
(2006) 09 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 277 of 2005

Shyamal Bhattacharjee

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 51A

Citation : (2006) 4 GLT 358

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : Somik Deb, for the Appellant; U.B. Saha, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—What is the meaning of "downgrading" is the moot controversy in the present writ petition and whether the remarks, contained in the annual confidential report (hereinafter referred to as "ACR") of the writ Petitioner, was downgraded without following the law laid down, in this regard, are the questions, which arise for determination in the present writ petition.

2. The material facts are, let me point out, not in dispute and these facts are, in brief, thus: By order, dated 12.6.1981, the Petitioner was appointed as a Sub-Inspector of Police and he was, vide order, dated 23.6.1986, confirmed in the substantive post of Sub-Inspector of Police (un-armed branch) and was placed at Serial No. 15 of the seniority list. The Petitioner appeared in pre-promotional written examination of the Sub-Inspector of Police in armed branch as well as in un-armed branch. By order, dated 8.7.1988, the Petitioner was declared successful in the pre-promotional written examination. In the list of successful candidates, who were selected for practical test, the Petitioner's name figured at serial No. 46. The final result of the pre-promotional examination was published in the month of February, 1988, and in this list of 22 candidates, the Petitioner was placed at Serial No. 14. In the final gradation list of Sub-Inspector of Police (unarmed branch) published on 31.10.2002, which included as many as 410

candidates, the Petitioner was placed at Serial No. 22. In terms of this list, the private Respondents figured below the writ Petitioner. The post of Inspector of Police (un-armed) is a promotional post, the minimum qualification for such promotion being eight years of regular service in the grade of Sub-Inspector of Police and passing of pre-promotional examination as prescribed by the Government and conducted by the Tripura Police Organization. By Memorandum, dated 10.6.2004, the Government of Tripura has laid down the procedure to be adopted by the Departmental Promotional Committee (hereinafter called as "DPC"), while considering the question of promotion. The benchmark for promotion to the post of Inspector of Police, which falls under Group B, is "Good" and the DPC is required to categorize the candidates on the basis of their service records as "fit" and "unfit". All eligible officers are to be arranged in order of their inter se seniority on attainment of the benchmark. When the order, dated 15.1.2005, was published by the Inspector General of Police (Administration), promoting 41 Sub-Inspector General of Police (un-armed branch) and 5 Sub-Inspector of Police (armed branch) to the posts of Inspector, the Petitioner found, contrary to what he had expected, that he had not figured in the said list of promotion. Feeling aggrieved, the Petitioner has, now, approached this Court with the help of the present application, made under Article 226 of the Constitution of India, seeking, inter alia, issuance of writ of certiorari setting aside and quashing the impugned order of promotion, dated 15.1.05, and necessary direction to the Respondents to consider the case of the Petitioner for promotion in accordance with law, the case of the Petitioner being, briefly stated, that the Petitioner has all along worked with great sincerity and dedication, there is no justifiable reason for denying him promotion and if the impugned order is allowed to survive, it would cause manifest injustice.

3. The Respondents have resisted the prayer of the writ Petitioner, the case of the Respondents being, in brief, thus: Promotion is not a matter of right, through consideration for promotion to a particular post is, indeed, a right of every employee. The post of Inspector of Police is a post to which promotion can be earned only in accordance with the prescribed requirement, which the DPC is duty bound to follow. Apart from other materials, which are considered for promotion to the post of Inspector of Police, the ACRs of the officer concerned for the last five years and his service records are taken into consideration. The DPC considered the Petitioner's case as he fell within the zone of consideration on the basis of seniority. The required bench mark for promotion to the post of Inspector of Police is "Good", for, the post of Inspector of police falls in Grade-B (Gezatted post). In terms of the Govt. Memorandum, dated 10.6.2004, the DPC is required to categorise the candidates, who fall within the zone of consideration, into three groups, namely, "Good", "Very Good" and "Outstanding" and, then, further categorize them into two groups, namely, "fit and "unfit". The names of only those candidates, who are graded as fit, is placed in the select penal in order of their inter se seniority in the feeder grade and those, who are graded as "unfit", are not to be included in the select penal. Seniority is not the

sole criterion for promotion to the post, in question. The DPC is a body of experts in the matter and, having considered the service record of the Petitioner, the DPC found him "unfit" and, hence, the Petitioner was not included in the select panel. Failure of the Petitioner to receive the gradation of "fit" is a result of the Petitioner's own performance and consideration of the Petitioner's case by the DPC was entirely in conformity with the service conditions and as per the relevant recruitment Rules.

4. I have heard Mr. S. Deb, learned Counsel for the Petitioner, and Mr. U.B. Saha, learned Govt. Advocate, appearing on behalf of the State Respondents.

5. While considering the present writ petition, what is of paramount importance to note is that the guidelines formulated by the Government for promotion to the post of Inspector of Police as reflected by Memorandum, dated 10.6.04, is not in dispute. In other words, the system, which is followed for the purpose of making promotion, is not under challenge in the present writ petition. With this reality in mind, I have to consider, now, if the denial of promotion to the Petitioner needs any interference.

6. While considering the above aspect of the matter, what may be noted is that, according to Mr. S. Deb, the Petitioner was denied promotion due to the fact that the gradation in his ACRs were downgraded without giving any opportunity to the Petitioner to have his say in the matter. If the Petitioner's performance was not satisfactory, and he had earned adverse entry in his ACRs, the same, according to Mr. S. Deb, ought to have been communicated to the Petitioner and since the Petitioner was never communicated that he had received any adverse entry, the promotion to the post of Inspector of Police could not have been legally and justifiably denied. In support of his case, Mr. S. Deb has placed reliance on *Human Bihari Singh v. State of Manipur*, reported in (2003) 2 GLR 671, *State of U.P. Vs. Yamuna Shanker Misra and another*, *Swatanter Singh Vs. State of Haryana and others*, and *U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others*,

7. Controverting the submissions made on behalf of the Petitioner, Mr. U.B. Saha, learned Govt. Advocate, has submitted that in the present case, there has been no downgrading of entries in the ACRs of the Petitioner nor did the Petitioner earn any adverse entry in his ACRs and, hence, the question of communicating to him the remarks in the ACRs did not arise at all. It is further submitted by Mr. Saha that since the bench mark for earning promotion to the post of Inspector of Police is "Good" and the Petitioner's ACRs of five years did not have five good entries, the Petitioner could not be included in the selected panel.

8. While considering the present writ petition, what is of immense importance to note is that the downgrading of an employee's ACR mean re-writing entries, which a Govt. employee has already earned, in such a manner that a higher graded entry, already earned by him, is charged or reduced to a lower graded entry. The procedure for writing of ACRs, generally, envisages that an officer

initiates his remark on the ACR of his subordinate, there is an officer, who functions as an accepting authority and such accepting authority may or may not accept the remarks of the authority, who initiates the ACR. Thereafter, the procedure may include a reviewing authority, who reviews the remarks given by his subordinate authorities and thus puts his own remarks. In every case, fairness demands that the remarks given by the officer is supported by reasons. If the entry, which the officer finally earns in his ACR, is adverse, such adverse remark must be communicated to him, the purpose being two fold: while such communication gives an opportunity to the officer concerned to have his say, if any, to the adverse entry made in the ACR, it, at the same time, helps the officer concerned to improve his performance in future. When the entry earned in the ACR by an officer, in a given year, is re-written in the subsequent year and the gradation is changed in such a manner that it amounts to downgrading him, communication of such downgrading too to the officer concerned is imperative. Such a downgrading takes place even when a selection committee, such as, the DPC, finds that on the basis of the performance of an officer, as reflected from his service records, his grading, in the ACRs, is of higher category than what it ought to have been, then, such selection committee can, it rules permit, downgrade the officer; but before doing so, the officer, whose ACRs are sought to be adversely affected, needs to be given an opportunity of having his say in the matter.

9. The present case is, I must clarify, not a case of downgrading for, none of the entries, already earned by the Petitioner in his ACRs, during the last five years, was re-written. The gradation earned by the Petitioner was left untouched; but as he did not been graded, consistently for five years, as "Good", he was considered, in terms of the Memorandum, dated 10.6.2004, aforementioned, "unfit" by the DPC and was not placed in the select penal. Merely because of the fact that the Petitioner's case was considered for promotion, it was not obligatory to accord him promotion. The Petitioner was, as the Respondents correctly contend, considered for promotion on account of the fact that in terms of inter se seniority in the grade of S.I. of Police, the Petitioner fell within the zone of consideration. An officer, who falls within the zone of consideration, need not necessarily earn his promotion to the next higher post if the bench mark required is not achieved by the entries earned by him in his ACRs.

10. In the present case, I may also point out that none of the entries, earned by the Petitioner, was adverse and, hence, question of communication of such an entry to the Petitioner was not required. This apart, when, in a given year, a Government's employee's performance is graded lower than the previous year, no communication of such an entry is required to be made to him to have his say in the matter so as to convert the same to higher graded entry. In a case, wherein an officer, who has been performing well, is found, in a particular year, not to have performed so well as he had done in the past and he does not, therefore, earn as good an entry as he did in the past, imperative it is that such a remark is communicated to him. However, such communication of remarks is

not for the purpose of changing the remarks, but for the purpose of enabling the officer to improve his performance. Such communication is not made, because the entries are adverse; but because of the fact that the officer has to be advised and counseled to improve his performance.

11. In the case at hand, in one of the ACRs, the Petitioner did not earn as good a grade as he had received in the past. For not grading him as "good" as in the past, reasons are available on record and since the gradation was not adverse, the same was not required to be communicated for the purpose of giving the Petitioner an opportunity of having his say in the matter. Such a remark, in the ACR, was, however, required to be communicated so as to advise and guide the Petitioner to improve his performance. As the ACRs of the Petitioner disclose, the Petitioner in the very next year, earned better ACR. Notwithstanding, therefore, the fact that the Petitioner was not communicated that his gradation, in a particular year, was not as good as in the past, the fact remains that such non-communication did not adversely affect the Petitioner inasmuch as even without such communication having been made to the Petitioner, the Petitioner improved his performance and earned the ACR of the same level, which he had received in the past too.

12. The contention of Mr. S. Deb that if an officer has been consistently earning a grade, such as "Good", and if such an officer is subsequently graded as "Average" in a succeeding year, it amounts to "downgrading" and such "downgrading" needs to be communicated to him, does not receive support from the decision of U.P. Jal Nigam (supra), which Mr. Deb himself relies upon, for, in U.P. Jal Nigam (supra), the higher graded entry, already earned by the employee, was changed to a lower graded entry, which really amounted to downgrading and since such downgrading was resorted to without giving the employee concerned any opportunity of having his say in the matter and since the relevant service rules, in U.R Jal Nigam (supra), provided for giving an opportunity to an employee, whose entry in the ACRs is sought to be downgraded, the Allahabad High Court set aside the downgraded entry and the Apex Court did not disturb the decision of the High Court, but clarified the position of law in this regard. In its subsequent decision, in Union of India (UOI) and Another Vs. Major Bahadur Singh, The Apex Court has further clarified that the decision, rendered in U.P. Jal Nigam (supra), shall be read in the context of the facts of the said case and what has been laid down therein has no universal application.

13. What also needs be noted, in the case of U.P. Jal Nigam (supra), is that for the change in the remarks of the succeeding year, no reason had been assigned and it was for this reason that the Supreme Court did not interfere with the decision of the High Court. In the case at hand, however, the reasons for not grading the Petitioner "good", in a particular year exists", on record. In such circumstances, the qualitative change in the gradation of Petitioner, in one year, cannot be said to be illegal and/or not sustainable.

14. The object of writing confidential report and the need to communicate any

entry that may affect an officer's career is succinctly described, in Yamuna Shanker Misra (supra), thus:

7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidential should share the information which is not a part of the record by the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher level and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.

15. From what has been observed in Yamuna Shanker Misra's case (supra), it is clear that an officer may not consistently perform well. It is the responsibility of the higher authorities to make efforts to ensure improvement in the level of performance of their subordinates. Considered from this angle, when there is a qualitative change in the remarks or in the grading of an officer, say from "Outstanding" to "Good", in a succeeding year, such change must be communicated to him so as to enable him to perform better in future. In the present case, notwithstanding the fact that falling of standard of gradation was not adverse, but qualitatively damaging and in such circumstances, the remarks ought to have been, ordinarily, communicated to the Petitioner for his improvement. However, when non-communication does not adversely affect an officer, it would be hyper-technical approach to interfere with the remarks. In the present case, though the qualitative change, in the gradation of the Petitioner, ought to have been communicated to the Petitioner, as already indicated hereinabove, for enabling him to improve, the fact remains that without such

communication too, the Petitioner has performed better in the succeeding year and, hence, no prejudice can be said to have been caused to the Petitioner, particularly, when for qualitative change in the grading, in one particular year of the present Petitioner, reasons are available on record.

16. Because of what has been discussed and pointed out above, I find that the DPC considered the case of the Petitioner in accordance with law and the failure of the Petitioner to receive promotion to the post of Inspector of Police was based on the Petitioner's own performance. In such circumstances, the decision of the DPC and/ or the subsequent promotion granted by the impugned order, dated 15.1.05, calls for no interference by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

17. This writ petition, therefore, fails and the same shall, accordingly, stand dismissed. No order as to costs.

18. Return the records.