
(1983) 04 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2228 of 1974

Jai Kumar Chaturvedi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-04-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1983) WLN 246

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dwarka Prasad Gupta, J.—In this writ petition the petitioners has challenged the action of the respondents Nos. 1 to 3 in refusing to confirm the petitioner on the post of Warehousing Manager Grade II in preference to the respondents Nos. 4 to 12 and also their action in not promoting the petitioner on the post of Warehousing Manager Grade I.

2. The addmitted facts are that the petitioner was employed as a Technical Assistant in the Rajasthan State Warehousing Corporation (here in after re erred to as "the Corporation") by an order dated October 16, 1961. He joined the aforesaid post on October 20, 1961 and was confirmed on the said post by the order dated December 22, 1962 with effect from December 16, 1962. Later on, the date of confirmation of the petitioner on the post of Technical Assistant Grade I was modified as October 20, 1962. The petitioner was promoted to the post of Technical Assistant Grade I by an order dated May 17, 1966 and was confirmed on that post with effect from May 17, 1967 by the order dated July 25, 1968. However, the petitioner had started officiating on the higher post of Warehousing Man even prior to that by the order dated November 7, 1963 with effect from June 6, 1963. The designation of the post of Warehousing Man was later on changed by Circular Order dated September 29, 1967 to that of Warehousing Manager Grade IT. Thus, the petitioner continued to hold the post of

Warehousing Manager Grade II until July 25, 1970 when he was reverted to the post of Technical Assistant Grade I on the ground that a disciplinary enquiry was made against him. The Managing Director of the Corporation imposed a penalty of stoppage of two grade increments with cumulative effect upon the petitioner by the order dated December 11, 1970 and as a result thereof the petitioner was reverted to his substantive post of Technical Assistant Grade I by the order dated July 25, 1970. The petitioner moved a review petition which was considered by the Executive Committee of the Corporation and the reversion of the petitioner was withdrawn by the order dated December 2, 1972 and he was restored to the earlier post as officiating Warehousing Manager Grade II, but it was ordered that the petitioner shall not be considered for higher promotion for a period of 2 years, i.e. upto July 16, 1972. The Departmental Promotion Committee (DPC) met in the year 1973 and the respondent Nos. 4 to 12 were confirmed on the post of Warehousing Manager Grade II with effect from various dates from June 28, 1969 to November 24, 1971. But the petitioner was not promoted. However, in the seniority list of Warehousing Manager Grade II as on December 1, 1973 published by the Corporation and December 11, 1973, the petitioner was shown as senior to the respondents Nos. 4 to 12 and it was also mentioned therein that he was confirmed on the post of Warehousing Manager Grade II with effect from May 17, 1967. On June 24, 1974 the Head Office of the Corporation issued a letter to the petitioner informing him that his case for confirmation on the post of Warehousing Manager Grade II was considered by the DPC along with the case of other employees of the Corporation, but as the service record of the petitioner was not found to be satisfactory, he was not considered fit for confirmation.

3. After the receipt of the aforesaid letter, the petitioner filed the present writ petition in this Court, challenging the validity of the order dated June 24, 1974 and also praying that he should be deemed to have been confirmed as a Warehousing Manager Grade II with effect from May 17, 1967 as shown in the provisional seniority list (Ex.9). The petitioner also prayed that the respondent Nos. 1 to 3 may be directed to consider his case for promotion and confirmation to the higher post of Warehousing Manager Grade I with effect from August 1, 1971, when other persons junior to him namely respondent Nos. 4 to 8, were so promoted and confirmed.

4. The reply filed by the Corporation stated that the petitioner was erroneously shown as confirmed with effect from May 17, 1967 in the provisional seniority list Ex. 9. According to the respondents Nos. 1 to 3 on order of confirmation of the petitioner on the post of Warehousing Manager Grade II was over passed and that he continued to hold the post of Warehousing Manager Grade II in an officiating capacity. It was also stated by the respondents Nos. 1 to 3 that the Departmental Promotion Committee which met in December, 1963 considered the case of the petitioner along with that of other employees, but in view of the record of the petitioner the Departmental Promotion Committee did not think it proper to confirm the petitioner on the post of Warehousing Manager Grade II.

5. It appears from a perusal of the writ petition that the petitioner was labouring under a misconception that his case for confirmation on the post of Warehousing Manager Grade II was not considered alongwith the case of other employees junior to him. From the reply submitted by the respondents Nos. 1 to 3 it is absolutely clear that the case of the petitioner for confirmation on the post of Warehousing Manager Grade II was considered by the Departmental Promotion Committee alongwith the case of other employees junior to him, in the cadre of Technical Assistant Grade I, but on account of the adverse entries in his service record and taking into consideration the result of the disciplinary enquiry conducted against the petitioner, the Departmental Promotion Committee did not think it proper to confirm the petitioner on the post of Warehousing Manager Grade II. A perusal of the seniority list of Warehousing Manager Grade II annexed to the Circular. Ex. 9 shows that the petitioner was promoted as officiating Warehousing Manager with effect from June 6, 1963 and he was confirmed with effect from May 17, 1967. The respondents have stated in their reply that the confirmation has been erroneously shown in the aforesaid seniority list Ex 9, which was tentative, in nature, because objections were invited in respect of the entries made in the provisional seniority annexed to the circular dated December 11, 1973 (Ex 9). According to the respondents the petitioner was never confirmed on the post of Warehousing Manager Grade II. No document has been produced by the petitioner showing that he was ever confirmed on the post of Warehousing Manager Grade II. Neither any letter of confirmation nor any notification or order has been produced to the above effect, nor there is any other material on the record to show that the petitioner was ever confirmed by the orporation on the post of Warehousing Manager Grade II. Thus except for the tentative seniority list annexed to the circular Ex. 9, which is claimed by the respondents to be erroneous, there is nothing on the record to support the petitioner's claim that he was confirmed on the post of Warehousing Manager Grade II with effect from May 17, 1967. Thus, the aforesaid claim of the petitioner is not substantiated by any documentary evidence and the entry in the provisional seniority list annexed to circular Ex. 9 alleged by the respondents Nos. 1 to 3 seems to have crept in on account of clerical error.

6. It is difficult in the aforesaid circumstances to accept the contention of the petitioner that he was a confirmed Warehousing Manager Grade II. if the petitioner was not confirmed as a Warehousing Manager Grade II the question of his substantive promotion to the higher post of Warehousing Manager Grade I could not arise. The seniority list shows that two persons vis. v. Acharya and B.B. Gupta were confirmed as Warehousing Manager Grade II with effect from May 17, 1967. These persons are not parties to the writ petition and it is not on record as to when these persons were confirmed on the post of Warehousing Manager Grade II. But as their substantive appointment on the post of Warehousing Manager Grade II has not been made subject matter of challenge in this writ petition, it would be fair to assume that these two persons were confirmed on the post of Warehousing Manager Grade II earlier to the period

when the present dispute arose. The remaining persons in the aforesaid schedule were confirmed of the post of Warehousing Manager Grade II from June 28, 1969 to November 24, 1971 as a result of the deliberations of the Departmental Promotion Committee which met in December 1973. the respondents Nos. 1 to 3 have asserted that the case of the petitioner was also considered for promotion to the post of Warehousing Manager Grade II along with cases of respondents Nos. 4 to 11 by the Departmental Promotion Committee which met in December 1973, but the petitioner was not found suitable for promotion on account of adverse entries occurring in his service record and also a result of the disciplinary enquiry proceedings. It would not be proper for this Court to interfere with the recommendations of the Departmental Promotion Committee in this respect.

7. In *N.B. Kanungo v. Union of India* RLV 1975 234, it was held by this Court that when the case of the petitioner was duly considered by the Departmental Promotion Committee and the Committee after looking into his service record thought that he was unfit for promotion then it would not be proper for the Court to examine the proceedings of the Committee to evaluate the comparative merits of the candidates considered for promotion.

8. It cannot be denied that there are adverse entries contained in the service record of the petitioner in respect of the years 1967-68, 1968-69 and 1969-70. Disciplinary proceedings were also taken against the petitioner which resulted in inflicting a penalty of with holding two grade increments. If after considering the aforesaid circumstances appearing on the service record of the petitioner, the Departmental Promotion Committee did not consider the petitioner fit for promotion, there can not be any interference by this Court.

9. Learned Counsel for the petitioner contended that the adverse entries relating to the year 1969-70 could not be looked into for the purpose of promotion with reference to vacancies which existed on June 28, 1969 and on which persons junior to the petitioner were promoted with effect from the aforesaid date. Learned Counsel is justified in making the aforesaid contention in as much as the record of the employee upto the date, with reference to which the promotion was to be made, could be looked into by the Departmental Promotion Committee. However, even if the adverse entries relating to the year 1969-70 were left out of consideration, yet there were adverse entries in the service record of the petitioner relating to the year 1967-68 and 1968-69 and further disciplinary proceedings took place with regard to the lapse on his part in the year 1968, for which two grade increments were ordered to be with held. Even after a consideration of the record which could have been lawfully taken into consideration, if the Departmental Promotion Committee found that the petitioner was unfit for promotion, the said decision could not be held to be arbitrary or illegal in any manner.

10. Lastly, learned Counsel for the petitioner urged that there were adverse entries also in the record of the respondents Nos. 7,8 and 9, yet they were confirmed by the Departmental Promotion Committee and were also promoted to

the higher post and that the action of the respondents in this respect was discriminatory. The allegation made by the petitioner in this regard is very vague and the same is denied by the respondents. It has been asserted that the relative merits of all the candidates were considered by the Departmental Promotion Committee and the respondents were found suitable and were ultimately recommended for promotion by the Departmental Promotion Committee. As no specific material has been brought on the record to show as to whether the alleged adverse entries in the service records of the respondents No. 7,8 and 9 pertained to the same period which was under consideration before the Departmental Promotion Committee and for which the petitioner's service record was not found to be satisfactory, it can not be said that there was a breach of the provisions of Articles 14 and 16 of the Constitution or there was any discrimination made between those respondents and the petitioner. In the face of the denial and in view of the state of material on the record, this submission of the learned Counsel for the petitioner cannot be accepted.

11. No other point was argued before me in this writ petition.

12. In the result, the writ petition has no merit and consequently the same is dismissed. The parties are left to bear their own costs.