
(1966) 09 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 909 of 1964

M.G. Sirsikar

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 22-09-1966

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1967 Kar 136

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; M. Rangaswamy, for High Court Special Government Pleader and E.S. Venkataramiah, for the Respondent

Judgement

Somnath Iyer, J.—There was a police firing on June 7, 1958 in Bhatkal in the District of North Kanara. The petitioner before us was then the Extra Aval Karkun and Executive Taluka Magistrate, and, he gave the order for firing. In consequence, disciplinary proceedings were started against him in which he faced as many as seven charges. The accusation against him was that, without acquainting himself with the true position, he gave an irresponsible order to fire.

2. In consequence, on July 12, 1958 he was placed under suspension and the suspension was however terminated by an order made by the Government on August 17, 1959, during the pendency of the disciplinary proceedings. The disciplinary proceedings came to an end on June 15, 1962 when Government made an order completely exonerating the petitioner in respect of all the charges which had been brought against him. The relevant part of the order of exoneration reads:--

"After consideration of the records and the report of the Enquiry Officer, Government are convinced that the three officers, Sarvashri: Salaskar, Sirsikar and Gonsalves have tried all possible methods to disperse the furious mob and having failed in their attempt, they have taken recourse to firing which appears to have been the only alternative left to them in the circumstances prevailing at

the crucial hour. This act of discretion cannot be construed for misconduct or mala fides. Government consider that there was no rashness, negligence or misconduct on the part of the officers in this case, but on the other hand they by their timely action have avoided worse happenings. All the three officers in question are therefore exonerated and further proceedings against them are dropped."

Mr. Sirsikar who is referred to herein is the petitioner before us.

3. Mr. Ullal, in our opinion, is right in making the observation that the three officers in respect of whom there was an order of exoneration, received commendation at the hands of Government for the prompt and adequate steps taken by them for preventing what might have proved much more unfortunate.

4. Now what has given cause for the complaint made in this writ petition is what happened in the meanwhile. During the pendency of the disciplinary proceedings, although the petitioner was the seniormost Aval Karkun and was entitled to be considered for promotion to the post of a Tahsildar, respondent 3 who was junior to him was promoted on October 3, 1959. Thereafter, and in the course of the pendency of the disciplinary proceedings, respondents 4 to 35 were also similarly promoted but the petitioner remained where he was.

4A. The petitioner was promoted to the post of a Tahsildar only on July 19, 1962, when the disciplinary proceedings ended in his favour. It is obvious that Mr. Ullal is right in submitting to us that the reason why the petitioner could not earn his promotion until that date, was, the pendency of the disciplinary proceedings in which serious charges had been brought against him.

5. On May 21, 1964, the petitioner was reverted from the post of a Tahsildar to his substantive post of an Aval Karkun on the ground that he being the juniormost, had to revert when the vacancy in which he was officiating was no longer available to him. It is this order of reversion which is called in question, and, it is contended before us that on the petitioner's exoneration on June 15, 1962, the impediment which stood in his way when respondent 3 was promoted on October 3, 1959, disappeared, and that when the petitioner was promoted on July 19, 1962, he should have been placed above respondent 3. So it was contended that if he had been placed above respondent 3, as he should have been placed, the reversion of the petitioner would have become impossible on the ground that there was no vacancy in which he could be continued, and, the juniormost Aval Karkun who had been promoted to officiate as Tahsildar, had to make place for him. The juniormost Aval Karkun is, according to Mr. Ullal, respondent 35.

6. Mr. Rangaswamy, the learned Government Pleader who could not dispute that, if the pendency of the disciplinary proceedings was the only hurdle to the promotion of the petitioner, his exoneration in the disciplinary proceedings would earn for him a place above respondent 3 in the cadre of a Tahsildar, strenuously contended that the pendency of the disciplinary proceedings was not the only

ground on which the petitioner was superseded, and that the supersession was attributable to the opinion of the promoting authority that the petitioner was even otherwise unfit for promotion.

7. It is now too well settled that promotion cannot be claimed as of right, and, that the question as to whether a person deserves a promotion to a higher post, depends upon a concatenation of relevant factors such as seniority, work efficiency, rectitude, antecedent official record and the like. So it could be said that, if the pendency of the disciplinary proceedings was the only ground on which the petition was superseded, it should follow that the supersession was not attributable to any deficiency in regard to the other qualities which would have earned for the petitioner the promotion for which he aspired.

So if, the disciplinary proceeding was the only ground on which the petitioner's claim was overlooked, and if it turned out, as it has turned out in the case before us, that the disciplinary proceeding had no legs to stand upon and that the charges with which it was concerned were groundless, it should follow indisputably that the refusal of promotion was based on an irrelevant and non-existent ground, and so, on his exoneration, the petitioner became entitled to be promoted with effect from the date on which respondent 3 was promoted. This is so, since, if the disciplinary proceeding had not been commenced, the person who would have been first promoted was the petitioner and not respondent 3.

8. So the material question is whether the sole and exclusive ground on which promotion was refused was the pendency of the disciplinary proceedings. Mr. Ullal asks us to say that it is so, and, in support of his submission he draws attention to two communications addressed to him by the concerned Deputy Commissioner and the concerned Divisional Commissioner. The first was addressed on September 12, 1959 by the Divisional Commissioner which reads:--

"With reference to his application dated 1-9-1959 requesting for promotion as Tahsildar, Shri M. G. Sirsikar, Aval Karkun in the Tahsildar's office, Haliyal, is informed that, since a Departmental enquiry is pending against him, his request cannot be considered."

9. The next communication addressed by the Deputy Commissioner reads: --

"With reference to his application dated 16-10-1959 Shri M. G. Sirsikar, Extra Aval Karkun, Haliyal under orders of transfer to Sipa is informed that his request for promotion has already been refused by the Divisional Commissioner under his No. RB/EST. S. R.-1038 dated 12th September 1959, since a departmental enquiry is pending against him. His second request for retention at Haliyal also cannot be considered."

10. These two communications which we are made at a stage which was almost contemporaneous with the refusal of promotion, make it clear and certain, that the only ground on which the petitioner was refused promotion when respondent 3 was promoted, was the fact that there was a disciplinary proceeding pending

against him.

11. But Mr. Government Pleader asks our attention to the counter-affidavit produced before as on behalf of the State, of which an Under Secretary is the deponent, and, on the basis of the allegations therein, he asks us to say that the disciplinary proceeding was not the only ground for refusal of promotion. In para 2 of the counter-affidavit the deponent says that he was "advised to state" that the petitioner was considered not fit for promotion and found to be ineligible on the ground that his record of service was found on examination by his official superiors to be unsatisfactory, and not merely on the ground that a departmental enquiry was pending.

We asked Mr. Government Pleader to tell us whether there was any record of service such as the one to which the deponent's affidavit has referred which could reveal that that record was adverse to the petitioner. But no such record was made available to us and Mr. Government Pleader was unable to say whether there was any such record in existence.

12. What, in our opinion, clinches the issue is that the official superiors to whom the deponent of the affidavit refers in paragraph 2 of his counter-affidavit, are no other than the Deputy Commissioner and the Divisional Commissioner. Their communications addressed to the petitioner in September & October, 1950 respectively make it clear that, what according to them constituted an impediment to the promotion of the petitioner, was no other than the pendency of the disciplinary proceeding. It is of great importance and consequence, that in these two communications, they did not tell the petitioner that his official record was adverse to him and stood in the way of his promotion. (13) We therefore do not find any difficulty, in reaching the conclusion that the petitioner was unable to get his promotion as a Tahsildar when respondent 3 was promoted, for no other reason than that there was a disciplinary proceeding against him. That being so, on the termination of that proceeding in his favour, and in which Government not only exonerated him, but expressed approbation of the swift and adequate action taken by him for the prevention of what might have been much more calamitous, the petitioner had a right to urge that he should be promoted, and that that promotion should take effect from the date on which respondent 3 was promoted and that he should be placed above respondent 3 in the post of a Tahsildar.

14. If that be the true position and if the petitioner had been placed above respondent 3 and his appointment had been made to operate from October 3, 1959, there could be very little doubt that his reversion could not have been ordered.

15. But Mr. Government Pleader asked us to say that the pronouncement of the Supreme Court in Civil Appeal No. 975 of 1965 (SC), *Southern Railway v. Raghavendrchar* disentitled the petitioner to any relief, even on that supposition. We do not think so. The only enunciation made by the Supreme

Court was that, if a person who held a higher rank in a substantive post was promoted to officiate in a higher post and there was a subsequent promotion of his juniors similarly, and there was a reversion of the person who was first promoted to his substantive post, there was no reduction in rank within the meaning of Article 311 of the Constitution. That is not the position in the case before us. The petitioner was never placed above respondent 3, as he should have been placed; nor was his promotion ordered so as to take effect from October 3, 1959, as it should have been done, and, what is more than abundantly clear is that, if that had been done, the petitioner would not have been the person selected for reversion, since it is plain that his reversion was attributable to the fact that he had been placed at the bottom of the list. And so, Government were of the opinion that the person who should revert was the petitioner and none else. In that view of the matter no assistance can be derived by the Government Pleader from the pronouncement in the decision on which he depends.

16. So this writ petition succeeds and we quash the order made by the Government on May 21, 1964 reverting the petitioner to the post of an Aval Karknn. We make a direction in addition that the petitioner's promotion as Tahsildar should be made to take effect from October 3, 1959, when respondent 3 was promoted, and that he should be placed above him in the post of a Tahsildar. The petitioner will be entitled to all the consequential reliefs emanating from the directions which we have made.

17. In the circumstances we do not make any order as to costs.

18. Petition allowed.