

(1989) 04 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4742 of 1982

Shree L.P. Yadav

APPELLANT

Vs

The Central Warehousing Corporation and Others

RESPONDENT

Date of Decision : 06-04-1989

Acts Referred:

Mysore State Civil Services (General Recruitment) Rules, 1957 — Rule 43(b)

Citation : (1989) PLJR 984

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : B.C. Ghosh and Amar Nath Deo, for the Appellant; Y.V. Giri, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In this writ petition the petitioner has prayed for issuance of an appropriate writ for quashing an office order dated 13th September, 1982 and as contained in Annexure 1 to the writ petition whereby and whereunder the respondent nos. 3 and 4 were promoted to the post of Assistant Engineer (Civil) purporting to be in supersession of the claim of the petitioner. The facts of the case lie in a very narrow compass.

2. The petitioner was appointed by the respondent-corporation as a Sectional Officer in the Central Warehousing Corporation on 20th April, 1973. According to the petitioner which has been denied and disputed by the respondents his services were satisfactory. On or about 7-3-1982 a purported adverse remark was communicated to the petitioner which is contained in Annexure 3 to the writ petition. In the said purported adverse remark (sic) had been merely mentioned that the petitioner is not fit for promotion purporting to be on the ground that in the general remark column it was mentioned as follows : --

Does not take any self decision on even very small matter.

3. In the column of fitness for promotion it was mentioned as follows : --

Not yet fit.

4. However, other portion of A.C.R. is as follows : --

His theoretical knowledge is good. His overall performance is average. Not yet fit for promotion.

5. According to the petitioner in passing the purported adverse remarks the procedures therefor as laid down in the office order dated 28th December, 1981 were not followed. The aforementioned office order is in the following terms : --

The matter regarding writing of Annual confidential reports in respect of officers and staff of the Corporation has been reviewed and it has been decided that the procedure detailed in the enclosed statement will be observed with effect from the year ending 31-12-1981. This is in super session of all earlier orders on the subject.

Where the ACRs are finalised at the level of Regional Manager, he may convey the adverse remark, if any, to the concerned employee and then only forward the reports along with a copy of the communication conveying the adverse remarks to Head Office for record.

The Confidential Report may be written keeping in view of the instructions issued by the Head Office from time to time.

The blank CR Forms for the year 1981, have been/are being forwarded to the concerned officers separately.

6. A chart has been appended to the aforementioned office order dated 28th December, 1981 showing that in respect of the Sectional Officer, Assistant Engineer is the reporting officer and the Executive Engineer is the Reviewing Officer and General Manager (Engineering) and Manager (Engineering) are the countersigning authorities.

7. The petitioner has further asserted in paragraph 6 of the writ petition quoting a circular dated 11th December, 1980 stating therein as to how the annual Confidential Remarks are to be recorded which is in the following terms : --

3. It is the duty of the officers at each level to observe carefully the work and conduct of those working under them and to provide necessary training and guidance. The annual reports should be based upon the result of such observation and periodical inspections. The reports should give a proper appreciation of the character, conduct, aptitude and qualities of the employee reported upon; reference to specific instances may be made only by way of illustration to support the adverse remarks of a general nature as for example, inefficiency, dilatoriness, lack of initiative or judgment etc It is necessary that every employee should know what his defects are and how he could remove them. For better efficiency and contentment of the public services, every reporting officer should realise that it is his duty not only to make an objective assessment of his subordinates work and qualities but also give them, at all

times, the necessary advice, guidance and assistance to correct his fault and deficiencies. The remarks should not be more off-hand impressions and should not be brief and casual as to convey little or no real meaning. A record of warning issued to the individual pointing out his defects and exhorting him to improve etc. may be kept by the reporting officer and mentioned in the ACR. No attempt should be made to differentiate between a remediable and an irreparable defect. Remarks based on mere hearsay should be avoided.

4. While mentioning any faults/defects, the reporting officer should give indication of the efforts he had made to reform or correct the individual by way of guidance advance etc. and result of such efforts.

8. However, according to the petitioner the reporting officer himself had granted a certificate on 15-11-1982 which is contained in Annexure 4 to the writ petition wherein it was stated that the petitioner is a man of good moral character and have an excellent knowledge of civil works and his over all performances are very good. The petitioner made representations against the said adverse remarks before the Reviewing Authority but the same has not been considered. In the meanwhile by an office order as contained in Annexure 1 to the writ petition, the respondent nos. 3 and 4 who were junior to the petitioner were promoted. The petitioner has further contended that he made an appeal against his supersession also which has also not been disposed of.

9. In this case a counter affidavit has been filed on behalf of respondent Corporation. According to the respondent corporation the promotion was done on the selection basis i.e. seniority-cum-merit. According to the respondents the Departmental Promotion Committee considered the cases of all persons including the record of services of the petitioner as recorded in the ACR for the last eight years. It has not been denied in the said counter affidavit that his representations against so called adverse remarks as also an appeal in respect of his supersession have not been disposed of. In paragraph 9 of the counter affidavit it has been mentioned that the petitioner filed a representation on 16-4-1982 which was not signed by him received in the office on 28-8-1982. He filed a fresh representation on 8-10-1982. It was further stated that the Departmental Promotion Committee met in the month of March-April, 1982 and considered the case of the petitioner for promotion to the post of Assistant Engineer along with other officials but he was not considered fit for promotion by the Departmental Promotion Committee.

10. In paragraph 11 of the counter affidavit it has been mentioned that the promotions to Group B posts from Group C posts are made strictly on the basis of seniority-cum-merit. It was further mentioned that although the petitioner was senior in the cadre of sectional officers, the Departmental Promotion Committee did not find him of such standard which have made him suitable for promotion to the post of Assistant Engineer.

11. Mr. B.C. Ghosh, the learned counsel appearing on behalf of the petitioner

submitted that from the admitted facts it is clear that the Departmental Promotion Committee could not have taken into consideration the purported adverse remarks as reflected in Annexure 3. The learned counsel further submitted that as admitted by the respondents themselves seniority-cum-merit is the rule for granting promotion from Group C posts to Group B posts, the petitioner having not been found ineligible for promotion, the seniority of the petitioner vis-a-vis other Section Officers ought to have been considered. The learned counsel for the petitioner submitted that in any event the purported adverse remarks against the petitioner being not in consonance with the procedure as laid down by the respondent-corporation itself (as mentioned hereinbefore) the same could not have been taken into consideration by the respondent-corporation.

12. Mr. Y.V. Giri, the learned counsel appearing on behalf of the respondents, on the other hand, submitted that the petitioner has no right of promotion and he has the only right to be considered for promotion. According to the learned counsel as the petitioner was considered for promotion, he cannot have any grievance whatsoever and as such he is not entitled to obtain a writ from this Court.

Reported in this issue.

13. The learned counsel in this connection has placed strong reliance upon a decision of the Supreme Court in State Bank of India and others Vs. Mohd. Mynuddin, .

14. True it is that a person has no right to be promoted unless the rule provides for an automatic promotion on the basis of seniority alone. However, a consideration for promotion on the basis of seniority-cum-merit is distinct and different from consideration for promotion on the basis of merit-cum-seniority.

15. From a perusal of Annexure 3 to the counter affidavit it is evident that the same cannot be construed to be containing any adverse remarks as such. The same merely contains an opinion about quality of performance so far as the petitioner is concerned. As mentioned hereinbefore, the respondents themselves however accepted the said remarks to be an adverse remarks and proceeded on that basis, the petitioner's representation against the so called adverse remarks was not reviewed by the Reviewing Authority despite repeated representation made by the petitioner.

16. Admittedly, the Annual Confidential Remarks of the petitioner for the year 1931 had also been placed before the Departmental Promotion Committee.

17. It is now well known that an employee has a right to be considered for promotion. It is also well known that such consideration must be based on relevant facts and while purporting to consider the case of an employee, an employer cannot rely upon an irrelevant matter nor can it base its decision on an extraneous consideration. The consideration for promotion at the hands of

employer must be fair and reasonable. Reference in this connection may be made to a recent decision of this Court in Harendra Pratap Singh v. The State of Bihar* reported in 1989 B.L.J. 87 : 1989 B.L.J.R. 130 (: 1989 P.L.J.R 967).

18. Apparently Annexure 3 to the writ petition could not have been considered by the respondent-corporation to contain any adverse remark against the petitioner without getting the same reviewed by the Reviewing Authority.

19. Further it is also clear, as mentioned hereinbefore, that before the said purported adverse remark was communicated the procedure as laid down by the authorities themselves as contained in Annexure 4 and 12 to the writ petition were not at all followed. In State Bank of India and others Vs. Mohd. Mynuddin, relied upon by Mr. Giri, the Supreme Court held as follows: --

The nature of the writ that can be issued in cases like the one before us have been considered by this Court in the State of Mysore and another v. Syed Mohmood and others. In this case Rule 43 (b) of the Mysore State Civil Services General Recruitment Rules, 1957 required promotion to be made by selection on the basis of seniority-cum-merit, that is seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion.

20. The distinction between a rule of promotion on the basis of "seniority-cum-merit" and "merit-cum-seniority" is so well known that it is not necessary to be reiterated.

21. Evidently except Annexure 3 which did not reach finality, no other material was before the Selection Committee in order to enable it to come to the conclusion that the petitioner was fit for promotion on the ground that he was of such standard which would have been suitable for the Assistant Engineer. There is nothing in the counter affidavit to show that the Departmental Promotion Committee considered the seniority of the petitioner over other Sectional Officers.

22. However, as this writ petition was filed in the year 1982 the respondent nos. 3 and 4 have since been working in the post of Assistant Engineer for a long time in my opinion, it would not be proper to quash the order of their promotion at this stage.

23. In the instant case the respondents are hereby directed to consider the case of petitioner afresh in accordance with law. In the event the respondents find that the petitioner is fit for promotion, I hope and trust they would also consider the question as to whether the petitioner should be promoted with retrospective effect so as to restore his seniority over the respondent nos. 4 and 5 even by granting a notional seniority.

24. As the petitioner has been superseded long time back, the respondents are hereby further directed to take a decision in this matter after disposing of the representation and appeal of the petitioner within a reasonable time and preferably within a period of two months from the date of receipt of a copy of

this judgment. In the result this writ petition is allowed to the aforementioned extent. However, on the facts and in the circumstances of the case there will be no order as to costs.