
(2017) 02 GAU CK 0033
In the Gauhati High Court
Case No : W.P. (C) No. 50 of 2016

Laldintluanga

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Constitution of India, 1950 — Article 16, Article 226

Citation : (2017) LIC 1118

Hon'ble Judges : Micheal Zothankhuma, J.

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Micheal Zothankhuma, J.—; Heard Mr. A.R. Malhotra, learned counsel for the petitioner. Also heard Mr. Samuel Vanlalhriata Chhangte, learned Govt. Advocate for the respondent Nos. 1 to 4 and Mrs. Dinari T. Azyu, learned counsel for the respondent No. 5.

None appears for the respondent Nos. 6 to 8 though service is complete against them and accordingly, the matter is being decided Ex parte respondent Nos. 6 to 8.

2. The petitioners case in brief is that the petitioner is presently working as an Industrial Promotion Officer in the Industries Department since 17.12.2002, where he was senior to the respondent Nos. 6, 7 & 8 in the Grade of Industrial Promotion Officer. The petitioner was belatedly communicated his below bench mark grading for the year ending 31.03.2010 and 31.03.2011 by the respondent No. 4 vide letter dated 28.09.2015. The petitioner submitted a representation dated 29.09.2015 for upgrading his ACR grading for the year ending 31.03.2010 and 31.03.2011, to the bench mark grading.

3. The petitioners counsel submits that in pursuance to the petitioners representation dated 29.09.2015, where he requested that he should be given bench mark grading, the petitioners representation was sent to the Director of

Industries, who thereafter, rejected the petitioners representation on the ground that there was no merit for enhancement or giving a higher grading to the petitioner in the ACR ending dated 31.03.2010 and 31.03.2011. The petitioners counsel submits that the Director of Industries was the accepting authority for the ACR ending 31.03.2010, while the Secretary to the Govt. of Mizoram, Industries Department was the accepting authority for the ACR ending 31.03.2011. The petitioners counsel submits that the law in this regard is that whenever a representation is submitted to the authorities by an employee in respect of up-gradation of his grading given in his ACR, the said representation should be considered by an authority superior to the Accepting authority.

4. The petitioners counsel submits that as per the O.M dated 20.12.1990, issued by the Govt. of Mizoram, Political & Cabinet Department, if an adverse remark was recorded by the Reviewing authority, the representation against such adverse remark should be examined, as far as possible, by an Officer Superior to the Officer recording the adverse remark. In this regard, the petitioner has relied upon the decision of the Apex Court in the case of Dev Dutt v. Union of India, reported in 2008 8 SCC 725 : (AIR 2008 SC 2513).

5. The petitioners counsel submits that the respondent No. 5, i.e. Mizoram Public Service Commission had held its meeting on 08.03.2016 to consider the promotion of eligible candidates from the post of IPO/SDIO to Assistant Director of Industries. In view of the petitioner not having the required 4 (four) bench marks out of the 5 (five) ACR gradings given in his 5 (five) ACRs which were considered, the petitioner was not recommended for promotion by the respondent No. 5. The petitioners counsel submits that in view of the above, the private respondent Nos. 6 to 8, who had the required number of benchmark gradings in their ACRs, though they were junior to the petitioner in the grade of IPO, were promoted to the post of Assistant Director of Industries.

6. Mr. A.R. Malhotra, learned counsel for the petitioner submits that a perusal of the letter dated 03.12.2015 issued by the Director of Industries to the Deputy Secretary, Industries Department clearly reflects the fact that Director of Industries did not apply his mind while considering and rejecting the petitioners representation dated 29.09.2015 and submits that there should have been proper application of mind while disposing the representation.

7. The petitioners counsel submits that the respondent No. 5 could not have taken into consideration the petitioners ACRs ending 31.03.2010 and 31.03.2011, when the petitioners representation dated 29.09.2015 had not been considered by the Competent authority, as held by the Apex Court. The petitioners counsel submits that in view of the above reasons, the petitioners representation dated 29.09.2015 should be considered by a superior authority to the Accepting authority and thereafter, depending upon the outcome of the decision so made by the said authority, a direction may be given for a review DPC meeting to be held for consideration for promotion of the petitioner to the post of Assistant Director of Industries.

8. Mr. Samuel Vanlalhriata Chhangte, learned Govt. Advocate and Mrs. Dinari T. Azyu, learned counsel for the respondent Nos. 1 to 5 do not have any objection to the prayer made by the petitioners counsel.

9. I have heard the learned counsels for the parties.

10. In the case of Dev Dutt (AIR 2008 SC 2513) (supra), the Apex Court has held at paras 13, 17 & 37 as follows:

"13. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employees chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a "good" or "average" or "fair" entry certainly has less chances of being selected than a person having a "very good" or "outstanding" entry.

17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its up-gradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India that arbitrariness violates Article 14 of the Constitution.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible."

11. On a perusal of the law laid down by the Apex Court in the paragraphs quoted above, it is clear that every entry in the ACR of a Public Servant must be communicated to him within a reasonable period. In this particular case, there has been considerable delay in communicating the adverse grading given in the

petitioners ACRs. However, in view of the right given to a Public Servant to make a representation against the adverse entry and as the petitioner has availed of the said right by filing a representation dated 29.09.2015, this Court finds that the delay in communicating the adverse entry is a curable defect. However, the Director not being an authority superior to the Accepting authority with respect to both ACRs ending on 31.03.2010 and 31.03.2011, this Court finds that the disposal and rejection of the petitioners representation dated 29.09.2015 by the Director of Industries is a nullity as the same cannot withstand the scrutiny of law. Accordingly, the letter dated 03.12.2015 (Annexure-VII of the affidavit filed by the State respondents) issued by the Director of Industries is hereby set aside.

12. In view of the decision of the Apex Court in *Dev Dutt* (AIR 2008 SC 2513) (*supra*), the respondents are directed to place the petitioners representation dated 29.09.2015 before the Chief Secretary, Govt. of Mizoram for examination and disposal of the same. The petitioners representation dated 29.09.2015 should be examined and a decision should be taken by the Chief Secretary with regard to whether the grading given in the petitioners ACRs ending 31.03.2010 and 31.03.2011 should be modified or should remain. The said exercise should be carried out within a period of 6 (six) weeks from the date of receipt of a copy of this Order. In the event, the petitioners ACR grading ending 31.03.2010 and 31.03.2011 is upgraded to the required bench mark, the promotion of the respondent Nos. 6 to 8 as Assistant Director of Industries should be set aside/ cancelled by the State respondents. Thereafter, a review DPC meeting should be convened by the respondent No. 5 wherein, it should consider the case of the petitioner and the private respondents afresh for promotion to the post of Assistant Director. The subsequent exercise, if required should take place within a further period of one month.

13. The present Writ petition is accordingly disposed of.