
(2009) 02 DEL CK 0262

In the Delhi High Court

Case No : Writ Petition (C) No. 802 of 2006

P.K. Sarin

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0262

Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Zakir Husain, for the Appellant; Meera Bhatia, Nitesh Kr. Singh and Rajat Soni, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The petitioner is aggrieved by his non-promotion to the post of Executive Engineer for which he was considered by the DPC for vacancies pertaining to the years 1995-96 and 1996-97. In fact, the petitioner was earlier placed under suspension in the year 1991 because of his involvement in a criminal case and remained under suspension upto 27.1.2002. He was tried and acquitted by the Special Judge, CBI, Tis Hazari vide orders dated 20.8.2002. Thereafter, he had preferred a representation dated 21.8.2002 for consequential benefits and in these circumstances orders dated 29.1.2003 were passed revoking the suspension of the petitioner. Review DPC was thereafter held on 21.9.2004 wherein his case for promotion to the post of Executive Engineer for the vacancies pertaining to the year 1995-96 and 1996-97 was considered. During the period of suspension, the ACRs of the petitioner were not written and, therefore, ACRs for the period from 1984-1991 were taken into consideration by the Review DPC. The DPC declared him unfit for promotion because of the reason that as per the benchmark prescribed for the aforesaid post, minimum three "Good" ACRs should be there to the credit of the candidate. However, in the case of the petitioner, he had got only two ACRs as "Good" and rest were "Average/Fair". The grievance of the petitioner is that those gradings which were below

"Good", namely "Average/Fair", should have been communicated to the petitioner as because of these gradings, which were below benchmark, the petitioner was denied promotion. It could not be disputed by the learned Counsel for the respondent that the ACRs of the petitioner wherein he got the grading less than the benchmark were not communicated to him.

2. This contention of the petitioner is well-founded and is now covered by catena of judgments of the Apex Court. Such gradings had to be communicated in view of recent judgments of the Supreme Court in the case of Dev Dutt Vs. Union of India (UOI) and Others, as well as Abhijit Ghosh Dastidar v. Union of India (Civil Appeal No. 2667/2008, decided on 22.10.2008).

3. We had the occasion to consider all these judgments, including another judgment of the Supreme Court in K.M. Mishra Vs. Central Bank of India, on which the respondents placed reliance, in WP(C) No. 12110/2006 entitled D.G. Employees State Insurance v. R.S. Gautam and Ors. decided on 13.1.2009, where we have opined that those ACRs which are below the benchmark are required to be communicated to the concerned employee.

4. In these circumstances, this writ petition is allowed and the impugned order of the Tribunal is set aside. We direct the respondents to communicate the ACRs of the aforesaid years to the petitioner within four weeks. The petitioner shall be entitled to make representation, which shall be made within four weeks thereafter. On making this representation, the same shall be considered and decided by the respondents within two months thereafter. In case the entry/entries for the aforesaid years are upgraded, the petitioner shall be considered for promotion by the Review DPC. Learned Counsel for the petitioner also submits that the petitioner was even allowed to cross his efficiency bar in the year 1991 itself on the basis of same ACRs and, thus, relies upon the judgment of the Supreme Court in the case of Brij Nath Pandey v. State of U.P. and Ors. 2000 (5) SLR 76, as per which he would have become entitled for fresh consideration for promotion. It is made clear that while holding Review DPC, this fact shall also be taken into consideration by the Review DPC.

5. In the facts and circumstances of this case, there shall be no orders as to costs.