communicating the adverse remarks to the petitioner was at all issued.

13. From the above facts, it is apparent that the purported adverse remarks were not communicated to the petitioner.

14. Coming now to the decision of the D.P.C., it appears that the D.P.C. has considered the entries in the A.C.R. of the petitioner, pertaining to the preceding five years prior to the date of its meeting. As already noted above, the entries for the years 1997-98 and 1999-2000, contain two contradictory remarks, namely, "Good & Adverse" simultaneously. It is not understood as to how the performance of the officer could be assessed "Good" as well as "Adverse" at the same time. Learned Counsel for the petitioner has argued that even by making an average assessment of the preceding five years, and giving the benefit of relaxation under the Reserved category, the petitioner could have earned Bench mark of "Good" and certainly not "Adverse".

15. The above arguments of the learned Counsel, appears to be persuasive. If the D.P.C. had treated the remarks to be adverse, then in accordance with the Rules stipulated, it ought to have first ascertained as to whether such adverse remarks were at all communicated to the petitioner and only after recording its finding on this issue, could the D.P.C. have proceeded to assess the petitioner's A.C.R. for his promotion. This, having not been done and yet, treating the entries in the A.C.R. for the preceding five years, to be adverse, is certainly against the procedure laid down under the Rules.

17. In the light of the above discussions, I find merit in this writ application. Accordingly, the same is allowed. The impugned order dated-01.09.2005, (Annexure-4) as passed by the Respondents-authorities is hereby set aside. The matter is remitted back to the concerned authorities of the Respondents to reconsider the petitioner's case for his promotion in accordance with the Rules and to take an appropriate decision by assigning reasons. If the petitioner is found entitled to promotion to the higher post, the Respondents shall also consider the date from which the petitioner could be held eligible for such promotion, keeping in view the fact that persons junior to him in the Gradation list have already secured their promotions.

The decision, as directed above, shall be taken by the concerned authorities of the Respondents within three months from the date of receipt/production of a copy of this order.

18. With these observations, this writ application stands disposed of.

19. Let a copy of this order be given to the learned Counsel for the Respondents, who is directed to forward a copy of this order to the concerned authorities of the Respondents within 48 hours from the date of receipt of the order.