
(1983) 07 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 619 of 1982

Nathu Dharmaji Padole and another	APPELLANT
Vs	
Commissioner, Nagpur Division, Nagpur and others	RESPONDENT

Date of Decision : 06-07-1983

Acts Referred:

Citation : (1983) MhLj 1108

Hon'ble Judges : V. Mohta, J;H.W. Dhabe, J

Bench : Division Bench

Advocate : P.G. Palshikar, for the Appellant; W.M. Sambre, Government Pleader, for the Respondent

Judgement

V. Mohta, J.—At the heart of this matter is the issue--Can promotional avenues in public service be closed on the basis of uncommunicated adverse remarks in a confidential record? On this point divergent views have been taken. The controversy is state nonetheless important.

2. The admitted position is: The two petitioners--Nathu Padole and Yadav Sakure at the relevant time were working as confirmed First Grade Clerks in the Office of the Collector, Bhandara. They respectively joined as Second Grade Clerks in 1945 and 1954 and were promoted as First Grade Clerks in 1964 and 1965. Next promotional post is that of a Naib Tahsildar. 50 percent posts are to be filled in by the promotees and the balance by direct recruits. Out of the posts for direct recruits 50 percent posts are to be filled in from the First Grade Clerks and the balance from the Revenue Inspectors. Upto the year 1977 persons who had crossed the age bar of 45 were not eligible. On removal of the said bar in 1977 first petitioner became eligible. Other eligibility clause is 3 years continuous service as First Grade Clerk. The basis of selection is seniority-cum-fitness. Certain juniors to the petitioners (respondents Nos. 3 to 18) were selected by an order dated 15th March 1982 for promotion to the posts of Naib Tahsildar superseding the petitioners on the basis of uncommunicated adverse remarks in their service records. The third respondent was facing a departmental enquiry on

serious charges of issuing bogus coupons under the Employment Guarantee Scheme in respect of distribution of wheat and rice and the fourth respondent's name was included in the list though he was already promoted an year before.

3. The case of the Commissioner of the Division (Respondent No. 1) and the Collector of the District (Respondent No. 2) as disclosed in the return and as submitted on their behalf by Shri Sambre, the learned Government Pleader is that there was nothing basically wrong in superseding the petitioners on the basis of service record containing adverse remarks though uncommunicated. Validity of this stand has to be tested. The importance of a service record in the career of a Government Servant cannot be underrated. It is an objective assessment by a superior of a subordinate by which his general and special qualities are recorded. The object of maintenance of the service record is two-fold. First is to record contemporaneously the assessment of the work and to provide guidance to the concerned officer, and secondly to appraise him of his limitations so that, if so desired, he may improve his conduct and work. Mostly, it is on the basis of these entries that future of a career of a Government servant is determined. Indeed, it is by far the most important weapon in the armoury of the department by which his career can be exploded. If, therefore, these entries can be used against Government Servant to deny promotion to him, they are something with which he is vitally concerned. We are informed that the rules relating to maintenance of service-record permit making representation against the adverse remarks. Even otherwise, salutary principle of natural justice is that none should be condemned unheard. Denying promotion on comments without having the version of the affected person or giving him chance to improve at the relevant time, is certainly violative of that principle. The remarks may be general or may be specific relating to certain instances. Take for example, service records of these very petitioners. There are general as well as specific remarks against them as can be gathered from the service records which were made available to us for perusal. Is it not unfair to deny promotion on the basis of a fault which is not made known to him, and which could have been removed, if found true, had he been informed earlier ?

4. It is true that different High Courts have taken different views on this issue. The learned counsel for the parties have brought to our notice some decisions of the Supreme Court. In *Gurdial Singh Fijji Vs. State of Punjab and Others*, to which our attention was drawn by Shri Palshikar, the learned counsel for the petitioner, it is observed :

The principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its objects, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is

justified.

The learned Government Pleader invited our attention to the subsequent decision in the case of Union of India v. M. E. Reddy A 1 R 1980 S C S63 and has contended that as a contrary view has been taken and as it is a later decision of a bench of the same strength, it is this later decision which has the binding effect on us. We have examined this decision. It deals with the aspect of consideration of uncommunicated adverse remarks while compulsorily retiring a Government servant in public interest on the basis of Rule No. 16 of All India Services Death-cum-retirement Rules, 1958. This view is taken on a finding that the Rules expressly exclude the principles of natural justice and that the Government has not merely the discretion but an absolute right in the matter, the object of the Rule being to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is further observed that no stigma is attached to such retirement. These basic distinguishing features, in our judgment make the ratio in the later decision wholly inapplicable to the present matter relating to promotion in the given set of circumstances.

5. We may also notice at this stage recent judgment of the Supreme Court in the case of Brij Beharilal v. Hon"ble High Court of M.P. and others AIR 1981 SC 594 in which after considering both the aforesaid decisions, it has been held that even in the matter of compulsory retirement communication of certain adverse remarks is essential.

6. In conclusion, we hold that respondents 1 and 2 cannot deny promotion to the petitioners on the basis of uncommunicated adverse remarks and consequently their action in rejecting the claim of the petitioners for promotion on that basis is illegal and untenable in law. The respondents 1 and 2 are, therefore, directed to consider the cases of the petitioners for promotion without reference to the uncommunicated adverse remarks, if necessary by quashing the promotion of the junior most respondent with effect from 15th March 1982 i. e. the date on which the persons junior to the petitioners were promoted.

7. We are informed that during the pendency of the petition, first petitioner has retired. In that circumstance, the only benefit that could be granted to him would be payment of monetary benefits on the basis that he is deemed to have been promoted on 15th March 1982 i.e. the day on which promotion was wrongly denied to him. Rule made absolute in the above terms. No costs.