

(1994) 09 GUJ CK 0011
In the Gujarat High Court
Case No : S.C.A. No. 3716 of 1981

Natvarbhai Narandas Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 2 LLJ 1153

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : K.A. Mehta, for the Appellant; Mehul Rathod, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner, who is a Junior Industries Inspector, has challenged in this petition the promotion orders dated April 7, 1981 (Annexure "C") and dated September 5, 1981 (Annexure "F") of promoting his juniors and also prayed to direct the respondents to promote the petitioner with effect from April 8, 1981 with all consequential benefits on such promotion. By way of interim relief, it is prayed that respondent Np.2 be restrained from implementing and/or giving effect to the promotion orders dated April 7, 1981 and September 5, 1981 and he be further restrained from giving charge of the post of Senior Industries Inspector to person junior to the petitioner.

2. This petition was filed on September 17, 1981 and placed for orders on September 18, 1981. On September 18, 1981, this petition was straightaway admitted and Rule was issued and notice as to interim relief was made returnable on October 13, 1981 and it was directed that one post of Senior Industries Inspector be kept vacant till October 31, 1981. That ad-interim relief was confirmed on October 20, 1981.

3. It may be stated that when promotion order (Annexure "C") dated April 7,

1981 was issued, the petitioner challenged the same by way of Special Civil Application No. 1221/81 which was disposed of on (he statement made by the learned Advocate for the respondents (Annexure "D") which is as under :

"Special Civil application No. 1221 of 1981.

Mr. M.S. Shah states on behalf of the second respondent as follows, upon instructions received from Mr.H.G.Patel, Officer on Special Duty, who is present in the Court.

(1) In view of the decision of this Court in Special Civil Application No.980 of 1981 decided on April 24, 1981, the adverse remarks in the confidential record of the petitioner for the period 1978-1979 will be ignored for the purpose of considering his case for promotion.

(2) The adverse remarks in the confidential record of the petitioner for the period 1979-1980 have been communicated to the petitioner and his representation against those adverse remarks would be disposed of as expeditiously as possible.

(3) After the disposal of the said representation, the petitioner's case for promotion would be considered by the competent authority and necessary decision in the matter would be taken as early as possible thereafter.

In view of these statements, the petition does not survive and Ms. Mehta withdraws the same. The petition stands dismissed as withdrawn. Interim relief vacated.

It may be stated that on behalf of the petitioner the contention was inter alia that the criterion for promotion is seniority simpliciter. This contention was controverted on behalf of the competent authority. However, it is not necessary to go into this question at this stage, and therefore, the Court does not express any opinion on this question."

As per the statement made in the petition and the order, the adverse remarks for the period 1978-79 i.e. from April 1, 1978 to March 31, 1979 has to be ignored for purposes of considering the case for promotion of the petitioner. The representation made by the petitioner against the adverse remarks communicated to him for the period 1979-1980 i.e. from April 1, 1979 to March 31, 1980, was to be disposed of as expeditiously as possible and after the disposal of that representation, his case for promotion was to be considered by the competent authority and necessary decision in the matter was to be taken as early as possible.

4. It seems that before the representation of the petitioner against the adverse remarks for the year 1979-1980 was disposed of, respondent No.2 by his order dated September 5, 1981 promoted other juniors of the petitioner (Annexure "F") and thereafter the petitioner was conveyed on September 14, 1981 that his representation against the adverse remarks for the year 1979-1980 is rejected (Annexure "E"). Aggrieved by the same, the petitioner has filed this petition and

challenged the promotion order of his juniors dated September 5, 1981 (Annexure. "F") as well as earlier promotion order dated April 7, 1981 (Annexure "C")

5. Ms. Mehta, learned counsel for the petitioner raised four contentions, viz:

(1) The criteria for promotion is strictly according to seniority and, therefore, the petitioner ought to have been promoted when his juniors were promoted on September 5, 1981 and April 7, 1981.

(2) Even if the criteria is not seniority but seniority-cum-merit, then also there was not positive demerit of petitioner and, therefore, he ought to have been promoted when his juniors were promoted.

(3) The Selection Committee ought to have considered the adverse remarks for preceding three years when they met to consider the case of the petitioner for promotion and the adverse remarks conveyed to the petitioner are also not such which could come in the way of promotion of the petitioner.

(4) The petitioner was, in fact, allowed to cross Efficiency Bar as Junior Industries Inspector on October 5, 1979 and, therefore, the adverse remarks conveyed to the petitioner for the year 1979-1980 i.e. from April 1, 1979 to March 31, 1980 were not proper and ought not to have been made against the petitioner and they ought to have been ignored by the Committee while considering the case of the petitioner for promotion.

6. As against this, Mr. Mehul Rathod, learned Asstt. Govt. Pleader, appearing for the respondents, vehemently submitted that the respondents have considered the case of the petitioner in light of the order passed by this Court (Coram: P.D. Desai, J) on April 29, 1981 in Special Civil Application No. 1221 of 1981, and the adverse remarks for the year 1978-79 i.e from April 1, 1978 to March 31, 1979 were ignored by the Selection Committee. He submitted that the case of the petitioner, according to his seniority, was considered by the Departmental Promotion Committee on August 1, 1979 but due to non-communication of the adverse remarks, his consideration was deferred till the next meeting of the Committee, which was held on July 23, 1981 and August 4, 1981, but he was not found suitable. Further consideration as on July 23, 1981 was deferred in view of the undecided representation made by the petitioner against the adverse remarks for the year 1979-80. That representation; was rejected and the said decision was communicated to the petitioner on September 14, 1981 (Annexure "E") and thereafter the case of promotion of the petitioner was considered in its meetings held on October 19, 1982, February 24, 1987 and August 23, 1988, but he was not found suitable for promotion and, therefore, he was not promoted. He further submitted that on February 22, 1981 he was censured for not submitting inspection report and was visited with punishment of stoppage of one increment without future effect. Not only that he was granted earned leave from September 11, 1981 to December 8, 1981 and he had to report for duty on August 11, 1981 but till today he has not reported for duty. Notices sent to him

at his residential address have been returned unserved as he has left the county. Thus, the petitioner has lost total interest in the service and, he is not keen to serve the respondents. He, therefore, submitted, that his petition be dismissed.

7. To appreciate the rival contentions raised by the learned Advocates for the respective parties, the statement showing the service record of the petitioner, which is produced before this Court, is required to be reproduced.

See Table on Page No. 1157

8. The above statement shows that except for one year i.e. 1980-81 adverse remarks have been recorded in the service book of petitioner from April 1, 1978 to March 31, 1982 and the same have been communicated to the petitioner and the petitioner has made a representation against the adverse remarks of one year only i.e. for 1979-80, which was rejected by the authority. When at the earliest point of time the Departmental Promotion Committee could consider the case of the petitioner for promotion on October 19, 1982, there was serious adverse remarks against the petitioner, including that of corruption. Thus, taking into consideration the adverse remarks for the period from April 1, 1979 to March 31, 1980 and April 1, 1981 to March 31, 1982, it cannot be said that the decision of the Selection Committee of not considering the case of the petitioner for promotion is illegal or unjust and calls for interference at the hands of this Court in its jurisdiction under Article 226 of the Constitution of India. Though the petitioner has claimed that the criteria for promotion is only seniority, in fact, it is seniority-cum-merit and from the adverse remarks stated above, it cannot be said that the decision of the authority was wrong. There was positive demerit of the petitioner, and therefore he was rightly not considered for promotion. Having regard to the averments made in the reply affidavit and other relevant circumstances on the record, I do not find any substance in any of the submissions made by Mrs. Mehta for the petitioner. In fact, the petitioner cannot again challenge the earlier order of promotion dated April 7, 1981 because that was challenged in "the earlier petition being S.C.A. No. 1221 of 1981, which was disposed of on April 29, 1981 by this Court. That apart, the subsequent order of promotion promoting persons junior to the petitioner cannot also be challenged by the petitioner in absence of those persons being made party-respondents to this petition and, therefore, also this petition is required to be dismissed.

9. The last submission made by Ms. Mehta that the petitioner was in fact allowed to cross Efficiency Bar as Junior Industries Inspector on October 5, 1979, and, therefore, the adverse remarks conveyed to the petitioner for the year 1979-1980 i.e. from April 1, 1979 to March 31, 1980 were not proper and ought not to have been made against the petitioner and they ought to have been ignored by the committee while considering the case of the petitioner for promotion has also no substance and it has to be rejected in light of the unreported judgment of the learned single Judge of this Court (Coram: J.M.Panchal, J) in S.S.No. 1140 of 1984 decided on July 19, 1994 wherein it has

been held that the correct proposition of law emerging from the decision of the Constitution Bench is that Departmental promotion Committee's taking into consideration of confidential reports to which an employee has been given no chance to make representation is merely fortuitous and it is the duty of the committee to take note of adverse remarks and come to a decision on consideration of them.

In view of the aforesaid decision, there is no substance or merit in the petition and accordingly it fails and is dismissed. Rule is discharged. Ad interim relief granted earlier stands vacated.

OFFICE OF THE INDUSTRIES COMMISSIONER : GANDHINAGAR STATEMENT
SHOWING THE SERVICE RECORD OF SHRI N .N.PATEL. Jr. INDUSTRIES
INSPECTOR

SR. Year Adverse Remarks

Whether adverse remarks were communicated

If representation is made result thereof

D.P.C. decision Remarks

1.

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2.

....

3.

....

4.

1-4-78 to 31-3-79

(1) Not maintain index book under Weights & Measures Act.

Yes, communicated on 24-3-81 for the period of 1-4-79 to 31-3-1979 ... DPC was held on 1-8-1979 and it was decided to defer the case of the next meeting. Hon"ble Court has passed an order dated May 5, 1981 to ignore C. R. of 78-79 for promotion

(2) Lagging behind in verification, stamping, inspection, surprise visit and prosecution.

(3) Not fit for promotion

5.

1-4-79 to 31-3-80

..do..

Yes, communicated on 24-3-81 for the period of 1-4-79 to 31-3-1980

Yes

...

6.

1-4-80 to 31-3-81

No adverse remarks

...

...

...

7.

1-4-81 to 31-3-82

(1) Less inspection work

Yes

...

DPC was held on 23-7-81 and 4-8-81. It was decided to decide the case after obtaining one year C.R. for 81-82. entries were communicated

As per the statement furnished for the DPC 24-2 87 it is stated that different adverse entries were communicated

(2) Default in panchnamas in case of Food Corporation of India

(3) Corruption

(4) Harassment to others