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(2012) 11 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8442 of 2008

Kishore Chand Chandawat APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 19-11-2012

Acts Referred:
Rajasthan Commercial Taxes Subordinate Service Rules, 1975 — Rule 17

Citation : (2013) LabIC 736

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Advocate : Manoj Bhandari, for the Appellant; Anirudh Purohit and V.K. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Govind Mathur, J.—The petitioner, a Commercial Tax Inspector, has preferred this petition for writ to have a direction for the respondents to consider his candidature for the purpose of promotion to the post of Assistant Commercial Taxes Officer. Briefly stated, facts of the case are that the petitioner entered in the service of respondents being appointed as Commercial Taxes Inspector Gr. II under an order dated 27-5-2000 as a consequent to his selection as per the Rajasthan Commercial Taxes Subordinate Service (General Branch) Rules, 1975. While serving the respondents he suffered a minor penalty i.e. of censure under an order dated 26-4-2006 passed by the Commissioner, Department of Commercial Taxes.

2. Commercial Tax Inspectors to the post of Assistant Commercial Taxes Officer against the vacancies of year 2008-09 denied consideration to the petitioner due to the minor penalty suffered by him. An order dated 5-1-2008 then was passed by the competent authority giving promotion to several persons as Assistant Commercial Taxes Officer including Shri Rajesh Aswal, a Commercial Tax Inspector, junior to the petitioner. Being aggrieved by the same and also the minor penalty imposed under an order dated 26-4-2006, this petition for writ is

preferred.

3. During the course of arguments the petitioner has not pressed into service the challenge given to order dated 26-4-2006.

4. The case of the petitioner is that as per the Rajasthan Commercial Taxes Service Rules, 1971 (hereinafter referred to as ''the Rules of 1971''), appointment to the post of Assistant Commercial Taxes Officer is required to be made by way of direct recruitment and promotion in the ratio of 1:1. The appointment by way of promotion is required to be made from among the Commercial Tax Inspectors having five years service by adhering the criteria of seniority-cum-merit. Under the criteria of seniority-cum-merit, the merit required is the minimum merit requisite for efficiency of administration. A person, though, less meritorious shall have better right vis-a-vis a person junior to him, though more meritorious.

5. Per contra, as per the respondents the petitioner suffered a minor penalty i.e. of censure and in view of Government of Rajasthan circular dated 26-7-2006 he was not entitled to be considered for promotion at least for a year as per the circular aforesaid if a person is subjected to a penalty i.e. is censure, then for one such punishment he is required to be debarred from promotion for a year.

6. Heard learned counsel for the parties.

7. The respondents have not considered candidature of the petitioner for promotion to the post of Assistant Commercial Taxes Officer in view of circular dated 26-7-2006. The circular aforesaid provides that for one penalty of censure, the incumbent shall not be considered for promotion for a time and if the punishment imposed is more than one, then he shall not be considered for promotion of the equal period to number of punishments. The petitioner suffered one penalty of censure, therefore, he is not entitled to be considered for promotion at least once.

8. The promotion to the post of Assistant Commercial Taxes Officer is required to be made in accordance with Part-IV of the Rules of 1971. Rule 17 of the Rules aforesaid provides that a certain number of posts shall be filled by promotion, and for that the Commissioner shall prepare a correct and complete list containing names not exceeding five times the number of vacancies from among the senior-most persons who are qualified under the rules and who have passed the qualifying examination for promotion to the service as prescribed in Schedule II. The list so prepared shall be forwarded to the Secretary to the Government of Rajasthan, Incharge of Commercial Taxes Department with necessary confidential rolls and personal files of the enlisted persons. A committee consisting of the Chairman of the Rajasthan Public Service Commission or any other Member of the Commission nominated by the Chairman, Secretary to the Government, Incharge of the Commercial Taxes Department or the Special Secretary concerned nominated by the Government of Rajasthan, Incharge of the Commercial Taxes Department and Commissioner, Commercial Taxes

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Department shall consider cases of all persons enlisted and if necessary interview them. After such process, a list containing name of the suitable candidates upto twice the number of existing posts shall be prepared. Promotion then is required to be accorded as per the criteria of seniority-cum-merit.

9. The procedure prescribed under the Rules of 1971 gives an exclusive jurisdiction to the Committee, commonly known as the Departmental Promotion Committee (DPC) to consider cases of the eligible persons for promotion to next higher post. The criteria for promotion is also prescribed under the Rules of 1971 and in the instant matter i.e. seniority-cum-merit. As per the Rules, the entire personal file of eligible persons is required to be sent to the Departmental Promotion Committee with the annual confidential records to be considered for promotion. The Committee is supposed to consider the entire record available with it objectively. The Government of Rajasthan in its administrative side issued a circular prescribing guidelines for not considering candidature of the certain persons who suffered penalties. The Scheme of the Rules of 1971 - nowhere empowers the State Government to provide instructions to a statutory Departmental Promotion Committee to act in a specific manner. The effect and impact of a specific punishment to a Government servant under consideration for promotion is required to be examined by that Committee only. The Government is not supposed to provide administrative instructions to a Statutory Committee to act or to mold its consideration in a specific manner. As a matter of fact, the instructions issued under the circular dated 26-7-2006 are nothing but an extraneous interference with the authority available to the Departmental Promotion Committee under the Rules of 1971.

10. The issue that a Committee is required to consider candidature of a Government servant for promotion under the criteria of seniority-cum-merit was examined by this Court in the case of Satyamani Tiwari v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 2878/2003) decided on 11-8-2006 while dealing with analogous provisions under the Rajasthan Police Service Rules, 1974. In that case, this Court held as under:--

As a matter of fact the Departmental Promotion Committee in most cursory manner rejected candidature of the petitioner merely by saying that the petitioner is not suitable for promotion being suffered with a minor penalty under an order dated 19-4-1993. In view of the provisions of Rule 28 of the Rules of 1954 and also in view of the law laid down by this Court in Het Ram Dudi''s case (supra) while examining suitability of an incumbent various factors are required to be taken into consideration and imposition of a minor penalty cannot be a sole criteria for denying promotion to a person. The procedure for selection under Rule 28 in quite unambiguous terms states that while preparing a list under the criteria of seniority-cum-merit remarks are required to be given for not recommending a person for promotion being unsuitable. No such remarks are available in the record of entire selection proceedings including the minutes of Departmental Promotion Committee. The Departmental Promotion Committee

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was required to see the entire service record including the annual confidential reports/annual performance appraisal reports, awards/commendation certificates, entries relating to punishments or pending departmental enquiries etc. and then by analysis of the same an objective remark in relation to suitability was required to be made. The Departmental Promotion Committee should have recorded that how the misconduct for that the petitioner was penalized by a minor penalty effected his efficiency to the extent that he is not suitable to be promoted to Rajasthan Police Service. While doing so the committee must keep in mind that under the criteria of seniority-cum-merit it is the seniority that will prevail as the term "merit" under the criteria concerned means the minimum merit necessary for efficiency of administration. From perusal of the record it appears that no such exercise was done while rejecting candidature of the petitioner for promotion to Rajasthan Police Service.

11. In the instant matter, the position is all the more worst. The State Government issued administrative instructions and has restricted the statutory Departmental Promotion Committee from making necessary consideration to provide promotions to the Commercial Tax Inspectors. Such restriction by the administrative instructions is not at all permissible. As per the Rules the Commissioner should have sent the entire record to the Committee, and the Committee should have recorded that now the punishment of censure effects the minimum efficiency of the person under consideration for promotion. No such consideration was made in the case in hand, thus, I am having no hesitation in holding that the Departmental Promotion Committee erred while not considering the candidature of the petitioner for promotion to the post of Assistant Commercial Taxes Officer on the count that the petitioner suffered penalty of censure.

12. The writ petition, therefore, deserves acceptance. Accordingly, the same is allowed. The respondents are directed to consider candidature of the petitioner for the purpose of promotion to the post of Assistant Commercial Taxes Officer against the vacancies of the year 2008-09 ignoring the instructions prescribed by the Government of Rajasthan udder the circular dated 26-7-2006. The Departmental Promotion Committee shall be at liberty to examine effect of minor punishment i.e. of censure on the efficiency of the petitioner while considering his candidature for promotion. No order as to costs.

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