
(2001) 05 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 12762 of 1999

Rajendra Prasad Mandal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Citation : (2001) 05 PAT CK 0024

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—The sole petitioner is presently an Assistant (Tech) in the Regional Development Office of Central Silk Board (hereinafter referred to as "the Board"), Patna. He has prayed for quashing of memorandum dated 10-8-1999 contained in Annexure-1 whereby his representation for promotion to the post of Assistant Superintendent (Tech) has been rejected. His further prayer is to command the respondents to promote him to the aforesaid post from the date when respondent No. 7, a junior of the petitioner, was granted such promotion, along with all consequential reliefs.

2. It is not in dispute that petitioner is senior to respondent No. 7 and had the petitioner not been awarded and communicated the adverse remarks contained in Annexure-4 dated 1-3-1996, he may have been selected for the promotion in question for which the Departmental Promotion Committee (DPC) met on 25-6-1999. From Annexure-1, The memorandum under challenge in this writ application, it is clear that petitioner's case was considered and he was not found fit for promotion on account of adverse remarks recorded in his ACR for the year 1994-95. The adverse remarks were admittedly communicated to the petitioner vide memorandum dated 12-3-1996 (Annexure-3). It was clearly mentioned in the memorandum dated 1-3-1996 (Annexure-4) that representation, if any, on the adverse remarks may be given within one month from the date of receipt of that memorandum. The memorandum containing the adverse remarks (Annexure-4) was issued by the Assistant Secretary (Admn) from the office of the Board at Bangalore. The petitioner chose not to make any

representation against the adverse remarks till 1-1-1998 and in the intervening period since no representation had been filed against the adverse remarks hence, the petitioner was not found fit for promotion by the DPC and respondent No. 7 was promoted.

3. On behalf of the petitioner, two submissions were advanced to support his claim for promotion. Firstly, it was contended that the adverse entries had been mala fide recorded by respondent No. 5 and as such, it is fit to be ignored and cannot be allowed to come in the way of petitioner's promotion. The second contention is that in spite of adverse remarks some other employees have been considered and promoted in the past and hence, denial of promotion to the petitioner is arbitrary and unfair. On the other hand, on behalf of the respondents No. 2,3 and 6, it was submitted that in absence of any representation from the petitioner against the adverse entries communicated to him on 12-3-1996, there was nothing wrong or illegal on the part of the DPC in considering the adverse remarks in its meeting held on 25-6-1996 and in finding the petitioner unfit for promotion on account of adverse remarks duly communicated.

4. From the materials on record, it is clear that petitioner did not represent against the adverse remarks duly communicated to him and the first representation filed by him in this connection dated 1-1-1998 (Annexure-5) discloses that he had raised a grievance against supersession by a junior (respondent No. 7) and not against the adverse remarks communicated in March 1996. The Board gave a clear reply in the matter through memorandum dated 29-1-1998 (Annexure-7) disclosing the fact that the DPC in its meeting held on 25-6-1996 had not found him fit for promotion on account of adverse remarks against which the petitioner had not represented. Thereafter, in his next representation dated 9-2-1998 (Annexure-8), the petitioner included statements to the effect that remarks in the ACR for 1994-95 were not recorded by the Reporting Officer impartially, rather it was done arbitrary, perhaps for some personal reasons. In the next representation dated 27-3-1998, petitioner took a legal stand that promotion cannot be denied unless a charge-sheet had been issued before the meeting of the DPC. In the next representation dated 5-8-1998 (Annexure-10), the petitioner alleged personal mala fide against respondent No. 5, who was Deputy Secretary (Tech) at Patna during the relevant time. An allegation was made that Mr. Mukherjee wanted the office premises to shift to a different locality in the town of Patna and this was opposed by some members of the staff including the petitioner which led to a decision against shifting and hence, Mr. Mukherjee as Reporting Officer gave adverse remarks against the petitioner. After that, the petitioner filed a case bearing OA No. 168 of 1999 before the Central Administrative Tribunal, Patna Bench, Patna which was disposed of on 30-6-1999 only with a direction upon the respondents to dispose of petitioner's representation, dated 5-8-1998 by a speaking order in accordance with law. In compliance, the Board passed a speaking order rejecting petitioner's representation vide impugned memorandum dated 10-8-1999 (Annexure-1).

5. In the facts and circumstances noticed above, this Court finds no error in the decision of the Board contained in Annexure-1 nor does the Court find any illegality in the decision taken by the DPC on 25-6-1996. In absence of any representation filed even till the meeting of the DPC, the adverse remarks duly communicated were rightly considered by the DPC and the decision taken on the basis of such adverse remarks cannot be held to be unfair, illegal or arbitrary. The explanation given by the petitioner in this writ application that he did not file any representation because of assurance given by Mr. Mukherjee that he will correct the adverse remarks, does not appear probable and acceptable, especially when according to petitioner's own case, Mr. Mukherjee was perhaps not happy with him. The representation to higher authorities against the adverse remarks ought to have been sent within 30 days or within a reasonable time thereafter but in fact, the petitioner never made a representation directly against the adverse remarks so that the appropriate authority could consider his grievances in accordance with law. In such circumstances, the petitioner's contention that this Court should hold the adverse remarks to be mala fide and fit to be ignored is not found acceptable. Even in his subsequent representations, the petitioner came out with specific allegation, against the respondent No. 5 only in his last representation dated 5-8-1998. When the petitioner never challenged the adverse remarks directly before the authorities, it is not proper to allow the petitioner to challenge those remarks belatedly and collaterally in a writ proceeding.

6. The second contention based upon promotions granted to some other employees despite adverse remarks is of no help to the petitioner because those were cases considered in different transactions and much depends upon the entire "service record of an employee as well as nature of adverse remarks. Articles 14 and 16 cannot be of any help to the petitioner in the present circumstances.

7. On behalf of the petitioner certain Central Government rules were referred to from Swamy's Handbook 2000 and Swamy's Complete Manual on Establishment and Administration for Central Government Offices. The Handbook contains only gist of the Central Government circular and rules. On going through the guidelines for recording adverse entries for confidential reports, this Court finds no such provision which can be held mandatory. Nothing was shown to indicate that the instructions were statutory or that they apply to the employees of the Board. The judgment of the Supreme Court relied upon by the petitioner, reported in Amar Kant Choudhary Vs. State of Bihar and Others, does not apply to the case of the petitioner because in that case, the adverse entries which were considered by the selection committee had been represented against and subsequently expunged. On the other hand, learned Counsel for the respondent-authorities of the Board relied upon a judgment of the Supreme Court, reported in R.L. Butah Vs. Union of India (UOI) and Others, to submit that the rules regarding preparation and maintenance of confidential reports are by way of departmental instructions and are neither statutory rules nor rules made under

Article 309 of the Constitution.

8. In view of aforesaid discussions and findings, this Court finds no merit in this | writ application and the same is accordingly dismissed.