
(2006) 08 MP CK 0028
In the Madhya Pradesh High Court

Kishanlal Patle

APPELLANT

Vs

Government of M.P. and Others

RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Citation : (2006) 08 MP CK 0028

Hon'ble Judges : Shantanu Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.—The petitioner was appointed on the post of Assistant Draftsman vide order dated 19-10-1983. He has challenged his non-promotion from the post of Assistant Draftsman to the post of Draftsman by filing Original Application No. 3838/1990 before the M.P. State Administrative Tribunal, Jabalpur. On abolition of the Tribunal the matter has reached to this Court for adjudication.

2. The petitioner alleges that he has been denied the promotion by the Departmental Promotion Committee (for short "DPC") taking into consideration the un-communicated adverse remark recorded in his personal file and instead the promotion has been granted vide order dated 15-11-1990 to the respondent Nos. 3 and 4 who are juniors to him. According to him, the DPC ought not have considered the adverse confidential remark which was not communicated to him while considering the matter of the promotion. He, therefore, claimed the benefit of promotion to the post of Draftsman with effect from 15-11-1990 when his juniors were promoted.

3. The respondent Nos. 1 and 2 have filed return and have not disputed that the respondent Nos. 3 and 4 were juniors to the petitioner. According to them, the petitioner's name was considered for promotion for the post of Draftsman alongwith others by the DPC convened on 13, 14 and 15th October, 1990. The DPC laid down certain norms for inclusion of the eligible candidates for promotion

to the post of Draftsman. As per the said norms any Assistant Draftsman shall be eligible for promotion to the post of Draftsman provided he secures atleast 10 marks in the DPC. The marks were to be allotted according to the grading of their preceding five years confidential reports. The DPC fixed the marks for the grading as follows :

?1? \$ d mRd`"V] m?ke 4 vad

?2? d cgqr vPNk 3 vad

?3? [k vPNk larks"ktud 2 vad

?4? x lkekU;] i;kZIr 1 vad

?5? [?k ?kfV;k] [kjc 0 vad

4. According to the respondents the petitioner's grading for the preceding five years were considered and it was found that for the period commencing from 1-4-1984 to 31-3-1988 (four years), the petitioner secured Kha-Good but for the years 1-4-1988 to 31-3-1989 there was adverse remark in his confidential report and for the said year he was awarded grading Gha-Ghatia. In the circumstances, it is stated that he could not secure the minimum 10 marks as fixed by the DPC, therefore, he was not promoted to the post of Draftsman.

5. Having heard the learned Counsel for the parties and on perusal of the records of the DPC and the confidential reports of the petitioner produced at the time of hearing, it is clear that the DPC considered the cases of the Assistant Draftsman for promotion to the post of Draftsman on the basis of the norms laid down by it. The petitioner secured good for the period commencing from 1-4-1984 to 31-3-1988. He however, was awarded adverse remark for the years 1-4-1988 to 31-3-1989 and was categorized as Gha-Ghatia for the said years. In the circumstances, he could not secure minimum 10 marks as fixed for becoming eligible for inclusion of his name for promotion. It is not disputed by the learned Govt. Advocate that the said adverse remark was not communicated to the petitioner.

6. Thus, undisputedly the petitioner has been denied the promotion acting upon the adverse remark without intimation of it to him. It is now well settled that an adverse remark in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances, leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. See *Gurdial Singh Fijji Vs. State of Punjab and Others*, .

7. In *State of U.P. Vs. Yamuna Shanker Misra and another*, has held thus:

The object of writing the confidential reports and making entries in them is to give an opportunity to a public servant to improve excellence. Article 51-A (j)

enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of performance of the subordinate officer. It should be founded upon facts and circumstances. Though some times, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within the knowledge of such officer. Before forming an opinion to make adverse entries in confidential reports, the reporting/reviewing officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.

8. In case of *P.C. Pradhan v. Union of India and Ors.* 1980 M PLJ 820 a Division Bench of this Court finding that the adverse entry in the confidential report was not communicated to the petitioner at all before it was considered by the Selection Committee and the favourable report made by the Deputy Chief Conservator of Forests was withheld, in the circumstances it was held that the non-selection of the petitioner cannot be held to be valid. In case of *Brij Mohan Singh Chopra Vs. State of Punjab*, the Supreme Court while considering the case of compulsorily retirement observed that whenever an adverse entry is awarded to a Government servant it must be communicated to him. The object and purpose underlying the communication is to afford an opportunity to the employee to improve his work and conduct and to make representation to the authority concerned against those entries. If such a representation is made it is imperative that the authority should consider the representation with a view to determine as to whether the contents of the adverse entries are justified or not. Making of a representation a valuable right to a Government employee and if the representation is not considered, it is bound to affect him in his service career, as in Government service grant of increment, promotion and ultimately premature retirement all depend on the scrutiny of the service records. In case of *Amar Kant Choudhary Vs. State of Bihar and Others*, the Supreme Court observed that

the appellant was not included in the select list by the Selection Committee relying upon the adverse entries which had been made in his confidential rolls which had not been either communicated to him or against which he had made representation which had remained undisposed of and which had been subsequently expunged. In the circumstances, the Supreme Court held that the appellant has made out a case for consideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar. The Supreme Court directed the Selection Committee to reconsider the case of the appellant accordingly and it further directed that on such reconsideration if the appellant is selected he shall be entitled to the seniority and all other consequential benefits flowing there from.

9. Having given the anxious consideration to the aforesaid legal position, I am of the view that the denial of promotion to the petitioner on the basis of adverse remark which was not communicated to him is contrary to the principles of natural justice and such an action cannot be sustained.

10. Accordingly, the petition deserves to be and is hereby allowed. The decision of non-inclusion of the petitioner in the eligibility list of candidates for promotion to the post of Draftsman is quashed. The respondent Nos. 1 and 2 are directed to reconsider the petitioner's case for promotion from the date of his juniors were promoted and in case the petitioner is promoted he shall be entitled to the seniority and all other consequential benefits. The necessary exercise be completed within 3 months. No order as to costs.