
(1989) 07 KAR CK 0020
In the Karnataka High Court
Case No : W.A. No. 1269/1989

M. Papanna

APPELLANT

Vs

The Hon"ble Chief Justice and Others

RESPONDENT

Date of Decision : 28-07-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1989) 2 KarLJ 372

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Judgement

Rama Jois, J.-This appeal is by a Stenographer on the establishment of this Court, against the decision of the learned Single Judge (rep: 1989(1) Kar.L.J. 391) dismissing his writ petition in which he had challenged the legality of the selection and appointment of respondents 2 and 3 as Judgment Writers.

2. The learned counsel for the appellant strenuously contended that as undisputedly the appellant had committed only 20 mistakes in the typing test and the second respondent had committed 23 mistakes and as the post of Judgment Writer was required to be filled up by promotion by selection, the appellant should have been selected in preference to the second respondent.

3. As pointed out by the learned Single Judge in his order, not only the performance at the typing test, but also the confidential reports of the candidates were considered by the Selecting Authority. It is seen from paragraph 23 of the order of the learned Single Judge (rep. 1989(1) Kar.L.J. 391 at P. 401) that the confidential reports, for a period of three years immediately prior to the selection, namely, for the years 1985, 1986 and 1987 were taken into account. For these three years, the confidential reports in respect of the appellant were "satisfactory", "good" and "satisfactory" respectively, whereas the confidential reports of the second respondent were "satisfactory", "good" and "good" respectively. From the proceedings, it is clear that selection was made not only on the basis of performance in the typing test but also on the basis of the confidential reports. The difference in the number of mistakes in the typing test

between the appellant and the second respondent were only three and in the evaluation made in the Confidential Reports the second respondent was rated better, in that, she had been rated "good" for two consecutive years immediately before selection, whereas the petitioner was rated as "good" and "satisfactory" for the two consecutive years.

4. It is well settled from the decision in *Sant Ram v State of Rajasthan* (AIR 1967 SC 1910. and *Union of India v M.L. Kapoor* (AIR 1974 SC 87), the fundamental right flowing from Articles 14 and 16 available to a civil servant is not a right to be promoted but a right for fair consideration of his case for promotion. In this case, there has been a fair consideration of the case of the appellant for promotion, in that, comparative merits of the appellant and the second respondent has been considered and by the combined effect of the performance in the typing test and the rating in the confidential reports, the second respondent was considered better and she was selected. Moreover, it is not in dispute that the second respondent is senior to the appellant.

5. The learned counsel for the appellant submitted that if seniority was to be taken into account, at least the appellant should have been selected in preference to the third respondent. But as pointed out by the learned Single Judge in paragraph 22 of the order (rep. 1989(1) Kar.L.J. 391 at P. 401), in the typing test the performance of the third respondent was the best among all the candidates and she had committed only 13 mistakes and there was nothing adverse in her confidential reports. It is on consideration of the comparative merits the third respondent was selected.

6. Further, as held by this Court in the case of *Shankar Rao v Karnataka Electricity Board* (ILR 1979 Kar, 1425) in a case where the number of candidates for consideration for promotion by selection are a few in number and the selecting authority has the opportunity of knowing the performance and work of the candidates in their day-to-day work, a record to the effect that on consideration of the confidential reports, a particular candidate is selected, fulfils the requirement of recording reasons, in order to ensure that the fundamental right guaranteed under Articles 14 and 16 of the Constitution of India for fair and proper consideration is complied with. In the present case, the number of candidates were only 12, all of whom are working as Stenographers on the establishment of this Court and therefore the selecting authority had the opportunity of knowing their work and performance and therefore the reasons recorded are sufficient to indicate that there has been fair consideration of the cases of all the candidates including that of the appellant and the selection has been made on consideration of comparative merits.

7. In the circumstances, we are entirely in agreement with the view taken by the learned Single Judge.

8. In the result, we make the following order:

(i) The writ appeal is rejected, (ii) No Costs.