

(2005) 08 DEL CK 0025
In the Delhi High Court
Case No : WP (C) 2437 of 1989

Kartar Singh Giroh

APPELLANT

Vs

Air India and Another

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Citation : (2005) 122 DLT 541 : (2005) 83 DRJ 611

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : R.K.Singh and Deepa Rai, for the Appellant; S.P. Bhatia, for the Respondent

Judgement

R.S. Sodhi, J.—By way of WP(C)2437/1989, the Petitioner seeks a writ of mandamus directing the Respondents to duly consider the Petitioner for the vacancy which arose in the year 1986 in the post of Assistant Accounts Officer in the Air India. The Petitioner also prays for writ of mandamus directing the Respondents to consider the Petitioner for promotion, eschewing the uncommunicated adverse entries from consideration as also writ of mandamus directing the Respondents to apply the Reservation Policy contained in the Government of India Circulars, for filling up the vacancy of Assistant Accounts Officer in Air India in the year 1986.

2. The brief facts of the case, as has been stated in the Writ Petition, are as under :

"(a) The Petitioner is working in Air India as an Accountant. He belongs to Scheduled Case. His next promotion has to be to the post of Assistant Accounts Officer. As a matter of fact, the Petitioner was selected for promotion in the year since the Petitioner was on overseas posting, he could not accept promotion foregoing his overseas posting, which is considered as prestigious and always coveted. In the case of other officers, without affecting their tenure of overseas posting, promotions were mad.

In the Petitioner's case alone since he happened to be a member of Scheduled Caste, he was sternly asked to choose between overseas posting and the promotion. The Petitioner had to choose in favor of the former since overseas posting was more advantageous.

(b) Again, in 1986, the question of promotion to the posts of Assistant Accounts Officer came. The Petitioner is entitled to be considered for promotion, he being the senior most. Strangely, this time, to the shock and dismay of the Petitioner, his juniors were being promoted. The petitioner protested against this by his representation dated 28.8.1986, which is in Annexure-A. The Petitioner was intimated on 13.9.1986 that he was superseded on the basis of the Appraisal Reports for the preceding year.

This communication is in Annexure-B. On his request the details of the Appraisal Reports for the year 1984, 1985 and 1986 were given to the petitioner, by communication dated 20.7.1987 which is in Annexure C. This contained adverse remarks as to his promotion. The remarks virtually called him "unfit for promotion". These remarks were never communicated to the Petitioner. These remarks were wholly arbitrary and unreasonable. Such opinions about future promotions were uncalled for. Only his performance and integrity etc. with reference to the presently held post were relevant and the remarks on the Petitioner being considered for selection was wholly without jurisdiction and void.

(c) On 10th August 1987, the petitioner protested against his super session on the basis of uncommunicated adverse remarks. This letter is in Annexure-D. The respondents took up a stand in Annexure "E dated 7.10.1987 that the Reporting or countersigning authority's remarks on the petitioner's potential to be promoted was a confidential information, which would not be communicated. The Petitioner on his enquiries, came to know that the Respondents ignored the policy of reservation for Scheduled Caste and Scheduled Tribes by illegally holding that the same was not applicable to the post of Assistant Accounts Officer. This was clearly illegal."

3. It is contended by Counsel for the Petitioner that admittedly the confidential remarks in the ACR regarding the overall assessment were not communicated and taking them into consideration for the purpose of promotion would be vocative of principles of natural justice. He also submits that the Petitioner being a scheduled caste candidate was entitled to further benefits and concessions which have not been given to him.

4. I have heard Counsel for the Petitioner and have gone through the pleadings in the writ petition as also the counter-affidavit. In reply to ground 2(b), it is stated that the non-selection of the Petitioner to the post of Assistant Accounts officer in the year 1986 was on account of consideration of his Appraisal Reports for the three preceding years" 1983, 1984, 1985, rating him as "B" , which is equivalent to "Average". In the Appraisal Report of the Petitioner there was an entry as "Not ready or promotion" and "Mr. Giroh is not evincing any interest in

the work and also limited resourcefulness". These remarks of the Reporting Officer on the Appraisal Report of the Petitioner which were also endorsed by the Counter Signing Officer are not part of the ACR, which is to be communicated to the Petitioner and the same are not adverse entries.

5. Having heard counsel for the Petitioner and taking into consideration the affidavits on record, I find that the Petitioner was graded as "Average". Learned Counsel has not produced any rules, regulations, circulars or standing orders that govern the recording of ACR. He has also not alleged any mala fides. In that view of the matter, it is for the superior officer to assess the competence of the Petitioner for the purpose of promotion. The Petitioner has been found to be unfit on the assessment of his past performance. There were no remarks of the Assessment Officer in the Confidential Report which were required to be communicated to the Petitioner. The Petitioner's overall performance having not been to the satisfaction of the employer, there was no reason why he should have been promoted. In that view of the matter, WP(C)2437/1989 is dismissed.