
(2013) 08 MP CK 0290
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 579 of 2008

Smt. Sunita Choubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) LabIC 3994

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.;U.C. Maheshwari, J

Bench : Division Bench

Advocate : Avinash Zargar, for the Appellant; Samdarshi Tiwari, Learned Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against an order dated 10.4.2008 passed in W.P. No. 17607/2006 (S), by which the writ petition preferred by the appellant challenging the order dated 6.11.2006, (Ann. P-17) was dismissed. This order is assailed by the appellant on the following grounds:-

(a) That the appellant's case was considered in review DPC convened on 13.10.2006, but in the said DPC, the criteria was changed while the appellant ought to have been considered on the basis of same criteria which was adopted by the initial DPC convened on 9.1.1997.

(b) That in subsequent DPC the criteria which was adopted was in respect of consideration of three years ACR and also that an employee should not have earned "Ga", (average), while in the earlier DPC of 1991 such was not the criteria.

On the aforesaid ground, it was submitted by Shri Zargar that the order dated 10.4.2008 passed in W.P. No. 17607/2006 may be quashed and the matter may be remanded back to the respondents for convening a review DPC as per earlier order passed in W.P. (s) No. 610/2004, decided on 20.7.2006.

Shri Samdarshi Tiwari, learned Govt. Advocate for the respondents has supported the order and submitted that the ACR of the appellant for the years 1991 and 1992 were not written and the ACR of the year 1997, 1994, 1995 were available. So special permission was sought by the department from the PSC which was accorded by the PSC and ACRs of 1991, 1992 were exempted as these were not written but the criteria which was adopted by the earlier DPC, dated 9.1.1997 was reiterated for subsequent review DPC dated 13.10.2006. It is submitted by Shri Tiwari that the appellant was rightly not found fit even in the review DPC convened on 13.10.2006.

2. Before proceeding further, condition "Ga" as referred by the learned Dy. Advocate General, is reproduced below, which reads as under:-

3. In W.P. (s) No. 610/2004, decided on 20.7.2006, the following order was passed:-

The petitioner by way of filing this petition before this Court has challenged the order Annexure P-13, dated 23rd June 2003 by which petitioner's representation for grant of higher seniority has been rejected thereafter the petitioner submitted an appeal to claim that she is entitled to be given promotion in the seniority list.

The facts leading to the present case are that the petitioner was initially appointed on the post of Block Development Officer by an order Annexure P-1 dated 02.11.1991. By a subsequent order Annexure P-2 dated 05.01.1995 the petitioner was confirmed on the said post w.e.f. 31.12.1993. The first gradation list was published on 16th September 1997 which is Annexure P-3 showing the position of various Block Development Officers as on 01.04.1997. In this seniority list the name of the petitioner appeared at serial no. 85, so far as Pratik Sonwalkar, respondent no. 4 is concerned his name appeared at serial no. 86, thus the resulted position is shown that the petitioner is senior to Mr. Pratik Sonwalkar.

The respondents published another seniority list which is Annexure P-4 dated 03.10.1998 showing the position of various Block Development Officers as on 01.04.1998. In this seniority list also the petitioner had been shown above Mr. Pratik Sonwalkar.

The grievance of the petitioner is that Mr. Pratik Sonwalkar has been promoted to the post of Additional Assistant Development Commissioner by an order, Annexure P-5 dated 29.05.1997. The grievance of the petitioner is also that although the petitioner is senior to respondent no. 4, Mr. Pratik Sonwalkar but the petitioner was not promoted and not considered for the said post.

The learned counsel for the petitioner submitted that the promotion of Mr. Pratik Sonwalkar has also affected in pursuance to the recommendations of the Departmental Promotion Committee which met on 09.01.1997.

The petitioner prior to said order of promotion was facing a Departmental Enquiry. A charge sheet was issued to the petitioner on 20th May 1994. The

respondents passed an order dated 05.10.1996 which is Annexure P-6 to the position by which the petitioner was exonerated from the departmental enquiry and directed period of suspension 20.5.1994 to 20.5.1995 to be treated as period spent on duty for all practical purposes.

Now the grievance of the petitioner is that when the Departmental Promotion Committee held its meeting on 09.01.1997 considering the promotion of various Block Development Officers for the post of Additional Assistant Commissioner then the case of the petitioner should also have been considered.

The learned counsel for the respondents submitted that the case of the petitioner has been considered by the DPC and brought to the notice of this Court the minutes of the said committee. After perusal of the minutes of the DPC dated 09.01.1997 it is noticed that the case of the petitioner was not found fit on the ground that the petitioner was facing the departmental enquiry on the date when the DPC met. This is surprising circumstance for not finding the petitioner fit. It may be seen that the respondents have already passed an order dated 05.10.1996, Annexure P-6 by which the petitioner has been exonerated from the charges as the charges could not be found proved. The meeting of the DPC took place on 09.01.1997 and the order of exoneration was passed on 09.10.1996. Therefore merely because the petitioner was facing a Department Enquiry this is not a valid ground to ignore the claim of the petitioner.

The learned counsel for the respondents further submitted that the confidential report of the petitioner for the year 1991 and 1992 were not available therefore for this reason the committee decided that after when the confidential report for the aforesaid two years are made available then the matters shall be considered.

The learned Counsel for the respondents submitted that the case of the petitioner was considered in a meeting which was conducted in circulation, Wherein the petitioner on consideration was found unfit.

The learned counsel for the petitioner further submitted that in the present case petitioner has arbitrarily been left out from promotion. He submitted that keeping in view the confidential report wherein she is in higher grade than Shri Pratik Sonwalkar. For the purpose of ascertaining the said submission, the proceedings of the DPC have been perused by this Court and the record of the Confidential Report as noted by the DPC of petitioner as well of Shri Pratik Sonwalkar are reproduced as under:-

On the basis of aforesaid grading of the Confidential Report by the DPC it is clear that the confidential report of the petitioner was of higher merit than Shri Pratik Sonwalkar therefore, there does not seem to be any reason as to why the petitioner do not get his promotion and should not have found fit.

It may also be seen that the criteria of promotion is merit cum seniority. The DPC has fixed yardstick and in accordance with the yardstick fixed by the DPC, the case of the petitioner is also according to the Yardstick fixed by the DPC

petitioner's place is better than respondent no. 4 Shri Pratik Sonwalkar.

It may also be seen that at the time when the committee met and considered the case of the petitioner in its circulation meeting the confidential report of the petitioner for the year 1991 and 1992 were available. Considering the aforesaid eventualities when the Confidential Report of the petitioner for the year 1991 and 1992 were not available and the confidential report of Pratik Sonwalkar for the year 1991 and 1992 were available and also for the remaining years the learned counsel for the respondents submitted that the case of the petitioner was considered in a meeting which was conducted in circulation. Wherein the petitioner on consideration was found unfit.

The learned counsel for the petitioner further submitted that in the present case petitioner has arbitrarily been left out from promotion. He submitted that keeping in view the confidential report wherein she is in higher grade than Shri Pratik Sonwalkar for the purpose of ascertaining the said submission, the proceedings of the DPC have been perused by this Court and the record of the Confidential Report as noted by the DPC of petitioner as well of Shri Pratik Sonwalkar are reproduced as under:-

On the basis of the aforesaid grading of the Confidential Report by the DPC it is clear that the confidential report of the petitioner was of higher merit than Shri Pratik Sonwalkar therefore there is does not seem to be any reason as to why the petitioner do not get his promotion and should not have found fit.

It may also be seen that the criteria of the promotion is merit cum seniority. The DPC has fixed the yard stick and in accordance with the yard stick by the DPC, the case of the petitioner is also according to the Yard stick fixed by the DPC petitioner's place is better than respondent no. 4 Shri Pratik Sonwalkar.

It may also be seen that at the time when the committee met and considered the case of the petitioner in its circulation meeting the confidential report of the petitioner for the year 1991 and 1992 were not available. Considering the aforesaid eventualities when the Confidential Report of the petitioner for the year 1991 and 1992 were not available and the confidential report of Shri Pratik Sonwalkar for the year 1991 and 1992 were available and also for the remaining years the Pratik Sonwalkar. There is no material with regard to the objective consideration of the petitioner's case for her promotion.

The case of the petitioner is that in view of the available confidential Reports the case of petitioner itself was better in merit. Of course, this Court is conscious that while exercising the powers of judicial review the High Court can not act as an Appellate Authority over the question arrived by the DPC. In the present case this Court is not changing the grading of the confidential report of any candidates either of petitioner or of Shri Pratik Sonwalkar but on the basis of the accepted grading the case of the petitioner was on a better merit as DPC has given higher grading of the confidential report with regard to the petitioner.

During the pendency petitioner has been given promotion to the post of Additional Assistant Development Commissioner by an order, Annexure P-8, 31/12/1998 but the claim of the petitioner still remains to be decided by the review DPC on 09.01.1994 to the seniority even Mr. Pratik Sonwalkar, respondent no. 4. Accordingly the respondents are directed to hold a review DPC with regard to consider the case of the petitioner for her promotion to the post of Additional Assistant Development Commissioner. The exercise as such be completed within a period of four months and in case the petitioner is found fit then the petitioner shall be entitled to her seniority on the post of Additional Assistant Development Commissioner over the respondent no. 4 along with all consequential benefits.

Accordingly the petition stands allowed.

4. In W.P. No. 17607/2006 (s), decided on 10.4.2008, the writ court had passed the following order:-

The present petition is filed by the petitioner challenging the order dated 06.11.2006, (Annexure P-17), by this order the petitioner has been communicated that the case of the petitioner which was considered in the review DPC which met on 13.10.2006, the same has been rejected because the petitioner was not found to be more meritorious than the respondent no. 4, therefore, the petitioner could not be given promotion on the post of Additional Assistant Development Commissioner. The petitioner earlier filed a case before this Court which was registered as W.P. (s) No. 610/2004. The said case was decided in favour of the petitioner by the order dated 20th July 2006, whereby a direction was given by this Court to hold a review DPC to consider the case of the petitioner.

2. This Court while deciding the case, i.e. W.P. No. (S) No. 610/2004 on 20th July 2006, (Ann. P-16) has taken note of the order of exoneration passed by the respondents on 09.10.1996. The DPC took place on 09.01.1997. This Court has also taken note of the CR of the petitioner vis a vis with the respondent no. 4, the court found that the petitioner was wrongly deprived of from her promotion, therefore the direction was given to the respondents to hold a review DPC. According to the respondents the review DPC took place and the CRs of the petitioner as well as the respondent no. 4 were considered for the period of 3 years only i.e. from March 1993 March 1994 and March 1995.

For the year March 1993 in credit of the petitioner, the CR was graded average i.e. "Ga". For the year ending March 1994 it was graded as "Ka", March 1995 it was graded as "Ka". The original DPC as well as review DPC both have adopted the same grading that for all the three years CR of the incumbents for the promotion should either be good or above good. The three years CRs were taken into account by the DPC after seeking approval from the PSC because the CRs for all the five years preceding to the date of DPC of the officers were not made available. The PSC also intimated that all the officers who were employees upto 01/01/1996 should be considered for the promotion. After when the review DPC

has taken place, the CR of the petitioner for the year ending March 1992 - 1993 was treated to be "Ga" and for the year 1993-94 it was graded as "Ka" for the year 1994-1995 it was graded as "Ka" and for the year 1995-96 it was graded as "GA".

3. On the basis of the aforesaid CRs of the petitioner as noted by the review DPC and also the criteria adopted, it was not a case that the petitioner has wrongly been deprived of from her promotion.

4. The criteria which has been adopted by the original DPC as well as review DPC had been "merit cum seniority" which has also been taken more in the earlier judgment passed by this Court in W.P. (s) No. 610/2004. The DPC also fixed the criteria that for all the three years CR of the officers should be good or above good then only on merit they will be found fit for the promotion. On the basis of the grading of the petitioner's CR for the year 1992-93 in credit of the petitioner the CR is graded as "Ga" which means average and for the main years i.e. 1993-1994 & 1994-1995 it were graded as "Ka". On the basis of the criteria applied by the DPC which met on 09.01.1997 and also the criteria adopted by the review DPC in credit of the petitioner there are only three years CR i.e. from 1992-1993 which was graded as "GA" and 1993-1994 was graded as "KA" and for the year 1994-1995 it was graded as "KA".

5. Learned counsel for the petitioner was enlightened by the Court that earlier while deciding a case on 20th July 2006 in W.P. NO. 610/2004 a mistake has occurred. The copy of which has been placed on record as Annexure P-16. The mistake which has occurred is that the CRs have been treating to be calendar month i.e. from January to December though the CR is to be considered from 1st April to 31st March and it this is to be applied then the grading stands changed and changed grading has already been referred in paragraph 4 of the order.

6. Learned counsel for the petitioner when was pointed out the mistake of the court while deciding the earlier petition with reference to the year of grading counsel for the petitioner also could not explain that there was no mistake committed by the Court.

7. In view of the aforesaid, the petitioner cannot be permitted to take the advantage of the mistake committed by the Court and on the basis of the assessment of the correct CR which is referred in paragraph 4 of the judgment the petitioner does not have any case in her favour.

8. Under the circumstances, I do not find any case for interference that the petitioner's merit has been ignored.

9. In view of the aforesaid no case for interference is made out and petition stands dismissed.

5. From the perusal of the aforesaid factual position, it is clear that the appellant had entered into service on 2.11.1991. Thereafter she was under training and had joined the service on 13.11.1991. Thereafter, she was sent for training for a

period of 3 and 1/2 months. After completion of training, she was posted as Block Development Officer. The appellant's ACR was not written of DPC of 1992 as she had not completed one year and most of the period after joining the service was spent in on training. However, appellant's ACR in the years ending in 1993, 1994 and 1995 were available. In the aforesaid years, the appellant had earned "Ga" (average) "Ka" "very good" and "Ka" (very good) respectively. A DPC was convened on 9.1.1997, in which the criteria was for consideration of all cases of employees, who had completed four years on 1.1.1996. On the basis of this, the matter was referred to DPC but at the relevant point of time the appellant was facing a departmental enquiry. So the case of the appellant was not considered by the earlier DPC. This fact was brought to the notice when W.P. (s) No. 610/2004 was decided on 20.7.2006. On the basis of this glaring fact, learned Single Bench had found that on the date when the DPC was convened, the appellant herein was already exonerated from the departmental enquiry. So the case of the appellant was considered by the learned Single Judge, vide order dated 20.7.2006 and had directed the respondent-authority to convene a review DPC, on the basis of criteria as was fixed in the DPC dated 9.1.1997. It appears that the matter was placed before the DPC, but as the appellant's ACR ending in the years 1991, 1992 were not available, special direction was sought from the PSC and PSC accorded the permission as a special case and directed that on the basis of same criteria which were fixed in the DPC of 1997, the case of the appellant be reconsidered. It appears that on the basis of same criteria, the case of the appellant was considered by the review DPC and she was not found fit in the review DPC.

6. It is pertinent to mention here that after the DPC of 1997 another DPC was convened in the year 1998, in which the appellant was found fit and she was promoted on the post of Additional Assistant Development Commissioner, which is now redesignated as Chief Executive Officer, Janpad Panchayat.

7. In view of the aforesaid, if the appellant is found fit in the review DPC, she is would be entitled for seniority vis-a-vis respondent no. 4. Otherwise she will remain in the same status in which she was placed by the promotion order issued in the light of DPC convened in the year 1998.

8. Shri Tiwari, learned Govt. Adv. placed before us the minutes of the DPC, dated 9.1.1997, in which criteria among other was filed in para 3.6-

which reads as under:-

9. In the aforesaid criteria, it is apparent that DPC had fixed a criteria that in last five years, an employee should have earned "Good", in three years or above and for the last two years, he/she should have earned minimum, "Good", meaning thereby in last two years before convening DPC an employee should be "Good" and in last three years, he/she should also be "Good". In the present case, appellant in the year 1993 had earned "Ga", which was "average" and had not earned ACR of "Good". Even if the aforesaid criteria is applied in the case of

appellant, even, then she was not entitled for promotion in the aforesaid post.

10. In the aforesaid circumstances, we do not find any error in the impugned order passed by the learned Single Judge. Learned Single Judge has rightly considered the case of the appellant and dismissed the writ petition. There is no error which warrants interference in our writ Appeal jurisdiction. Thus, this writ appeal is accordingly dismissed. No order as to cost.