
(2012) 04 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8155 of 11 (s)

Ramkesh Yadav

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Citation : (2012) 4 MPLJ 609

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

Hon. Shri N.K. Mody, J.—The prayer in the petition is for quashing the down grade entry "C" awarded to the petitioner in the year, 2007 and also to quash the impugned order dated 6.9.11 (Annexure P-14) passed by respondent No. 2 and to direct respondent No. 2 to accept the opinion of Reviewing Officer respondent No. 3 and also to correct the ACR of the year, 2007 accordingly and award Grade-B to the petitioner. It is further prayed that respondents be directed to hold review DPC and reconsider the petitioner's case for promotion on the post of Veterinary Asstt. Surgeon. Short facts of the case are that petitioner was appointed on the post of Asstt. Veterinary Field Officer vide order dated 25.2.93 and after prosecuting the course, the petitioner was awarded a provisional degree certificate by Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur of Bachelor of Veterinary Science and Animal Husbandry (in short B.V.Sc. & AH) on 2.5.05. It was alleged that petitioner was initially appointed on the post of Veterinary Field Assistant and the post was re-designated as Asstt. Veterinary Field Officer. It is submitted that petitioner was entitled for promotion on the post of Veterinary Asstt. Surgeon. Since the petitioner was not promoted on the said post, therefore the petitioner approached this court by filing Writ Petition No. 4552 of 2009 (s), which was disposed of by this Court vide order dated 15.7.10 with the following direction:-

Keeping in view the judgment delivered by the Apex Court as an average entry of the year, 2007 was not communicated to the petitioner and the same has

resulted in supersession of the petitioner, it is directed that the average entry be communicated to the petitioner within a period of 2 months from the date of receipt of the certified copy of this order. On being communicated the petitioner may make a representation within two months if he so chooses, thereafter the said representation will be decided within two months. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the petitioner gets selected for promotion retrospectively, he should be given higher pension with arrears of pay with all consequential benefits.

2. In compliance of the aforesaid directions, petitioner submitted a representation wherein it was alleged that in all the last five years' Acrs from the year 2004 to year 2008, petitioner was awarded as Grade-B except in the year, 2007, petitioner was awarded Grade-B in the year 2007 also by the reporting officer, but the same was down graded by the Reviewing Authority as Grade-C without any reason. Upon representation, after hearing the petitioner, the impugned order Annexure P-14 was passed which is illegal and deserves to be quashed.

3. Learned counsel for petitioner submits that upon representation submitted by the petitioner, the recommendations were called from respondent No. 3 which is dated 25.2.11 in which the Reviewing Authority agreed with the recommendations made by Reporting Officer in which the petitioner was awarded Grade-B. It is submitted that without assigning any reason and without taking into consideration the recommendations made by Reporting Officer and the Reviewing Officer, the order Annexure P-14 has been passed which cannot be allowed to sustain. It is submitted that the order Annexure P-14 whereby the petitioner's representation was rejected, be quashed.

4. Mrs. Vinita Phaye, learned GA has placed reliance on the circular dated 25.9.80 (Annexure R-1) of the State Government of which the relevant clause-2, reads as under:-

5. Learned GA submits that according to the said circular, respondent No. 2 has passed the impugned order which has attained finality and no illegality has been committed in passing the impugned order Annexure P-14. Learned GA submits that as per circular Annexure R-1 quoted hereinabove, if there is difference of opinion between the Reporting Officer and Reviewing Authority, then the opinion of Reviewing Authority shall prevail. It is submitted that in the earlier round of litigation, the Reviewing Authority has awarded Grade-C to the petitioner, therefore, respondent No. 2 has committed no error in passing the impugned order. It is submitted that petition be dismissed.

6. From perusal of record, it appears that in earlier round of litigation, the writ petition filed by petitioner was allowed and the respondent/State was directed to communicate the adverse remarks made against the petitioner and to permit him to submit the representation. After communication of adverse remarks, the

representation was filed. The Reporting Officer right from beginning has given the opinion in favour of the petitioner by awarding Grade-B. After submitting the representation, the Reviewing Authority was also agreed with the observation made by the Reporting Officer. The opinion was given by Reviewing Authority upon the requisition of respondent No. 2. From perusal of order Annexure P-14 it appears that respondent No. 2 has observed that Reviewing Authority is empowered to down grade or upgrade the entry in the Acr. In the order it is also observed that since the petitioner was posted directly under the Reviewing Authority, therefore, the Reviewing Authority has opportunity to look and assess his performance. Since the Reviewing Authority has down graded the petitioner, therefore, petitioner's representation has been rejected.

7. From bare perusal of Annexure P-14, it is evident that respondent No. 2 was not bothered to look into the recommendations which were called by respondent No. 2 himself. In the recommendations dated 25.2.11, respondent No. 3 was agreed with the report submitted by Reporting Officer, according to which, petitioner was entitled for Grade-B. It is true that as per circular, issued by the State Government in case there is difference of opinion between Reviewing Authority and Reporting officer, then the opinion of higher authority shall prevail, but in the present case there was no difference of opinion in between Reporting Officer and Reviewing Authority which was called by respondent No. 2 himself.

8. In the facts and circumstances of the case, the impugned order Annexure P-14 cannot be allowed to sustain. In view of this, the present writ petition is allowed. The impugned order Annexure P-14 is hereby quashed. Respondent No. 2 is directed to award Grade-B to the petitioner in the Acr of the year, 2007 and to hold a DPC for considering the case of the petitioner as on 18.5.09. Needless to say, if the petitioner is found fit for promotion, then all the consequential benefits be extended to the petitioner. With the aforesaid, the present petition stands disposed of with no order as to costs.

CC as per rules.