
(2010) 08 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5540 of 2007

Prabhu Lal Khatik

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 — Section 4, 5
Rajasthan Police Service Rules, 1954 — Rule 20

Citation : (2011) 3 RLW 1903

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Judgement

Prem Shanker Asopa, J.—With the consent of counsel for both the parties, the writ petition has been heard finally and the same is being disposed of at the admission stage.

2. By this writ petition, the Petitioner seeks to challenge the order dated 5.4.2007 (Annx. 10) passed by the Rajasthan Civil Services Appellate Tribunal (in short "the Appellate Tribunal) in Appeal No. 610/2002, order 16.1.2002 (Anx.4) passed by the Appellate Tribunal in Contempt Petition No. 221/1999 and the promotion order 29.5.1997 (Anx. 2) and has further prayed for a direction to the Respondents to consider his candidature for promotion to the post of Rajasthan Police Service (Junior Scale) against the quota of year 1996-1997 and if found suitable for promotion, he may be promoted to that post along with all consequential benefits from the date his juniors have been promoted.

3. The facts, in brief, of the case are that on the recommendations of the Departmental Promotion Committee constituted under Rule 20 of the Rajasthan Police Service Rules, 1954, against the quota of the year 1996-97, promotion of Police Inspectors to the Rajasthan Police Service (Junior Scale) were made which included certain persons junior to the Petitioner whereas the Petitioner was not promoted, therefore, the Petitioner filed appeal No. 736/1997 before the Appellate Tribunal which was disposed of on 10.6.1999 with the observation that

the Respondents will hold review DPC within three months and will ensure that there should not be any discrimination between the officers in the matter of promotion. It was further observed by the Appellate Tribunal that if persons whose increments have been withheld are promoted, then depriving the Petitioner on the ground of censure is not proper, particularly when he is a member of Scheduled Caste and that the aforesaid observations be complied with within a period of four months and in case the Petitioner is selected by the review DPC for promotion, then he may be given all consequential benefits like his juniors. When the compliance of order dated 10.6.1999 was not made within the stipulated period, the Petitioner filed a contempt petition which was registered as Contempt Petition No. 221/99. In the said contempt petition, the State Government submitted a photo stat copy of an order dated 2.1.2002 wherein it was mentioned that the review DPC was held and the Petitioner had not been found suitable for promotion. After perusal of the said order dated 2.1.2002, the Appellate Tribunal observed, in contempt petition on 16.1.2002, that since the compliance of the order has been made by holding the review DPC, the contempt proceedings are dropped and in case the Petitioner is not satisfied, then he could file fresh appeal.

4. Keeping in view the aforesaid observations, the Petitioner filed fresh appeal which was registered as Appeal No. 610/2002. It was submitted in the appeal that his case was not considered fairly and properly and persons junior to him namely Shankar Sahayak, Bhagwat Singh, Natthi Singh, Ratan Lal and Bhawani Singh have been promoted vide order dated 29.5.1997. It was also submitted that in CWP No. 2878/2003 Satyamani Tiwari v. State decided on 11.8.2006 by this Court at the principal seat at Jodhpur, it was held that in case of promotion by seniority-cum-merit, minor penalty of censure will not come in the way.

5. In reply to Appeal No. 610/2002, the Respondent State submitted that the Petitioner has not been found suitable by the review DPC also and in pursuance to the said proceedings, the order was passed on 31.7.1998, which has been filed by the State of Rajasthan as Ex.R.I along with reply to memo of appeal and the same has also been filed by the Petitioner with this writ petition as Annexure-8.

6. In the present writ petition, it has been stated that although the Appellate Tribunal has agreed with the aforesaid principle and has further given the finding that out of APA Rs for the seven relevant years, his four APA Rs are good and three are satisfactory but it has also been held by the Appellate Tribunal that fresh appeal by the Appellant (Petitioner herein) for claiming the same relief, is not maintainable and in case the Petitioner was aggrieved, then he ought to have filed the writ petition. The Petitioner further stated in the writ petition that in the last paragraph the Appellate Tribunal has refused to interfere with proceedings of the review DFC on the basis of the principle laid down in Anil Katiyar (Mrs.) v. Union of India and Ors. 1997 (1) SLR (SC) 153, and ultimately, the appeal was dismissed vide order dated 5.4.2007.

7. Submission of counsel for the Petitioner is that the Appellate Tribunal while dismissing the contempt petition had granted him liberty to file fresh appeal, which has been ignored by the Appellate Tribunal while deciding the fresh appeal and further, once the Appellate Tribunal has agreed with the principle laid down by this Court in *Satyamani Tiwari v. State* (supra) that the minor penalty of censure will not come in the way of promotion on the basis of seniority-cum-merit and there was no other adverse material, then there appears to be no reason for not interfering with the proceedings of the review DPC. The judgment of the Supreme Court in *Anil Katiyar (Mrs.) v. Union of India and Ors.* (supra) is not applicable as the same is arising out of the judgment passed in the original application, by the Central Administrative Tribunal which was not exercising the power of appellate court and moreover, the earlier direction issued by the Appellate Tribunal has been ignored and further, the judgment of this Court in *Satyamani Tiwari* (supra) has also been ignored while considering case of the Petitioner by the review DPC. Further submission of counsel for the Petitioner is that the review DPC has not given any finding with regard to the promotion of the junior officers in whose cases, there was penalty of withholding of grade increments and superseding the Petitioner on the ground of minor penalty of censure while considering his case for promotion on seniority-cum-merit.

8. Submission of counsel for the Respondents is that the review DPC has rightly considered record of the Petitioner and further not found him suitable for promotion.

9. I have gone through record of the case and further considered rival submission of counsel for the parties.

10. Before proceeding further, it would be appropriate to quote Section 4 of the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976 (in short "the Act of 1976"), relevant portion of Para 20 of the judgment of the Division Bench of this Court in *Rajendra Singh v. State of Rajasthan and Ors.* (RLR 1993 (2) 304) and Para 4 of the judgment of the Supreme Court in *Anil Katiyar (Mrs.) v. Union of India and Ors.* (supra). The same are as under:

Section 4 of the Rajasthan Civil Services (Service Matters Appellate) Tribunals) Act, 1976

4. Duties of the Tribunal, (1) The Rajasthan Civil Services Appellate Tribunal shall hear an appeal against the order passed by any officer or authority on any service matter or matters affecting a Government servant in his personal capacity.

(2) The Tribunal shall have power to confirm, vary or reverse the order against which the appeal is preferred or to remand the matter for fresh decision in accordance with the directions given by it.

Relevant portion of Para 20 of the *Rajendra Singh v. State of Raj. and Ors.* RLR 1993 (2) 304

20. In the light of the above.... The Tribunal has proceeded to examine the appeal as if it was exercising a supervisory jurisdiction and not an appellate jurisdiction. It has completely lost sight of the fact that its jurisdiction is co-extensive with that of the departmental promotion committee/ the appointing authority, as has been laid down by the division bench of this Court in *State of Rajasthan v. Aklank Jindal*. In the said case this Court had examined the ambit and scope of the jurisdiction of the Rajasthan Civil Services Appellate Tribunal and held that the Tribunal can exercise those powers which are exercisable by the departmental promotion committee or by the appointing authority. In our opinion, the approach of the Tribunal is not consistent with the judgment of this Court in *State of Rajasthan v. Aklank Jindal* and is also contrary to the scheme of the Act of 1976. We wish to make it clear that the Rajasthan Civil Services Appellate Tribunal exercises appellate jurisdiction and not a supervisory jurisdiction as is exercised by the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985.

Para 4 of *Anil Katiyar (Mrs.) v. Union of India and Ors.* (1997 (1) SLR (SC) 153.

4. Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it would not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the Appellant that the selection by the DPC was vitiated by mala fides.

11. As regards the Finding that the Appellate Tribunal cannot interfere with the proceedings of the Review DPC on the basis of the principle laid down in the Supreme Court judgment in *Anil Katiyar (Mrs.) v. Union of India and Ors.* (supra), I may observe that the Appellate Tribunal has neither referred to any paragraph of the said judgment nor discussed the same and further, perusal of the same would reveal that the Supreme Court was conscious of the fact that the Central Administrative Tribunal was not exercising power of appellate authority, meaning thereby that the appellate court could interfere with the proceedings of the DPC. Since the Central Administrative Tribunal was not an appellate authority, it should not have played the role of an appellate authority but in the instant case, since the Appellate Tribunal was appellate authority, as held by this Court in *Rajendra Singh v. State of Rajasthan* (supra) therefore, it could have certainly examined the proceedings of the departmental promotion committee and passed appropriate orders as per Section 5 of the Act of 1976. The aforesaid judgment of the Supreme Court in *Anil Katiyar (Mrs.) v. Union of India and Ors.* is distinguished on the ground of jurisdiction.

12. In my view, one of the grounds for dismissal of the appeal that fresh appeal was not maintainable, is contrary to the order of the Appellate Tribunal dated 16.1.2002 (Anx.4) wherein while dismissing the contempt petition, there is

specific mention to the effect that in case the Petitioner is not satisfied, then he may file fresh appeal. Otherwise also, the order of the review DPC gave the Petitioner fresh cause of action which could be made basis for filing the appeal. Further, when on merit, the Appellate Tribunal, while assessing record in Appeal No. 610/2002, accepted the judgment of this Court in *Satyamani Tiwari v. State of Rajasthan and Ors.* (SBCWP No. 2878/2003 decided on 11.8.2006) that censure will not come in the way of promotion on the basis of seniority cum merit and further the Appellate Tribunal being an appellate authority could have certainly interfered with the proceedings of the review DPC, then there appears to be no justification for denial of the same on the ground that the Appellate Tribunal cannot interfere with the proceedings of the review DPC.

13. Accordingly, the writ petition is partly allowed, the impugned order dated 5.4.2007 (Anx. 10) is quashed and set aside and the matter is remanded back to the Appellate Tribunal for deciding Appeal No. 610/2002 within a period of three months from the date of receipt of certified copy of this order, in the light of the observations made here-in-above.