
(2012) 03 GAU CK 0091
In the Gauhati High Court
Case No : Writ Petition (C) No. 116 of 2011

Shri John M. Hlychho

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 03 GAU CK 0091

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : C. Lalramzauva, Mr. A.R. Malhotra and Mr. K. Laldinliana, for the Appellant; A.K. Rokhum, A.A.G. for Respondent Nos. 1 to 4 and Mr. Michael Zothankhuma, for the Respondent

Final Decision : Allowed

Judgement

S.R. Sen

1. The petitioner Shri John M. Hlychho approached this court by way of writ under Article 226 of the Constitution of India praying for issuance of writ and the same was admitted as appeared from the record, and finally the matter come up today for hearing before this court.

2. Learned counsel, Mr. A.R. Malhotra, is present for and on behalf of the petitioner, State has been represented by Mr. A.K.Rokhum, Addl. Advocate General, Mr.Michael Zothankhuma, learned senior counsel assisted by Mr. Lalfakawma, learned counsel is present for and on behalf of the respondent No. 5.

3. From the office note, it appears that, notice has been served to other respondents except Respondent Nos. 10 & 12, however, respondent No. 10 namely; Sh. Lalbiaksanga Hmar, and respondent No. 12 Sh. Lalthangkhuma, are present personally as well as respondent No. 7 Sh.Zawngvela. Since, other respondent did not appear after receiving notice, this court has nothing to do, but to proceed for disposal.

4. Heard learned counsel Mr. A.R.Malhotra, who submitted that, in this instant case the entry of ACR of the petitioner for the period of 2006-2007, 2008-2009 and 2009-2010 have not been communicated to the petitioner by his official authority. As such, he was in dark about the grading given to him by the authority in his ACR.

5. Learned counsel, Mr.A.R.Malhotra, also argued that, though, the grading was good but as per the skill of the petitioner he should have got better grading if the entry of the petitioner have been communicated in time, he would get an opportunity to file a representation for reconsideration. But, since it was not in his knowledge he deprived to file representation before the authority. As a result, when the promotion is considered by the Public Service Commission, respondent No. 5, he is found unfit as his grading was below bench mark as other candidates have the bench mark. Learned counsel, Mr. A.R.Malhotra, also submitted that, in such a case, direction may be issued to the authority concerned to communicate the entry made by them in the ACR of the petitioner for the period of 2006-2007, 2008-2009 and 2009-2010 with liberty to file a representation, and the representation must be considered by higher authority, above accepting authority of the ACR of the petitioner.

6. In support of his submission, Mr. A.R.Malhotra, relied on Dev Dutt Vs. Union of India (UOI) and Others, . On the other hand, learned Additional Advocate General, Mr. A.K.Rokhum agreed that the entry of the ACR in question as raised by the petitioner was not communicated to him, but Government after applying full mind and examining the record give promotion to others, so, he also submitted that, by this promotion petitioner is not effected in any manner and writ petition filed by the petitioner is not tenable in law. So, it may be dismissed.

7. On the other hand, Mr. Michael Zothankhuma, learned senior counsel appearing for and on behalf of the respondent No. 5 fairly submitted before this court that the instant case is covered by Dev Dutt case.

8. On perusal of the petition, it is understood and it appears that, petitioner while going through the minutes of the meeting conducted by the respondent No. 5 i.e. Mizoram Public Service Commission for considering promotion to the post of Grade-V of the Mizoram Agriculture service on 14.10.2011 alongwith the details of the assessment of the ACRs finds that; the petitioner was found not fit for promotion because he was graded "good" in his ACR for the year 2006-2007, 2008-2009, 2009-2010 although the bench mark for promotion to grade-V of the Mizoram Agriculture Service was fixed as "very good". The contention of the petitioner is that since the entry in the ACR in the year in question, was not communicated to him as a result he is deprived to file the representation, and so deprived in his promotion. On the other hand, the State Govt. in their counter affidavit at para 11 stated that the grading "good" should not be termed as adverse remark provided that there is no adverse entry in any item of ACR. On careful scrutiny of the ACR of the petitioner for the year 2006-07, 2008-09 and 2009-2010 ACR no adverse remark has been found, so, it is not communicated

to him.

9. After perusal of the counter affidavit filed by the Government respondent, it is amply clear to me the entry of grading in the ACR of the petitioner for the year 2006-07, 2008-09 and 2009-2010 were not communicated to the petitioner. I cannot accept nor agree with the view of the government respondent that grading good without any other adverse remark in any column of the ACR is not necessary to communicate as it is not an adverse remark at all. In case of ACR recording authority, review authority and accepting authority may give remark, according to their point of view, it may not be acceptable or satisfactory to a person in whose ACR entries are made. Therefore, it is imperative in law, that any entry made whether it is good, very good, outstanding, excellent, whatever the case may be, should be communicated to the concerned employee in whose ACR the entries are made. So that, he will get an opportunity to place his grievances if any through a representation.

10. But, in this case due to non communication of remarks in the ACR to the petitioner, In my view, he has been deprived of his right to file the representation.

11. Communication of entry in the ACR is also imperative because it encouraged the officers to do more better in future and those who did not obtain good grading, they will try definitely to improve themselves, so, from that point of view also communication of the entry in the ACR is imperative on the part of the authority concerned.

12. Hon'ble Supreme Court in the case of Dev Dutt Vs. Union of India (UOI) and Others, was placed to observe here under;

9. In the present case the benchmark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have "very good" entry for the last five years. Thus in this situation the "good" entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a "good" entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the "good" entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-1994 should be upgraded from "good" to "very good". of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the "good" entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the "good" entry, which was not done in this case. Hence, we are of the opinion that the non-

communication of the "good" entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

14. In most services there is a gradation of entries, which is usually as follows :

(i) Outstanding

(ii) Very Good

(iii) Good

(iv) Average

(v) Fair

(vi) Poor

A person getting any of the entries at Items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the authority concerned.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

13. So, after hearing the counsels at bar as well as on careful perusal of the counter affidavit, I came to the conclusion that the petitioner was deprived to file his representation due to non communication of the entry by the authority and after considering the observation made by the Hon"ble Supreme Court in Dev Dutt case, it is further clear that communication of entry in the ACR is mandatory and the effected petitioner has every right to move a representation and authority concerned to consider it without any hesitation or blocked mind.

14. Therefore, after considering the whole facts and circumstances and the law laid down by the Apex Court, I hereby direct the respondent No. 3. i.e. The Secretary to the Govt. of Mizoram, Agriculture Department, Aizawl and others to communicate the entry of the ACR to the petitioner for the year 2006-07, 2008-09 and 2009-2010 within a week from the date of receipt of this judgment.

15. Let the petitioner file his representation within a month before the authority concerned and let his representation and ACR be reviewed by an officer higher

than the accepting officer with fresh and clear mind within one month from date of receipt of the representation.

16. Further, while considering and reviewing the ACR of the petitioner for the year 2006-07, 2008-09 and 2009-2010 in question, if he is found that he deserves or gets better grading, his promotion should be considered with a retrospective effect by placing the matter before the review Departmental Promotion Committee.

17. With this observation, and direction this writ petition is allowed and disposed of.

18. There shall be no order as to costs.