

(2006) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12098 of 2005 (S)

Mukhtar Ahmad Khan

APPELLANT

Vs

The Chief Personnel Officer and Another

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2007) 2 MPJR 28

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : Sanjay Sanyal, for the Appellant; Prakash Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

The petitioner being aggrieved by the action of the Department relating to his promotion to the post of Senior Section Engineer approached the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (in short "the Tribunal") in Original Application No. 452/2000 and the Tribunal upon perusal of the pleadings and hearing the learned counsel for the parties in paragraphs 7 & 8 opined as under :

7. Since the applicant has been considered for promotion to the post of Senior Section Engineer in the year 1999 his five ACRs of the preceding years should be seen as per the DPC guidelines. This post of Senior Section Engineer is a non-selection post i.e. seniority cum suitability and the bench mark is good. We also find from the ACR that except for the ACR of 1996 and 1998 the applicant has been graded as good/very good. The adverse remark in the ACR for the year 1996 has not been communicated to the applicant to afford him an opportunity of making representations against the adverse remarks given by the reviewing officer. It is settled legal position that unless the adverse remarks are

communicated to the applicant and the applicant has been given an opportunity of making representation, the same should not be taken into consideration while considering the candidate for promotion to the next higher grade. In this case the adverse remarks in the ACR of 1996 have not been communicated to the applicant. Hence the review DPC should not have taken into consideration these remarks. Since the applicant has been assessed as good or very good for three years, by any stretch of imagination he should not have been ignored for promotion to the post of Senior Section Engineer which is a non-selection post.

In view of the above, we direct the respondents to hold a review DPC and consider the case of the applicant for promotion to the post of Senior Section Engineer without taking into consideration the adverse remarks given by the reviewing officer in the confidential reports of the applicant for the year ending 31st March, 1996. In case the applicant is found suitable he should be given all consequential benefits with reference to the promotion of his next junior. This exercise should be completed within a period of three months from the date of receipt of copy of this order.

In pursuance of the aforesaid direction the respondent-Railway Administration on 28.9.2004 has passed the following order:

As per Tribunal's verdict, Shri M.A. Khan, is promoted as SSE (DD) in Gr. Rs. 7450-11500 (RSRP) w.e.f. 01.09.98 and awarding him proforma benefits and Seniority vis-a-vis his junior S/Shri R.R. Sharma and R.M.Paul promoted as SSE(DD), Shri M.A. Khan is adjusted against the upgraded, 04 Posts of SSE (DD) Gr. Rs. 7450-11500 (RSRP) Shri Khan/DD/SS/DPM (W)"s Office, JBP is assigned inter polated seniority above Shri R.R. Sharma. He can exercise the option for fixation of pay within One Month from the date of issue this order as per R1s. Bd"s letter No. P (P&M) II/o/4 dt. 13.11.81.

The petitioner felt aggrieved that the order passed by the Tribunal had not been properly complied with and, in fact, there had been flagrant violation of the same and hence, he approached the Tribunal in C.C.P. No. 56/ 2005. The Tribunal noted the fact situation and taking into consideration the argument canvassed eventually dismissed the application for contempt on the ground that as per the legal position no fresh direction can be given in the application for contempt.

It is relevant to state here that initially an objection was raised by Mr. Prakash Upadhyaya that the writ petition would not be maintainable against the order of contempt. Mr. Sanyal, learned counsel appearing for the petitioner commended us to the decision rendered in the case of Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others, wherein the two Judge Bench of the Apex Court speaking through R.V. Raveendran, J in paragraph 11 expressed the opinion as under:

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable u/s 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

In view of the aforesaid the preliminary objection has to pale into insignificance and so it does.

The real crux of the matter is whether the application for contempt would have been dismissed on the ground that fresh relief had been sought. When the order passed by the Court of the Tribunal is absolutely clear it is incumbent on the part of the authorities that it has to be given effect to. Had the Railway Administration considering the case of the petitioner not conferred the benefit of promotion the matter would have been totally different and the petitioner could not have been asked to challenge the same by way of independent application. The same is not the situation in present. The Department has conducted the review DPC and found the petitioner suitable and promoted him but has granted notional benefit and seniority. The Tribunal in unequivocal and categorical term in the original order had stated that in case the applicant is found suitable he should be given all consequential benefits with reference to the promotion of his next junior. We fail to fathom that how the Tribunal has observed that it was a fresh relief, for it had already granted the relief in the earlier petition.

Submission of Mr. Upadhyaya is that in view of paragraph 228 of Indian Railway

Establishment Manual Volume-I the question of back wages does not arise. On a studied scrutiny of the same it is perceptible that it pertains to rectification of administrative errors by which incorrect seniority has been assigned and promotions have not been given but the present fact situation stands on a different footing. The Tribunal under the Administrative Tribunals Act, 1985 has granted relief. It does not require Solomon's wisdom to arrive at the conclusion that consequential benefit would include backwages. The Tribunal has stated about the consequential benefit not in uncertain terms in reference to the promotion of his next junior. The respondents should not play fast and loose at their whim and fancy as the Railway Administration is expected to comply with the order unless the same is lanced or modified by the higher forum.

In view of the aforesaid we set aside the order passed by the Tribunal on 24.8.2005 in CCP No. 56/2005 contained in Annexure-P-4 and command the respondents to give the consequential benefits to the petitioner and the differential backwages within a period of four months from the date of receipt of the order passed today. We hereby clarify that the same sum shall not carry interest.

The writ petition is allowed the extent indicated above. There shall be no order as to costs.