
(1986) 02 MP CK 0009
In the Madhya Pradesh High Court
Case No : M. P. No. 238 of 1982

Shivratan Tiwari

APPELLANT

Vs

General Manager, M.P.S.R.T.C. and others

RESPONDENT

Date of Decision : 27-02-1986

Acts Referred:

Citation : (1987) MPLJ 565

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : H.N. Upadhyaya, for the Appellant; N.P. Mittal, For respondents Nos. 1 to 6, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.

In the fore-front of his argument, respondent's counsel Shri Mittal has submitted that the petition is misconceived. He has drawn my attention to the operative part of the order passed by the Labour Court on 25-1-1982. The relief which was granted to the petitioner in the Labour Court, as appears from the reading of para 18 was that his case for promotion to the post of Traffic Supervisor (11) be considered. Shri Mittal's submission is that even earlier, in 1980, itself, as per Annexure P/19, the petitioner had been promoted to the post of Traffic Supervisor (II). That is so. But, the matter does not end there as the petitioner himself did not accept the award and challenged it in the Industrial Tribunal, though unsuccessfully. Not only Tribunal refused to give him relief prayed, but it took the view that the Labour Court had rendered an illegal order and in that view, the appeal preferred by the employer, (herein the non-petitioner) was allowed. Accordingly, in my view, the preliminary objection of Shri Mittal has no force and it is rejected.

Now, the merit. Shri Upadhyaya has drawn my attention to the order passed by the Labour Court to press for my consideration two findings, on the basis of

which relief was granted to the petitioner. At para 8 of the impugned judgment, it is true, there are two clear findings. Firstly, it is held that there was a confidential report against the petitioner, which was before the Selection Committee. Secondly, the said confidential report had not been communicated to the petitioner. Those findings, Shri Upadhyaya rightly submits, are not only binding on me, but on those findings, there is also no challenge. On the other hand, the Tribunal, in allowing the appeal, took an erroneous view of the matter by misreading the decision of the apex Court in *Union of India (UOI) Vs. M.E. Reddy and Another*, . Shri Upadhyaya has submitted that the point in issue is concluded by the decision of their Lordships of the Supreme Court in *Gurdial Singh Fijji Vs. State of Punjab and Others*, . Indeed, Shri Upadhyaya contends, in a recent decision of their Lordships in *Amar Kant Choudhary Vs. State of Bihar and Others*, , two decisions were considered, and also compared, contrasted and explained. The position in law, as obtains today, which remains undisputed according to Shri Upadhyaya, is that in a case where grievance concerns promotion or seniority, noncommunication of annual confidential report assumes primacy though the position may be different when the case is one of premature retirement. Reddy's case supra was of a premature retirement and was decided with reference to certain Rule 16(3) comparable to the provisions of F.R. 56(j) and the Industrial Tribunal erred in law in relying on Reddy's case supra and setting aside the award passed by the Labour Court.

The second limb of Shri Upadhyaya's contention is that what was done in 1980 by the respondent does not take care completely of petitioner's grievance, which remains very much live even today. He had approached in 1971 the Labour Court and during the pendency of his petition before the Labour Court, the order of his temporary promotion in 1980 was rendered. Therefore, he had himself impugned the Labour Court's award, which did not specify the date with respect of which his case for promotion ought to have been considered. His contention is that he was entitled to be promoted much earlier. He has drawn my attention to Annexure P/I to submit that he was senior to Param Sukh, Hasan Ahmad and Gyanchand Sharma, who were promoted to the same post of Traffic Supervisor, Grade II, in 1970 itself. In this petition, not only Sarvashri Param Sukh, Hasan Ahmad and Gyanchand are impleaded, but some others are also impleaded on the ground that the petitioner was senior to them also. Shri Upadhyaya has drawn my attention to para 5 of the judgment of the Labour Court to establish the position that the said respondents have been held to be junior to the petitioner. Therefore, if merit-cum-seniority be the twin criteria, on which consideration for promotion has to be based, non-communication of the adverse entry in the annual confidential roll to the petitioner, was a fatal flaw, which was not curable. Because, merit only is judged from the annual confidential report of the candidate, which would disclose the candidate's performance. Therefore, Shri Upadhyaya submits that apex Court has taken a view in large number of decisions that when the case is one of consideration for promotion, non-communication of adverse entry assumes significance and

primacy.

I need only refer to Amar Kant Choudhari (supra) to hold that Shri Upadhyaya's contention is well-founded because at para 5 of the report, their Lordships have stated the relevant principle by extracting a portion of the judgment of the leading decision in Gurdial Singh Fijji (supra). Reference is also made to R.L. Butah Vs. Union of India (UOI) and Others, . Butail's case was explained and indeed the same case was also considered by their Lordships in M. E. Reddy (supra) at para 17 of the report and the views expressed therein were accepted and reiterated, which I propose to quote as I find them to be very relevant in the context of the instant lis. The relevant portion of the extract is as follows :

They also show that such reports are not ordinarily to contain specific incidents upon which assessments are made except in cases where as a result of any specific incident a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant." (Emphasis added).

I have no doubt that the Tribunal failed to appreciate the correct position in law and it is the duty of this Court to enforce the judicial mandate of Gurdial Singh Fijji (supra). I have looked at Ex. D/3-A, which is Annexure P/12 of the petition. It definitely concerns petitioner's performance as there is entry in the report that his performance was very poor as he had not detected a single case of ticketless travel. Although Shri Upadhyaya has contended that in the course of hearing, the Labour Court found that the statement in the said confidential report was baseless as he had detected several cases of ticketless travel, in my opinion, that question is wholly irrelevant. Indeed, Shri Mittal contested the finding of the Tribunal. But, I only say that no finding at all was necessary as the genuineness or otherwise of the annual confidential Report cannot be in issue before the Tribunal. The sole question was whether the adverse entry had been communicated and whether the workman/employee had an opportunity to meet and explain the adverse entry, which was damaging as respect to his performance. The annual confidential roll containing the said adverse entry having admittedly entered the consideration of the Selection Committee in the matter of consideration of petitioner's case for promotion at the relevant time, the consideration must be held to be vitiated. It appears that the relevant entry was for the year 1969-70, which was very relevant and pertinent entry to be considered because petitioner claimed promotion in 1970-71 itself.

In the result, the petition succeeds and is allowed. The order passed by the Industrial Court on 12-4-1983 in case No. 94/M.P.I.R./82 is quashed. The first respondent is directed to place for consideration of the D.P.C. the case of the petitioner for promotion with effect from the relevant period, namely, the year 1970.

However, before that is done, the petitioner shall be given an opportunity to reply to the adverse entry which may be now communicated formally to the

petitioner. It is necessary to do so because the said entry cannot be taken into consideration again unless that is done. This shall be done within a period of two months. Outstanding amount of security be refunded to the petitioner.