

(2015) 08 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6903 of 2002

Ram Kalyan Akodia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Citation : (2015) 08 RAJ CK 0017

Hon'ble Judges : Ajit Singh, A.C.J;Anupinder Singh Grewal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J—The petitioner who is an officer of Rajasthan Higher Judicial Service has preferred the instant petition seeking Selection Scale and expunction of his assessment as an Average Officer in the ACRs for the years 1990, 1991, 1992 & 1993.

2. The petitioner was appointed as a Civil Judge in the Rajasthan Judicial Service vide order dated 03.11.1972. He was promoted as the Additional Chief Judicial Magistrate, vide order dated 23.04.1983. Thereafter, he was promoted as the Chief Judicial Magistrate on 17.09.1985. He was granted super time scale in the Rajasthan Judicial Service with effect from 13.08.1987 and was promoted to the Rajasthan Higher Judicial Service and posted as Additional District & Sessions Judge in August, 1987. He was promoted as District & Sessions Judge in September, 1992 and was confirmed in Rajasthan Higher Judicial Service on 24.08.1996. He superannuated on 30.06.2000.

3. Earlier the petitioner had filed a writ petition seeking direction for grant of Selection Scale and later on this petition was amended by the petitioner to plead subsequent developments, although the prayer remains the same.

4. At the very outset, the petitioner, who is appearing in person, has submitted that he does not wish to challenge the criteria for grant of Selection Scale and is also giving up his plea against downgrading of his ACRs by the Chief Justice for

the period from 1990 to 1993. He has, however, submitted that his overall record including the ACRs for the years 1997 to 1998 should have been considered by the Committee of the High Court constituted for consideration of the cases of the Officers for grant of Selection Scale. His ACRs for the years 1997 to 1998 were above the benchmark for grant of selection scale and in case they had been considered, he would have satisfied the criteria of five out of seven ACRs being "Good" or above and no adverse entry or major penalty being imposed during this period of 7 years. He has further drawn our attention to the averments in para 10 of the petition, wherein it is stated that he was a good officer and had a high disposal of cases. The petitioner has further submitted that one Shri Bheem Sen Lakhera, who was his junior, had been granted selection scale, whose service record cannot be said to be better than him. He has also drawn our attention to the cases of six other officers namely, Shri R.C. Jatav, Shri P.D. Sharma, Shri Salig Ram Chauhan, Shri P.K. Bhatia, Shri Gyan Prakash Pandey and Shri Prem Pratap Singh, who earlier had not been considered eligible for grant of Selection Scale in the meeting held by the Committee of the High Court in 1998 as their service record was not upto the benchmark. However, they are stated to have been subsequently granted selection scale against the vacancies which became available later on and in case they had not been considered, the petitioner would have been eligible for selection scale before he had superannuated on 30.06.2000. In support of his submissions, he has also relied upon the judgments of Hon"ble Supreme Court in State of Rajasthan and Others Vs. Shankar Lal Parmar, AIR 2012 SC 1913 : (2011) 131 FLR 944 : (2011) 11 SCALE 360 : (2011) 11 SCR 762 : (2012) AIRSCW 2370 , State of Rajasthan Vs. Fateh Chand Soni, (1996) 1 AD 261 : (1995) 9 JT 523 : (1995) 7 SCALE 168 : (1996) 1 SCC 562 : (1995) 6 SCR 559 Supp , and Central Board of Direct Taxes and Another Vs. Dr. O.N. Tripathi and Others, AIR 1991 SC 212 : (1991) 61 FLR 732 : (1990) 4 JT 203 : (1991) LabIC 227 : (1994) 3 LLJ 579 : (1990) 2 SCALE 800 : (1991) 1 SCC 51 Supp : (1990) 2 SCR 335 Supp : (1991) 2 SLJ 70 .

5. On the contrary, learned Senior Counsel appearing for the High Court has submitted that in the meeting held by the Committee in the year 1998, the ACRs of the officers for the period from 1990 till 1996 had been taken into account and as the petitioner did not have five out of seven ACRs which were "Good" or above, he could not be granted Selection Scale. He has further submitted that later the petitioner was considered for Selection Scale in the meeting of the committee held in 2001 and as he had superannuated on 30.06.2000, he could not be granted selection scale.

6. We have heard learned counsel appearing for the parties and also examined the record, including the record which had been furnished to us during the course of hearing by the learned Senior Counsel appearing for the High Court.

7. A Committee was constituted by the order of the Chief Justice to examine the record of the eligible Rajasthan Higher Judicial Service Officers falling within the zone of consideration and to recommend the names of the suitable officers for

grant of Selection Scale. The criteria for grant of selection scale is that at least five out of seven ACRs should be good or above and there should not be any adverse remark in ACR or any penalty imposed on the officer in the preceding seven years. The Committee in its meeting held on 30.03.1998 examined the ACRs of the eligible Rajasthan Higher Judicial Service Officers for the period from 1990 to 1996, as the ACRs for the year 1997 were said to be incomplete. While considering the service record of the petitioner including his ACRs of the previous seven years from 1990 to 1996, the Committee of the High Court in its report dated 30.03.1998 did not recommend his case for grant of Selection Scale. The Committee had given detailed reasons, which read as under:

"(14) Shri R.K. Ankodiya:-

This officer has three "good" A.C.Rs. to his credit and the A.C.R. for one year, i.e., 1995, has not been recorded. His A.C.Rs. for four years, i.e., 1990, 1991, 1992 and 1993 are average. His case, also, does not fall within the criteria laid down for the grant of selection scale. Therefore, he is also not recommended for the grant of selection scale."

8. Thereafter, on 23.04.1999 another meeting was convened by the Committee wherein the cases of the officers whose names were earlier deferred, were taken up. In addition to that, the cases of the officers whose names were earlier rejected were reviewed. The Committee in its meeting dated 23.04.1999 while examining the case of the petitioner had observed as under:

"14. Shri R.K. Ankodiya:

The officer has been assessed average for the years 1990, 1991, 1992 and 1993. In 1994, he has been assessed as good. In 1995, the seal has been put on his A.C.R. and in 1996 he has been assessed as outstanding officer. Even if the A.C.Rs. of 1995 and 1996 are treated as good in view of the Government Circular referred to above, this officer has only three good A.C.Rs. to his credit and, thus, he is not entitled for grant of selection scale and his case is not recommended for the same."

The recommendation of the Committee was accepted by the Full Court in its meeting held on 27.11.1999 and while agreeing with the recommendations of the Committee it was resolved that the petitioner was not fit for grant of Selection Scale.

9. It is also borne out from the record that the Committee of the High Court in its meeting held on 03.07.2001 had also considered the case of the petitioner wherein it was observed that he could not be considered for Selection Scale as the vacancy in terms of his seniority had become available on 01.08.2000 while he had already superannuated on 30.06.2000. As per the criteria laid down in the Rules, officers comprising 25% of the total strength of the Rajasthan Higher Judicial Service cadre are entitled to Selection Scale.

10. The petitioner, appearing in person, has also contended that he had become

eligible for Selection Scale after 1998 as his ACRs for the year 1997 and 1998 are stated to have been recorded as "very good". However, the record indicates that his ACR for the year 1997 is "very good" and if the ACR for the year 1998, which had not been recorded, is treated as "good", then he could be considered eligible. We have examined the proceedings of the subsequent meeting as well, which indicate that 29 officers were considered and 14 were recommended for Selection Scale against the vacancies which were available in the interregnum. The petitioner could not be considered as the vacancy, which was available in accordance with his seniority, arose after he had retired from service.

11. We now proceed to examine the cases of officers who are alleged to have been erroneously granted Selection Scale ahead of the petitioner.

12. A bare perusal of record indicates that Shri Bheem Sen Lakhera had been recommended for promotion in the year 1998 as five out of his seven ACRs were "Good" or above, although he was junior to the petitioner. It is also apparent from the record that the case of Shri R.C. Jatav was rejected by the Committee of the High Court in its meeting dated 23.04.1999. It was recorded in the minutes of the meeting that he has three adverse entries to his credit and only one "good" ACR. Representations against the adverse entries have been rejected and he had been awarded warning in a criminal case. While in the recommendations of the Committee, vide report dated 03.07.2001, it is mentioned that he had five "good" or "very good" entries to his credit and hence he was recommended for grant of Selection Scale with effect from 01.11.1999. From 1993 till 1999 Shri R.C. Jatav had five out of seven good or above ACRs, and hence he fulfilled the criteria for grant of Selection Scale. His ACRs for the years 1990 & 1992 wherein adverse remarks were made and were rated as "below average" were, thus, excluded from consideration as they were of a period prior to preceding seven years. He was, thus, recommended for Selection Scale when he had fulfilled the criteria.

13. The case of Shri R.N. Singh had earlier been deferred in the meeting of the Committee held on 30.03.1998 on the ground that one of his ACRs for the year 1996 had not been recorded and his representation against the adverse remarks recorded in the year 1992 was pending consideration. In the meeting of the Committee held on 23.04.1999, it is mentioned that the representation of Shri R.N. Singh against the adverse remarks in the year 1992 was accepted and as he fulfilled the criteria of five "good" entries, his case was recommended for grant of Selection Scale. Regarding Shri P.D. Sharma, it is borne out from the minutes of the meeting dated 23.04.1999 that he only had three "good" or "very good" ACRs to his credit and his case was not recommended for the grant of Selection Scale. However, the ACRs of Shri P.D. Sharma for the period 1994 to 1999 were either good or very good and he had five out of seven good or above ACRs during the preceding seven years, and hence, he was granted Selection Scale with effect from 01.08.1999 in terms of recommendation of the Committee on 03.07.2001. Shri Salig Ram Chauhan was not considered fit for Selection Scale

as he had two adverse entries against him besides a penalty of stoppage of one annual grade increment for charges of corrupt motive and gross negligence. However, Salig Ram Chauhan was recommended for Selection Scale by the Committee on 03.07.2001 as he also had five good or above ACRs in the preceding seven years. The adverse remarks and penalty, which had been imposed earlier, were excluded from consideration as they were beyond the period of seven years from the date of consideration and there was no adverse remark or major penalty imposed upon him during the period under consideration. Shri P.K. Bhatia and Gyan Prakash Pandey did not have five good or above ACRs in 1999. Prem Pratap Singh had earlier been rejected for Selection Scale as he did not have five out of seven good or above ACRs. In the meeting held on 03.07.2001, these officers namely, Prem Pratap Singh, P.K. Bhatia & Gyan Prakash Pandey were recommended for Selection Scale as they had achieved the benchmark of five good or above ACRs in the preceding seven years and there was no adverse entry or major penalty imposed on them during this period.

14. It is, thus, evident from the service record of all these officers that they had five out of seven good or above ACRs in the preceding seven years which had become available at the time of consideration in 2001. They have been recommended for grant of Selection Scale from the dates the vacancies had arisen in the order of seniority. All these officers are senior to the petitioner, and hence the petitioner cannot have any grievance with regard to the grant of Selection Scale to them. The case of the petitioner was also taken up and it was observed by the Committee that the vacancy against which he was to be considered for grant of Selection Scale in accordance with his seniority, had arisen on 01.08.2000, while he had already superannuated on 30.06.2000. For ready reference, the names of these officers who are senior to the petitioner along with the dates from which they were held entitled to the Selection Scale are reproduced as under:

15. Even assuming that the service record of the petitioner was satisfactory and he had acquired the eligibility for Selection Scale after the ACR for the year 1997 was recorded as very good and the ACR for the year 1998 is treated as good, the petitioner is only entitled for consideration for Selection Scale in terms of his seniority. As already discussed in the foregoing paragraphs, no person junior to the petitioner has been granted Selection Scale after the petitioner had become eligible for the same. All the persons, who were granted Selection Scale by the Committee, were senior to him.

16. The judgments relied upon by the petitioner are distinguishable on facts and not applicable to the instant case. In the case of *State of Rajasthan & Ors. vs. Shankar Lal Parmar* (supra), the classification of the officers on the basis of service record for consideration for grant of Selection Scale was held to be reasonable and the action of the State granting Selection Scale to those who had good service record and deferring the cases of those who had been censured,

was held to be in accordance with law. However, in the instant case as already discussed in foregoing paragraphs, no officer who was ineligible or junior to the petitioner was granted Senior Scale. Hence, the action of respondents is in accordance with the principle of Law laid down in this judgment.

17. In the case of *State of Rajasthan vs. Fateh Chand Soni* (supra), it was held that promotion can be given either to higher pay scale or to a higher post and an officer who was selected and appointed as a result of an earlier selection would rank senior to a person who was selected and appointed on the basis of a subsequent selection. However, the case of the petitioner is clearly distinguishable as there is no person junior to the petitioner who was granted Selection Scale ahead of him after the petitioner had attained eligibility.

18. In the case of *Central Board of Direct Taxes & Anr. vs. Dr. O.N. Tripathi & Ors.* (supra), the question which had arisen for consideration was that of the dates when the income tax officers were to be considered for promotion to the post of Assistant Commissioner. It was held that the cases should be considered as per the vacancies for the post of Assistant Commissioner yearwise and if the superseded officers were found fit for promotion, they were to be given seniority as Assistant Commissioner for the year in which they would have been promoted. The Committee could not have taken into consideration the record of future years for promotion in the earlier years. This judgment also does not help the case of the petitioner in view of the factual matrix set out in the foregoing paragraphs especially when before the superannuation of the petitioner, there was no vacancy against which he could be considered for grant of Senior Scale in terms of his seniority.

19. It is settled principle of law that the scope of judicial review in administrative orders is limited and confined to the manner in which the decision is taken and not the decision making process as such. Interference with the order of the departmental authority is called for only when it is found to be irrational, unreasonable or there is procedural impropriety. This principle of law has been reiterated by the Hon"ble Supreme Court in *Vinod Kumar Vs. State of Haryana and Others*, (2013) 11 AD 68 : AIR 2014 SC 33 : (2013) 14 JT 207 : (2014) LabIC 1525 : (2013) 5 LLN 6 : (2013) 13 SCALE 161 : (2014) 1 SCJ 339 : (2014) 1 SCT 312 : (2014) 1 SLJ 155 .

Tested in the light of the aforementioned principle of law, the action of the respondents in denying selection scale to the petitioner cannot be termed as arbitrary, unreasonable, or illegal warranting interference in exercise of writ jurisdiction.

20. In the result, the instant petition is dismissed being devoid of any merit.