

(2011) 09 DEL CK 0264
In the Delhi High Court
Case No : Writ Petition (C) 4720 of 2003

R.K. Batta

APPELLANT

Vs

The Registrar Delhi High Court

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 09 DEL CK 0264

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sandeep Sethi and Mr. P.S. Bindra, for the Appellant; V.R. Datar, Advocate and Mr. Chetan Lokur, for the Respondent

Judgement

A.K. Sikri, J.—The Petitioner joined the services of this Court as ?Lower Division Clerk? on 6th February, 1968. He worked in the said post for about 11 years, where after he was promoted to the post of Assistant in December, 1979. The next post for which the Petitioner was to be considered for promotion is that of a Court Master/Superintendent. The High Court Establishment (Appointments and Conditions of Service) Rules were amended and the minimum qualification of graduate was prescribed for promotion to the post of Court Master/Superintendent. The said amendment was made in the year 1992, however, effective from 26th November, 1990. Prior to the amendment in the rules as aforesaid, the promotion to the post of Superintendent/Court Master was made from Assistant who had 5 years service. For such promotion 75% of the vacant posts were to be filled up on the basis of seniority cum suitability and the rest 25% were governed by Selection Rules.

2. By the aforesaid Amendment of 1992 with retrospective effect, the Petitioner became ineligible for promotion as he is not a graduate. Having worked in the post of Assistant for around 24 years, the Petitioner felt that he was being adversely affected by the Amendment in the Recruitment Rules. The Petitioner impugned the said Recruitment Rules by filing a Civil Writ Petition bearing CW

No. 252/1995. Since the number of incumbent who were not even found graduate had been promoted to the post of Court Master/ Superintendent and since the regularization was being granted by the Respondent in most of the cases and also upon the submission of Respondent before this Court in the writ petition that they were considering the Petitioners, this Court, by order dated 17th may, 2002 directed the Respondent to consider the Petitioner for promotion to the next higher post of Court master/Superintendent by relaxation of the given Rules and in case they were found suitable for promotion to promote them.

3. Pursuant to the said order, this Court made promotions of various persons to the post of Court Master/Superintendent. Case of the Petitioner was, however, rejected. Being aggrieved by the aforesaid action of the Respondent, the Petitioner moved an application (CM. No. 8194/2001) for directions to promote him to the post of Court Master/Superintendent. The Respondent filed a reply to the said application and stated that the Petitioner had not been promoted to the post because of the low grading on the ground that the Petitioner's ACRs for the past five years were graded 'satisfactory'. The Petitioner's case was that these remarks were never communicated to him. The said application was filed on 31st July, 2002 and the first memo regarding "satisfactory" remarks in the confidential report for the year ending 31st December, 2001 was sent to the Petitioner on 3rd August, 2002. The aforesaid memo followed by annexed memo dated 25th September 2002.

4. Pursuant to the aforesaid communications the Petitioner by his letters dated 13th August, 2002 and 26th August, 2002 represented that the said remarks had been made in confidential report with a view to prejudice him and defeat his right to full promotion which he was entitled to. The Petitioner also represented that office order of 1996 was never followed and was also not in the knowledge of the Petitioner and other employees of the Establishment. The promotions had been made in the past ignoring the said office order. It was further stated by the Petitioner that the "satisfactory" remarks in a confidential report could not be treated as a bad one and in case it was sought to be treated as such it ought to have been brought to the knowledge of the Petitioner immediately as per fundamental rules of the service rules.

5. As the Petitioner did not receive any reply to the aforesaid representation, he invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing the instant petition. The grievance remains the same as stated in his representation namely the office order dated 19th January, 1996 was never communicated to the Petitioner and it had not been followed by the Respondent either as promotions have been made in the cases a candidate have more than two "average" or "satisfactory" remarks during the preceding five years from the date of promotion. The Petitioner has given the instances of Ms. Chander Kanta, Ms. Ila Sharma, Mr. Asit Kumar who have been given promotions with "average/satisfactory" remarks. It is also contended that in any case "average" or "satisfactory" remarks cannot be considered adverse thereby

denying the promotion to the Petitioner and if they are considered as adverse then they ought to have been communicated to the Petitioner within time to enable the Petitioner to make representation against the same.

6. In the counter affidavit filed by the Respondent, it is stated that pursuant to the orders dated 17th May, 2002 of the Division Bench in Writ Petition 252/1995, cases of all such persons including the Petitioner were considered for promotion to the post of AO (J)/Court Master. However, the Petitioner was not found fit. It is stated that in this meeting of the Selection Committee (DPC) held on 25th July, 2002 the DPC adopted the guidelines for assessment of suitability as set out in Office Order No. 60 dated 29th January, 1996 which prescribed suitability on the basis of service record and ACRs of those candidates having earned at least three 'Good' reports during the preceding, five years. It is also stated that the practice adopted by the DPC in fixing the criterion of suitability as having earned three 'Good' ACRs in the previous five years, as was the case here, was a practice that was and has been consistently and regularly being followed for a long period in the in the past by this Court on administrative side.

7. Insofar as the plea of the Petitioner regarding promotion of three officials namely Ms. Chander Kanta, Ms. Ila Sharma and Mr. Asit Kumar without adhering to the criterion of suitability on the basis of three 'Good' ACRs in previous five years is concerned, it is stated that the same is a factually incorrect averment. According to the Respondent, though the ACRs of the said three officials initially were not meeting the benchmark, i.e. not being three 'Good' ACRs in previous 5 years, upon a representation made by each of the three officials, their ACRs were reviewed and upgraded where after they met the suitability criterion of three 'Good' in the past five years. It was only on the basis of their revised grading that the said three officials were promoted to the post of Assistant.

8. As far as the plea of the Petitioner regarding non-communication of the 'adverse' ACR for the year 2001 is concerned, it is pleaded that the ACR of the Petitioner for the year 2001 was "satisfactory" and as such, was not an adverse ACRs. It is submitted that a 'satisfactory' ACR not being adverse in nature as such, can be taken into consideration, communicated or uncommunicated, especially in view of the Office Order No. 60 dated 29th January, 1996 adopted by the DPC while considering the name of the Petitioner for promotion. In any case, the said ACR for the year 2001 was in fact communicated to the Petitioner vide memo dated 25th September 2002.

9. This writ petition came up for final arguments on 10th August, 2011. However, no body appears on behalf of the Petitioner. We had heard the counsel for the Respondent and reserved the judgment. At the same time, opportunity was given to both the parties to file their written submissions. The counsel for the Respondent has filed written submission. Though no written submissions have been filed on behalf of the Petitioner, the Id. counsel for the Petitioner mentioned the matter after few days and oral hearing was given to him.

10. Counsel for both the parties argued in tune with the pleadings in their petition and counter affidavit respectively. Learned Counsel for the Petitioner also referred to the judgment of the Supreme Court in the case of Dev Dutt v. Union of India AIR 2008 SC 2513 and argued that the Supreme Court has held that the communication of ACRs is mandatory and if the ACRs are not communicated, they cannot be taken into consideration. Learned Counsel for the Respondent, on the other hand, referred to the judgment of Division Bench of this Court dated 28th July, 2010 passed in W.P. (C) 2925/1994 wherein it was held that the criteria of promotion prescribed administratively which was followed as a matter of practice should be adopted by the DPC.

11. We have considered the arguments of both the parties and also the perused the original records including the service record of the Petitioner which was brought by the Respondent.

12. We may note at the outset that office order dated 29th January, 1996 was issued by Hon'ble the Chief Justice laying down the guidelines that were to be followed for confirmation and promotion of the officials to various posts up to the post of Assistant and equal status post which would admittedly be applicable to the post in question. The criteria for promotion laid down in the said office order were as under:

PROMOTION

Assessment of suitability of officials for promotion up to the post of Assistant and equal status posts will be made on the basis of record of service and Annual Confidential Reports. Only those officials who would earn at least three 'GOOD' reports during the preceding five years in the feeder category would be regarded as suitable for promotion.

13. We have also gone through the minutes of the DPC which considered the case of the Petitioner and Ors. for promotion to the post of AO (J)/Court Masters. The case of the Petitioner was considered in relation to the Rules which were amended prescribing the minimum qualification criteria, there is no quarrel up to this. The minutes of the meeting further disclosed that the Selection Committee had kept in view the aforesaid office order dated 29th January, 1996 and in this behalf minutes record as under:

While assessing the suitability of the officials involved in the selection we have also adopted the guidelines issued to Vide Office Order No. 60 dated 29-1-1996 that assessment of suitability of officials up to the post of Assistant will be made on the basis of record of service and Annual Confidential Reports and only those officials who would learn at least three 'good' reports during the preceding five years in the feeder category would be regarded as suitable for promotion.

14. Insofar as the Petitioner is concerned, he admittedly did not fulfill the criteria laid down in office order dated 29th January, 1996.

15. We do not accept the submission of the Petitioner that aforesaid office order

dated 29th January, 1996 was not brought to the notice of the employees or that was not even followed by the High Court. The record reveals to the contrary. In fact, this submission of the Petitioner is predicated solely on the promotion given to certain persons namely Ms. Chander Kanta, Ms. Ila Sharma and Mr. Asit Kumar alleging that they did not fulfill the criteria laid down in the said Office Order but were given promotion. This is again factually incorrect. As explained by the Respondent, on their representation their ACRs were upgraded and the promotion was given only because of the reasons that they fulfilled the condition stipulated in the Office Order dated 29th January, 1996. Insofar as case of the Petitioner is concerned, he also made representation in respect of ACR of the year 2001 but the same was rejected.

16. The ACRs of the Petitioner disclosed that for the relevant five years he was given the following grades:

(i)

1997

Average

(ii)

1998

Average

(iii)

1999

Good

(iv)

2000

Good

(v)

2001

Average

On the basis of these grading, the Petitioner could not have been promoted having regard to the promotion criteria as he could not earned minimum three ? Good? reports.

17. With this we advert to the argument of non-communication of ACRs.

18. The ACR of the year 2001 was admittedly communicated to the Petitioner and, therefore, he cannot claim that his ACRs for this year should not have been taken into consideration. Insofar as ACRs of the year 1999-2000 are concerned,

he was given 'Good' remarks. For this reason, he has not made any grievance in respect of these two years.

19. This leads us to ACR for the year 1997-98 and for these two years he earned 'satisfactory' grading which were not communicated. However, there cannot be an automatic promotion. The Petitioner has sought mandamus that he be promoted forthwith as AO (J)/Court Master w.e.f. 17th May, 2002. That cannot be done. What course of action should be taken in such circumstances is provided by the Supreme Court in the case of Dev Dutt (Supra) in the following words:

We, therefore, direct that the "good" entry be communicated to the Appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the Appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. 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 Appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

20. Thus, at the most the Petitioner would be entitled to make representation only and in any case he succeeds in his representation and ACRs are upgraded only then the review DPC is to be held. Accordingly, this writ petition is disposed of with liberty to the Petitioner to make a representation in respect of ACRs for the year 1997 and 1998 within four weeks and in case his ACRs are upgraded, the Respondent shall hold review DPC to reconsider his case in the light of his revised ACRs.

21. No order as to costs.