
(1978) 05 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 767 and 1433 of 1973

Manakchand and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-05-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1978) WLN 199

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—These two writ petitions raise common question and as such it would be proper to dispose them by a common order.

2. The petitioner Manakchand Jain came to be appointed as Naib Tehsildar by promotion, on the basis of the recommendation of the Departmental Promotion Committee. However the petitioner Umraosingh came to be appointed as Naib Tehsildar by direct recruitment, after he was duly selected by the Rajasthan public Service Commission for the said post and was appointed on probation by the order of the Board of Revenue (hereinafter called "the Board") dated December 5, 1959. Thus, both the petitioners came to be appointed on the posts of Naib Tehsildars in a substantive capacity and were duly confirmed on the said posts on the expiry of the period of probation.

3. The appointment and promotion to and from the posts of Naib Tehsildars are governed by the Rajasthan Tehsildars Service Rules, 1956 (hereinafter referred to as "the Rules"). On their substantive appointment to the posts of Naib Tehsildars, the petitioner became members of the Rajasthan Tehsildars Service, constituted under the Rules. The petitioners were considered for promotion to the post of Tehsildars along with other persons by the Departmental Promotion Committee (hereinafter called "Committee") and on the basis of its

recommendations, the Board by its order dated July 9, 1971 promoted both the petitioners to the posts of Tehsildars with effect from June 15, 1971 on probation for a period of one year. But thereafter the Supreme Court, while deciding the appeal of *Gumansingh v. State of Rajasthan and Ors.*, struck down the circular issued by the State Government dated August 27, 1966 prescribing the adoption of the marking formula in matters of promotion under the various service Rules prevailing in the State of Rajasthan. On the basis of the aforesaid decision of their Lordships of the Supreme Court, the Government of Rajasthan issued a direction that all the promotions made in the various services on the basis of the aforesaid marking system from the year 1970 onwards, may be reviewed by the Committees concerned after ignoring the marking system and fresh recommendations be made by the said Committees for substantive appointments in such services. As such the case of the persons, including the two petitioners, who were promoted by the order of the Board dated July 9, 1971 as Tehsildars on the basis of the recommendations of the Committee, were also reviewed by the Committee in June 1972 after ignoring the marking system and on the basis of the recommendations made by the Committee on review, the Board by its order dated March 15, 1973 promoted 62 persons to posts of Tehsildars in substantive capacity in the seniority cum merit quota. In the last mentioned order issued by the Board the names of the two petitioners were omitted with the result that both the petitioners were re-promoted to the posts of Tehsildars. 32 more persons were promoted to the posts of Tehsildars on the basis of merit by another order issued on the same day. The petitioners filed the present writ petition against the aforesaid two orders passed by the Board and have prayed that (sic) the orders dated March 15, 1973 may be quashed and the respondents, the State and the Board, be restrained from reverting both the petitioners from the posts of substantive Tehsildars.

4. The contentions advanced by the learned Counsel for the two petitioners are that the petitioners were subjected to hostile discrimination in the matter of their promotion to the posts of Tehsildars, which was in violation of the provisions of Articles 14 and 16 of the Constitution of India. It was also argued by their learned Counsel that the petitioners were promoted to the posts of Tehsildars by the order dated July 9, 1971 on probation & on the expiry of the period of probation they stood automatically confirmed in the said posts, as no order was issued extending their probationary period nor they were reverted to the posts of Naib Tehsildars on the expiry of the period of their probation from the posts of Tehsildars. It was urged that the reversion of the petitioners now on the posts of Naib Tehsildars would amount to reduction in rank & that there was no justification for the so called procedure of review.

5. The learned Deputy Government Advocate, appearing for the respondents the State & the Board, submitted that the Board was left with no discretion in the matter after the decision of their Lordships of the Supreme Court holding that the marking system, which was void and the State Govt. as well as the Board had to review the decisions already made by them on the basis of the marking

system. According to the respondents, the petitioners were not selected by the Committee on review for the posts of Tehsildars in the year 1972 after ignoring the marking formula and as such the petitioners could not be promoted as Tehsildars in substantive capacity by the orders of the Board dated March 15, 1976. However, both the petitioners were subsequently promoted to the posts of Tehsildars on the basis of the recommendations made by the Committee, which met in the year 1974 and they have also been confirmed on the posts of Tehsildars after completing the period of probation. The petitioner Manakchand Jain has been confirmed as Tehsildar by the order of the Board dated December 5, 1975 with effect from October 1, 1975 while the petitioner Umraosingh was confirmed by the order of the Board dated April 3, 1976 also with effect from October 1, 1975. Not only that, according to the respondents, both the petitioners have since then been selected for officiating appointments in the Rajasthan Administrative Service and have been relieved by the board to join the aforesaid service by its order dated 27-5-76 and as such the petitioners can have no grievance now.

6. I have considered the rival contentions. The petitioners were no doubt selected for promotion to the posts of Tehsildars by the Committee and were also ordered to be promoted as Tehsildars on July 9, 1971 on the basis of the recommendation of the Committee. However it is not in dispute between the parties that the selection of the petitioners for such promotion was made on the basis of the marking system, contained in the circular dated August 27, 1966. When the Supreme Court held in Gumansingh's case that the marking formula was invalid and void and struck down the same, the State Govt. as well as the Board was perfectly justified in reviewing the selection made since 1970 on the basis of the aforesaid marking system. The State Govt. consequently, directed all the Appointing Authorities, under the various service Rules prevailing in the State of Rajasthan, to reconvene the meeting of the respective Departmental Promotion Committees to review the selections made on the basis of the marking system. The review committees were required to make a fresh appraisal of the various officials concerned, ignoring the marking system earlier adopted by them on the basis of merit and of seniority-cum-merit, as contained in the concerned service rules. The Board was, therefore, justified in recalling the meeting of the Committee to review the earlier recommendation made by it, after ignoring the marking system. The Committee which met in June 1972, was unable to recommend the names of the two petitioners for promotion to the posts of Tehsildars and as such the petitioners could not be appointed by promotion or, the said posts by the order of the Board dated March 15, 1973. Thus, the procedure of recalling a meeting of the Committee for the purpose of reviewing the recommendations made earlier on the basis of the (sic) system, cannot be held to be unjustified after the decision of their Lordships of the Supreme Court in Gumansingh's case.

7. The principal grievance of the learned Counsel in these two writ petitions was that the petitioners were Discriminated against and although the petitioners were

senior and more meritorious and suitable for promotion, yet less meritorious and junior persons were promoted in preference to the petitioners. The learned Counsel desired me to examine the confidential rolls of the two petitioners and some of the respondents whom the petitioners thought less meritorious than themselves. I have called for the confidential rolls & the personal files of the petitioners & such of the respondents as were desired by the learned Counsel for the petitioners and have looked into them. From a perusal of the confidential rolls & personal files of the concerned persons, including the two petitioners, I have no reason to hold that the Committee which met in June 1972 was in any manner not justified in promoting the concerned respondents in preference to the petitioners. The proceedings of the Committee, which met in June 1972, have also been placed before me by the learned Deputy Government Advocate. The Committee prepared a list on the basis of merit in which the officers who secured A and B rating were included 32 officers, whose names were included in the aforesaid list, were promoted on the basis of merit. Then the Committee proceeded to draw another list of officers who uniformly secured B rating and 64 officers found place in that list, which was prepared on the basis of seniority-cum-merit. The Committee also prepared a supplementary list of 46 officers, in accordance with the provisions of sub Rule (7) of Rule 28, read with Rule 29 of the Rules. The Committee prepared the aforesaid three lists on the basis of uniform criteria applied by it to all the concerned officers including the petitioners and while warnings were not considered as an impediment for securing promotions, yet major and minor punishments amounting to three or more in number were considered sufficient by the Committee for making an officer liable to lose by one step his rating, secured on the basis of the confidential rolls. Thus an officer who on the basis of his confidential rolls would have got a rating, but who was awarded three or more major or minor punishments was assigned B rating. It appears that the names of both the petitioners could not find place either in the first list prepared on the basis of merit alone or in the second list prepared on the basis of seniority-cum-merit, which included the names of officers who uniformly got B rating, but their names were included in the supplementary list.

8. The petitioners could not be selected in the list prepared according to merit alone. It is also clear from a perusal of the proceedings of the Committee that the last officer selected for promotion on the basis of seniority-cum-merit was Shri B.D. Dutta, whose name stood at serial No. 86 in the seniority list of Naib Tehsildars, while the names of the petitioners Umrao Singh and Manakchand stood at serial numbers 116 and 129 respectively in the aforesaid seniority list of Naib Tehsildars. Thus, the persons, who were selected for promotion to the posts of Tehsildars in the seniority-cum-merit quota were all senior to petitioners and even if such persons were of equal merit as the two petitioners yet the petitioners could not complain that they were discriminated against because of their position in the seniority list. If persons of similar merit but senior to the petitioners were selected for promotion by the Departmental Promotion

Committee then the petitioners could have no grievance. It may be mentioned here that the failure of the petitioners to obtain promotion at the aforesaid selection does not at all reflect upon the ability and suitability of the petitioners. But as a matter of fact they could not be selected for promotion in the seniority-cum-merit quota only because there were a number of senior persons available for promotion, who were also same what similar in merit to the petitioners and ignoring their, claims for promotion would have led to unlawful super session. It might be that on account of the application of the marking formula, the petitioners were able to obtain a march over their seniors on the earlier occasion, yet when the marking formula was struck down by their Lordships of the Supreme Court and it had to be ignored in making the selections for promotion to the posts of Tehsildars, the rightful claims of the officers senior to the petitioners, who were otherwise equally qualified & meritorious, could not be ignored by the Committee as well as by the Board. In these circumstances, the petitioners could not be promoted as Tehsildars in the year 1973. However, as there was nothing against the petitioners, they were promoted on the basis of the recommendations of the Committee which met in the year 1974. In the aforesaid circumstances. I am unable to hold that the petitioners have been subjected to hostile discrimination or that their claims for promotions to the posts of Tehsildars were wrongly ignored by the Committee or by the Appointing Authority. The petitioners have as a matter of fact, obtained promotions at their due time and there is no reason to interfere with the two orders of promotion issued by the Board of Revenue dated March 15, 1973.

9. In view of all that has been said above, the writ petitions have no merits and the same are dismissed. The parties are left to bear their own costs.