
(2013) 07 MP CK 0128

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1257 of 2004 (S)

Lal Bahadur Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 07 MP CK 0128

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : D.S. Raghuvanshi, for the Appellant; Sangita Pachauri, Dy. Govt. Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This is second visit of the petitioner to the Court. Against supersession by the private respondents/juniors, the petitioner filed O.A. No. 2985/1988 before the M.P. Administrative Tribunal. The petitioner's juniors/private respondents were promoted by order dated 12.2.1988. The Tribunal disposed of the petition on 25.4.1998. The petitioner's case was directed to be considered for promotion from the date his juniors were given promotion. The Tribunal gave certain findings also. Against this order of the Tribunal, the respondents filed W.P. No. 263/1999 (State of MP vs. Lal Bahadur Singh) before this Court. This Court rejected the writ petition on 10.10.2003. This petition was dismissed but certain observations/findings were given in the body of the order. Thereafter, the respondents have convened a review DPC and considered the case of the petitioner for the post of Senior Curator and then passed the impugned order dated 18.6.2004 (Annexure P/1). This order is under challenge in this petition. It is stated that in the review DPC the petitioner was not found suitable as per prescribed norms/benchmark.

2. Shri D.S. Raghuvanshi, learned counsel for the petitioner by taking this Court to the orders of the Tribunal and this Court submitted that the findings of the

review DPC filed by the respondents are arbitrary and perverse in nature. In view of specific finding given by the Tribunal and the High Court, the review DPC has erred in not treating the petitioner as suitable and, therefore, interference is warranted.

3. Per Contra, Smt. Sangita Pachauri, learned Deputy Government Advocate relied on the findings of the review DPC and the averments of the return. She submits that this Court cannot sit as an appellate authority over the findings of the DPC and in absence of any glaring illegality, this Court cannot review, re-assess and reweigh the performance of the candidates to arrive at to a different conclusion.

4. I have heard learned counsel for the parties and perused the record.

5. Before dealing with the findings of the DPC and Annexure P-1, it is apt to quote the relevant portion of the order of the Tribunal. The Tribunal's order reads as under:-

The applicant being senior to respondents No. 4 to 8 has not been promoted to the post of Curator. The applicant preferred his representation but, the respondents did not decide the same. On perusal of the record of the DPC, it appears that the applicant has better record than the respondent No. 5 Raviranjana Sharma. The respondents did not submit the record of the DPC, how the DPC did find the applicant unsuitable for his promotion. The assessment chart shows that the A.C.R. for the year 1987 was not communicated to the applicant so, the same could not be considered adverse against him or is a hurdle in the way of his promotion as per settled law on this point. The respondents in their return have submitted that his representation is still under consideration and such representation shall be decided.

In the said circumstances, the petition be and is hereby allowed. The respondents are directed to consider the case of his promotion in view of the observation as made here-in-above from the date on which juniors to him were promoted. The respondents shall promote him, though notionally, from the date if he is found fit for his promotion and shall fix the salary accordingly but not the arrears, till he resumes actual charge of the promotion post. The said period shall be counted for all service benefits except arrears. This exercise shall be done within a period of six months from the date of communication of this order.

A bare perusal of the order of the Tribunal makes it clear that the Tribunal had perused the relevant record and assessment chart. It opined that since ACR for the year 1987 was not communicated to the petitioner, same could not have been considered as adverse against him nor it could have been a hurdle in the way of his promotion as per settled law on the point. Thus, one thing is clear that ACR for the year ending 1987 could not have been a reason to deprive the petitioner for promotion because of the aforesaid finding of the Tribunal. This order of the Tribunal was affirmed by the High Court. In WP No. 263/1999 this Court gave following finding:-

3. We have heard counsel for the parties and perused the record of Departmental Promotion Committee. The record of the respondent No.

1 Lal Bahadur Singh is as under:-

For the year 1983-Not applicable.

For the year 1984-Two types of remarks are on record. It is mentioned "Ka" (very good) but by ink written as N.A.

For the year 1985-It is written "Ka" (Very good) but by ink written as "Kha" (good).

For the year 1986-he has been marked as good and average for the year 1987. Adverse remarks were not communicated to him.

xxx xxx xxx

4. We have directed the petitioner to produce the original C.Rs. of the respondents. But in spite of sufficient opportunity since 15.7.03 the petitioners have not produced the original C.Rs. of all the respondents for the reasons best known to them.

5. Considering the criteria laid down, we find that Tribunal has not committed any error in holding that respondent No. 1 Lal Bahadur Singh fulfills the criteria for promotion and he has wrongly been denied promotion. Tribunal has not committed any error in allowing the petition. We do not find any error in the order passed by the Tribunal.

6. In the result, petition fails and is dismissed with direction to the petitioner to comply with the directions of the Tribunal within a period of two months from today and it is further directed that respondent No. 1, if he is found fit for promotion, will be entitled for salary of promoted post six months after the order of Tribunal i.e. 25.4.98 and for previous period orders be passed in the light of orders of Tribunal.

6. The respondents have filed the review DPC proceedings (on circulation) along with their return. As per the benchmark fixed by the review DPC, it is clear as under:-

The review DPC on the basis of aforesaid benchmark prepared a grading chart of the petitioner which reads as under:-

Interestingly, the respondents in page 3 of the return have produced a comparative grading chart of private respondents for the same period, which reads as under:-

7. The DPC has given a finding regarding the petitioner that his last two C.Rs. for the year ending 1986 and 1987 were found as " " and, therefore, he was not found fit for promotion. In total, the petitioner received two " ", one " " and two " ". At the cost of repetition, it may be remembered that the DPC has fixed the

benchmark because of which last two ACRs must be "good" (). If the cases of private respondents are examined on the anvil of said benchmark, it will be clear that the respondent No. 6's grading for the year ending 1987 was " ". As per the benchmark fixed by the DPC, the last two ACRs must be "good". Admittedly, his last two ACRs were not "good", yet he has been selected and promoted. The respondents have taken into account 1987 grading of petitioner as " " whereas as per the order of the Tribunal, this could not have been taken into account. The High Court in para 3 gave a finding that the petitioner's ACR for the year 1985 is "very good" and for 1986 he was marked as "good". However, in the grading chart prepared by the DPC, the petitioner is shown as " " whereas this Court recorded that as per the record he was found " ".

8. On the basis of aforesaid, it is clear that 1987 grading of " " could not have been taken into account because of the order of the Tribunal and 1986's grading is found to be " " by this Court. The orders of Tribunal and this Court in absence of any further challenge have attained a finality.

9. I will be failing in my duty if I would not consider the arguments advanced by Smt. Pachauri, learned Dy. Government Advocate.

10. The question is regarding the scope of judicial review against DPC proceedings. This point is no more res integra and is decided by Supreme Court in the case of Badrinath Vs. Government of Tamil Nadu and Others, . In para 40 of the said judgment, the Apex Court held as under:-

Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

(emphasis added)

Applying the aforesaid litmus test in the present case would show that the said Wednesbury principles are attracted in the present matter. 1987 ACR could not have been taken into account pursuant to order of the Tribunal, yet it has been taken into account. Similarly, 1986 ACR, which is recorded as " " (good) by this Court is treated as " " and, therefore, the findings of the DPC are clearly erroneous.

11. Apart from this, on one hand the petitioner was held to be unsuitable for promotion because his last two ACRs were not " " (good), on the other hand and respondent No. 6, whose last two ACRs were also not " " was promoted. Thus,

there is a hostile discrimination qua the petitioner.

12. Considering the aforesaid, it can be safely concluded that the review DPC has erred and has taken into account the inadmissible material and left out the relevant and admissible material. Consequently, I am of the considered opinion that the review DPC's findings are perverse and arbitrary in nature.

13. Accordingly, the impugned order, Annexure P-1, based on the said finding cannot be permitted to stand. The rejection order dated 18.6.2004 is accordingly set aside. The respondents are directed to convene a review DPC positively within 60 days by treating the ACRs of the petitioner as per the finding given by the court aforesaid. If the petitioner is found fit for promotion, he be promoted as directed by the Tribunal. The outcome of review DPC be communicated to the petitioner. Petition is allowed to the extent indicated above. No costs.