
(2012) 01 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 526 of 2001

Pratapsingh Sengar

APPELLANT

Vs

The District and Sessions Judge, Yavatmal, The Registrar,
High Court, The State of Maharashtra and Shri C.G. Thote

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : (2012) 2 ALLMR 299 : (2012) 2 MhLj 800

Hon'ble Judges : P.B. Majmudar, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : A.V. Bhide, for the Appellant; Anand Jaiswal, Advocate for respondents no. 1 and 2, Mr. P.D. Kothari, AGP for respondent no. 3 and None, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—Petitioner is a retired employee who was working at the relevant time as Assistant Superintendent in Civil Court at Mahagaon, District Yavatmal. At the time when the petition was filed, petitioner was in service, but he has retired soon thereafter and it is pointed out to the Court that he has retired in October 2002. By way of this petition, the petitioner has challenged the promotion granted to respondent no. 4 to the post of Superintendent in the District Court, thereby by-passing the claim of the petitioner for such promotion. The petitioner has also challenged the order passed by the Registrar of High Court in appeal filed by the petitioner dated 24.6.1999 by which his appeal in connection with his promotion has been rejected. At the relevant time, the petitioner was serving as Assistant Superintendent in the Civil Court. The next promotional post is a post of Superintendent in the District Court. As per the provisions of para 580 of the Civil Manual, at the time of such promotion, the District Judge has to consider the entire service record of the employee and more particularly, annual confidential reports for the previous five years. It is not in dispute that the petitioner was senior to respondent no. 4 so far as post of

Assistant Superintendent is concerned. However, the case of petitioner was not considered on merit for promotion. The concerned District Judge at the relevant time considered the case of petitioner for promotion and by detailed order dated 7th July 1987 found that the name of petitioner was at sr.no. 7 in gradation list of Assistant Superintendent and since the Assistant Superintendents at Sr.Nos. 1 to 8 have eventually retired, the petitioner is eligible for consideration as he is senior-most Assistant Superintendent. The District Judge thereafter considered the service record of the petitioner at the time of considering his case for promotion. The District Judge has considered service record of the petitioner for the last seven years and it was found that there were regular adverse entries and petitioner's service record was not satisfactory and that even his representation against adverse entry was rejected and adverse entry remained in his service record. The District Judge even gave personal hearing to the petitioner in this respect. The District Judge also considered the fact that enquiry was also pending against the petitioner at the relevant time and ultimately after recording detailed reasons in this behalf, the District Judge found that he is not inclined to promote the petitioner to the post of Superintendent and ultimately, junior to the petitioner was promoted on the basis of service record after considering the service record of such junior employee. Appeal filed by the petitioner against his super cession was also dismissed in the year 1999 by the Registrar. The petitioner has thereafter filed this petition challenging the decision of his supercession in the matter of promotion.

2. Learned counsel for the petitioner has pointed out that the petitioner has retired in October 2002. It is submitted by him that if petition is allowed, petitioner will get more pensionary benefits and may be entitled to additional amount towards superannuation. It is submitted on behalf of the petitioner that for the year 1996-97, the Civil Judge who recorded adverse entry in petitioner's record was keeping hostile attitude against the petitioner as the petitioner had given evidence against the said officer in a departmental proceeding. It is submitted by learned counsel for the petitioner that service record of the petitioner was not that bad by which promotional benefit was not made available to him. It is submitted that at the relevant time departmental enquiry was no doubt pending against the petitioner, but he was subsequently exonerated. It is submitted by him that considering the seniority of the petitioner, he was entitled to be promoted in reference to respondent no. 4 who was junior to the petitioner.

3. Mr Anand Jaiswal, learned counsel appearing for respondents no. 1 and 2 submits that as per the provisions contained in the Civil Manual, promotion is required to be given on the basis of consideration of the entire service record of an employee. It is submitted that the administration, after considering the service record of the petitioner and particularly of last seven years and after considering the other material on record, ultimately found that the petitioner was not required to be promoted on the post of Superintendent and such decision is taken on the basis of objective material and on the basis of facts and circumstances of the case. It is submitted by learned counselor respondents no.

1 and 2 that so far as adverse entry in-service record of the petitioner is concerned, that has been affirmed by the reviewing officer and appeal against the same is also dismissed and thus, adverse entry continued of the petitioner. It is further submitted by learned counsel for respondents that concept of promotion is on the basis of service record and unless a person is having meritorious service record, he cannot claim promotion only on the basis of seniority as ultimately merit is required to be considered first and promotion is to be given on the basis of merit-cum seniority .

4. We have heard both learned counsel appearing in the matter. We have also gone through the documents forming part of this petition. As pointed out earlier, promotion to the post of Superintendent is to be given on the basis of service record of the employee. In the instant case, the District Judge gave an opportunity to the petitioner before supersession and after considering the relevant service record of past seven years took an objective decision not to promote the petitioner as he was found not suitable for promotional post. It is not in dispute that adverse entries for the relevant years continued to remain in the service record of the petitioner. The reviewing authority has also confirmed the said adverse entry in the service record of the petitioner for the year 1996-97 and since the adverse entry continued to remain in the service record of the petitioner, no fault can be found with the order passed by the District Judge in deciding to supersede the petitioner in the matter of promotion. The District Judge has given cogent reasons as to why according to him, the petitioner was not fit for promotion. So far as adverse entry in the service record of the petitioner for the year 1996-97 is concerned, it is found that the petitioner was avoiding work; his integrity was doubtful and that he was not suitable even for the post he was holding. That entry has ultimately been confirmed by the reviewing authority. So far as subsequent entry of 1.4.1996 and 5.6.1996 is concerned, there is no adverse entry in the service record of the petitioner, but that was for less than the period of three months and, therefore, it was not taken into consideration. The District Judge also considered the annual confidential reports of the petitioner starting from the year 1990 upto 1996-97. So far as adverse entry for the year 1993-94 is concerned, there is entry to the effect that relations of the petitioner with the colleague and public are best, but effective coordination is needed. So far as entry for the year 1995-96 is concerned, the reviewing authority wrote an adverse remark to the effect that the petitioner needs to be kept under control. Though this entry was not communicated to the petitioner, it is argued by learned counsel for respondents that the same could not be treated as adverse entry, but it is on the basis of general performance of the petitioner in service, the District Judge has considered service record of the petitioner for the last seven years and has found that the petitioner was not fit for promotion. Learned counsel points out that regarding adverse entries for the relevant period, the appeal filed by the petitioner was dismissed and, therefore, the most damaging adverse entry in the service record for the year 1996-97 has continued to remain in the service record as the petitioner did not take any steps

by filing writ petition in this Court for expunging such adverse entry. If such entry remained in the service record of the petitioner, the District Judge was right in not finding the petitioner eligible for promotion. The Registrar has filed detailed reply and has pointed out alto why the petitioner was not fit for promotion. The District Judge heard the petitioner and has given cogent reasons and the High Court administration also considered petitioner's appeal and rejected the same. We see no justification in the claim of the petitioner for promotion. For all these reasons, in our view, petitioner is not entitled to any benefit. Considering aforesaid aspects, we do not find any substance in the petition. We agree with the submission of learned counselor the petitioner that simply because the petitioner has retired long back that itself should not come in his way in deciding the matter on merit. However, on merit, we find that there is no substance in the claim of the petitioner for promotion and in our view, the District Judge after considering the relevant material, has rightly passed the order recording super ceding the petitioner in the matter of promotion for the post of Superintendent.

5. In the result, writ petition is dismissed. Rule discharged. No order as to costs.