
(2010) 03 RAJ CK 0042
In the Rajasthan High Court

Kailash Chand Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Citation : (2010) 4 SLR 621 : (2010) 2 WLN 552

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for parties.

2. This writ petition has been filed by petitioner Kailash Chand Sharma challenging adverse remarks recorded in his Annual Appraisal Performance Reports (for short, "the APARs") for the years 1988-89, 1989-90, 1990-91 and 1991-92, and also the orders by which his representations against those adverse remarks in his APARs were rejected. Further the petitioner has prayed that the respondents be directed to promote him from the date his juniors were promoted and also grant him selection scales on completion of 9, 18 and 27 of service.

3. Shri Ravindra Pal Singh, brief holder of Shri J.K. Singhi, learned Counsel for petitioner, contended that adverse remarks recorded against petitioner were due to malafides and biasness against him of his reporting officers. The petitioner has, for that purpose, arrayed three such officers by name as party respondents No. 3 to 5. Learned Counsel contended that adverse remarks were recorded in mechanical manner by one after another reporting officers. They were all biased against him. Learned Counsel submitted that petitioner was not issued any advisory or warning prior to recording such adverse remarks calling upon him to improve his performance. The relevant circulars/ instructions of Department of Personnel of the Government of Rajasthan in this behalf were not violated. Promotion of petitioner could not be denied just because of adverse remarks in his APARS.

4. Shri S.D. Khaspuria, learned Additional Government Counsel appearing for respondents, opposed writ petition and submitted that petitioner, apart from having adverse remarks in his APARs falling within the period which was to be considered for promotion, also had adversity in his service record of penalty of stoppage of one grade increment with cumulative effect imposed upon him. He could not therefore be granted promotion immediately after such adversely reported period. Moreover, since there were four adverse remarks in his APARs and one penalty of stoppage of one grade increment with cumulative effect, grant of selection scale to him was deferred/delayed by five years and that he was granted selection scale with effect from 25.01.1997 instead of 25.01.1992 when the Government Circular concerned was issued.

5. Upon hearing learned Counsel for parties and perusing material on record I find that in so far as adverse remarks recorded in APARs of petitioner for the years 1988-89, 1989-90, 1990- 91 and 1991-92 are concerned, no interference is called for therein because such adverse remarks have been recorded by different reporting officers. It cannot be accepted that all of them would be biased against petitioner. Petitioner has not placed any material or datas on record to substantiate his allegation of bias and malafide on the part of private respondents. Adverse remarks in APARs and the penalty were therefore bound to reflect upon his promotion. Prayer of petitioner in that respect is rejected.

6. Coming now to question of grant of selection scales to petitioner on completion of 9, 18 and 27 years of service, I find that petitioner was initially appointed as Stock Assistant in the year 1964 and by the time the Government Circular dated 25.01.1992 was issued, he had already completed 27 years of service; in other words, all three selection scales became due to him on completion of 9, 18 and 27 years of service on 25.01.1992 itself, but for the above referred adverse remarks and penalty. The action of respondents in deferring all the three selection scales by five years cannot be held to be justified. In so far as first two selection scales i.e. on completion of 9 and 18 years of service are concerned, the period in which the same became due to the petitioner, none of the five adversities, referred to above, were falling in those two spells. The period of four adverse remarks in the APARs of petitioner come within the period of 1988-89, 1989-90, 1990-91 and 1991-92 and the penalty of stoppage of one grade increment was also awarded to him by order dated 09.03.1989. All such five adversities thus fall within the period of nine years starting from 18 to 27 years and therefore they could have effect only in delaying grant of third selection scale to petitioner in terms of the provisions contained in the Government Circular dated 25.01.1992, and not for grant of all three selection scales. The said Circular provides that grant of selection scales would be depending on satisfactory service of government servant concerned. But then that satisfactory service would be computed only for the period/ span of 9 years for which the employer was not able to grant promotion to the employee and in order to remove the stagnation for such span of nine years, the employee has to be compensated by grant of selection scale.

7. In the result, this writ petition is allowed in part. The respondents are directed to grant first and second selection scales to petitioner immediately on issue of Circular dated 25.01.1992. However, action of respondents in so far as grant of third selection scale with effect from 25.01.1992 is concerned, the same is upheld. Petitioner shall be entitled to all consequential benefits together with interest thereon at the rate of 6% per annum.