

(2010) 12 SHI CK 0259
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 8802 of 2008

Rajender Sharma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0259

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed for quashing of notification dated 17.7.2001 Annexure A-3 vide which Respondent No. 2 has been promoted from the post of Deputy District Attorney to the post of District Attorney with immediate effect. The direction has been sought to convene a Review Departmental Promotion Committee as on 25.6.2001 and in case the Petitioner is selected then he be promoted by reverting Respondent No. 2 w.e.f. 17.7.2001. The Petitioner has also prayed for consequential benefits, such as, arrears of pay and seniority over Respondent No. 2 etc.

2. The case of the Petitioner is that he was appointed as Assistant Public Prosecutor now designated as Assistant District Attorney and he joined as such on 30.1.1984. He was promoted as Deputy District Attorney on 19.1.1996 and he joined as such on 12.2.1996. The Recruitment and Promotion Rules for the post of District Attorney (Class-1) in the Department of Prosecution, Himachal Pradesh provides that the post of District Attorney is selection post which is to be filled 100% by way of promotion from amongst the Deputy District Attorneys with five years regular service or regular combined with continuous ad-hoc (rendered upto 31.3.1991, if any) service in Grade-A. As per Recruitment & Promotion Rules the Departmental Promotion Committee is to be presided over by the Chairman of Himachal Pradesh Public Service Commission or a member thereto to be nominated by him. The Petitioner while working as Deputy District

Attorney had successfully completed five years of regular service in the grade on 11.2.2001. The Petitioner had also passed the departmental examination in the year 1982-83. The Petitioner was eligible for promotion to the next post of District Attorney in the year 2001 and was within the zone of consideration.

3. The Respondent No. 1 vide notification dated 17.7.2001 had promoted four Deputy District Attorneys to the post of District Attorneys including Respondent No. 2. The Respondent No. 2 was at serial No. 34 in the list Annexure A-2 whereas the Petitioner was at serial No. 33 in the list and thus Respondent No. 2 was junior to Petitioner.

4. It has been pleaded that while making promotion, AC Rs for previous five years were considered by the DPC meeting held on 25.6.2002. The Petitioner performed the duties of District Attorney during the period from May, 1997 to December, 1997 as the post of District Attorney remained vacant at Nahan. It has been pleaded that during the relevant period the Respondent No. 2 seems to have been graded outstanding for these periods in his AC Rs for no special reasons. The outstanding remarks in AC Rs seems to be the result of personal favour which has no concern at all with official performance of Respondent No. 2. The comments of the reviewing authority which has given chance to the DPC to grade Respondent No. 2 above the Petitioner are not based on true facts and comparative performance of Petitioner. As such the DPC has not taken into consideration all these material facts as the same were not brought to the notice of DPC.

5. The Petitioner was fully eligible for promotion but has apprehension that he was not considered properly, his AC Rs were also toned down unlawfully in order to give favour to Respondent No. 2 and to supersede the Petitioner. The Petitioner could not have been superseded in any lawful manner had the AC Rs been considered impartially and in accordance with Rules. The Petitioner had made representation on 17.5.2002 to Respondent No. 1 but to no effect. In these circumstances, the Petitioner has filed the petition.

6. The Respondent No. 1 has filed reply and contested the petition. It has been stated that promotion from Deputy District Attorney is from class-1 status, as such DPC is convened at Department/Govt. level. The post being selection post as such the criteria while making promotion is merit-cum-seniority. The Petitioner is one-step senior to Respondent No. 2 at the time of first promotion as Deputy District Attorney and Petitioner and Respondent No. 2 were both promoted jointly on regular basis on 19.1.1996 and Petitioner was one step senior to Respondent No. 2. Annexure A-2 dated 31.10.2000 is not the authentic seniority list. In the year 2000 one post of District Attorney fell vacant and in the year 2001 three posts of District Attorneys fell vacant. It has been stated that for three vacancies in the year 2001 five persons were considered, for first post Respondent No. 2 was assessed higher in merit and Petitioner and other three were assessed lower in merit in comparison to him. The Respondent No. 2 was recommended for promotion at serial No. 1 for the post in the year 2001 and Respondent-

department on the recommendation of DPC vide notification dated 17.7.2001 had promoted Bhim Singh Pathania, Mangat Ram Sharma, Akshay Kumar Paterwal and Amar Prakash as District Attorneys. They were promoted on merit-cum-seniority basis. The Respondent No. 2 was found higher in merit by DPC in comparison to Petitioner. The Respondent No. 1 has thus prayed for dismissal of the petition. The Petitioner has filed rejoinder to the reply of Respondent No. 1 and has reiterated his stand.

7. I have heard learned Counsel for the parties. The learned Counsel for the Petitioner has relied para-19.8.4 of Handbook on Personnel Matters (Second Edition) Government of Himachal Pradesh Department of Personnel which is as follows:

Abolition of grading column in A.C. Rs-Grading by DPC The general principles for promotion to selection posts provide that after excluding such of the officers in the field of choice who are considered unfit by the Departmental Promotion Committee or other selecting authority, the remaining officers should be classified as "Outstanding", "Very Good" and "Good" on the basis of merit, as determined by their respective records of service. It is entirely left to the D.P.C. or other selecting authority to make its own classification of the Officers being considered by them for promotion to selection posts, irrespective of the grading given to them by the reviewing officers in their confidential reports.

With the revision of forms of annual confidential reports it has been decided to dispense with the column in regard to the grading of officers in the confidential reports. Though the column of grading in the existing C.R. form has been dispensed with yet the D.P.C. or other selecting authority should arrive at its own conclusions regarding the grading of the work of the officers under consideration on the basis of the total contents of the confidential reports of the officers concerned. The principles for selection, will continue to apply, with reference to the grading to be given by the D.P.C. on the overall content of the C.R. form

8. The learned Counsel has also relied para 19.8.5 of aforesaid Hand Book on Personnel Matters which is as follows:

Outstanding entry in A.C. Rs.

As per above decision, the column for grading has been dispensed with. It has been decided by the Government that the Reporting//reviewing officers will exercise great restraint while making an entry of an officer/official as "Outstanding". If such an entry is to be made, details of specific performance and achievements justifying the entry should be recorded in the A.C. Rs. of the officers/officials.

9. It has been submitted by learned Counsel for the Petitioner while relying the aforesaid para 19.8.5 that the reporting/reviewing officers are required to exercise great restraint while making an entry of an officer/official as "Outstanding". In case such entry has been made, details of specific

performance and achievements justifying the entry should be recorded in the AC Rs of the officers/officials. It has been submitted that the outstanding entry of Respondent No. 2 has not been recorded in terms of para 19.8.5 and therefore, such outstanding entry should not have been considered by DPC while assessing the merit of Respondent No. 2 in comparison to Petitioner. The learned Counsel for the Petitioner has submitted that grading by DPC has been provided in aforesaid para 19.8.4. The para 19.8.4. provides that D.P.C. or other selecting authority should arrive at its own conclusions regarding the grading of the work of the officers under consideration on the basis of the total contents of the confidential reports of the officers concerned. The principles for selection, will continue to apply, with reference to the grading to be given by the D.P.C. on the overall content of the C.R. form.

10. Aforesaid para 19.8.5 nowhere provides that entry of "outstanding" has been dispensed with. Para 19.8.5 provides what more should be written justifying the entry of "outstanding". There is no specific allegation in the petition that entry of "outstanding" of Respondent No. 2 has not been written in the manner provided in aforesaid para 19.8.5. It has also not been pleaded that in support of "outstanding" entry details of specific performance and achievements justifying the entry have not been recorded. The Petitioner in the petition has pleaded that "outstanding" entry in the AC Rs has been given to Respondent No. 2 as a matter of favoritism and for no special reason. This allegation is vague and the person who has been allegedly shown favour to Respondent No. 2 has not been impleaded as party. Therefore, in absence of the person against whom the allegation has been made for showing favoritism, the Petitioner is not entitled to relief on the basis of bald allegation of favoritism. The Petitioner in the petition has not pleaded that on the basis of overall assessment of the AC Rs the Respondent No. 2 was not better in merit in comparison to Petitioner. In absence of the pleadings of the Petitioner that AC Rs of Respondent No. 2 overall could not have been assessed better in merit in comparison to Petitioner, he is not entitled to relief claimed in the petition. The post of District Attorney is selection post where merit-cum-seniority is the criteria, therefore, simply because Respondent No. 2 was one step below to Petitioner in the seniority, the Petitioner as a matter of right at the time of promotion to the post of District Attorney cannot claim promotion in preference to Respondent No. 2 simply on the basis of seniority. The Petitioner has failed to make out a case of better merit nor has he shown that DPC has wrongly considered the AC Rs of Respondent No. 2. There is no merit in the petition.

11. No other point was urged.

12. The result of above discussion, petition fails and is accordingly dismissed.