
(1975) 01 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2187 of 1970

Sohan Roop Rai

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) WLN 1

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kan Singh, J.—This is a writ petition under Article 226 of the Constitution by one Shri Sohan Roop Rai for an appropriate writ, direction or order.

2. Shri Sohan Roop Rat was an Assistant Engineer in Irrigation department of the State of Rajasthan at the relevant time. A provisional seniority list of Assistant, Engineers; of the Irrigation Branch was published on 8-5-59. In this list the petitioner's name was at serial number 59 below that of one Shri Nitya Behari Singh and above respondent Shri P.C. Mathur in Group C. the provisional seniority list was followed by a final seniority list which was published on 16-6-60. In this seniority list the petitioner was assigned the same position as in the provisional seniority list. In this way he claims that he was senior to the concerning respondents as Assistant Engineer. In 1959, a Departmental Promotion Committee met to consider the cases of eligible. Assistant Engineers as Executive Engineers, but the petitioner was not promoted while his juniors came to the promoted as officiating Executive Engineers the petitioner made his representation. It is not disputed that in year 1961 and 1963 there were again meetings of the Departmental Promotion Committees and the petitioner was not prompted though his juniors were promoted as officiating Executive Engineers. For the first time, however, on 5-1-65, that is, almost more than after 6 years the petitioner was given a notice of an adverse entry in his confidential rolls

made in the year 1959 the adverse entry ran as follows:

1959 Shri Sohanroop Rai's work has been very disappointing. In about 8 or 9 months time very little work has been done in Kalisindh Sub division and long section of only about 6 miles of canals have been got approved. Even here no work of constructing the canals has been done. Should show more energy, initiative and progress.

From notice intimating him the aforesaid adverse entry he came to know why he had been superseded in the past the petitioner considered this adverse entry to be unjustified and made a detailed representation to the authorities the Government were satisfied with the explanation furnished by the petitioner concerning this adverse entry and therefore they passed an order on 30-8-65 in consultation with the reporting officer, that the adverse entry communicated to the petitioner on 4-1-65 be expunged the petitioner was then promoted as officiating Executive Engineer in the year 1965 itself. He, however, went on making representations against him supersession by the previous Departmental Promotion Committee and eventually filed the writ petition in this Court on 9-11-70.

3. In challenging his supersession the petitioner contends that the adverse entry had been considered against him without his being afforded an opportunity to explain the same and this has prejudicially effected his case vis-a-vis his juniors as Assistant Engineers till 1965 when he too came to be promoted as officiating Executive Engineer. This was, according to the petitioner, violative of principles of natural justice the petitioner has, there fore, prayed that he be ordered to be posted as Executive Engineer from 21-11-59 or, in the alternative, the respondents be directed to determine the number of vacancies for the year 1959 and be ordered to consider the case of the petitioner for promotion in the year in which he was entitled to be promoted.

4. The writ petition has been opposed by the State. It is denied that the earlier orders of supersession of the petitioner were bad on any of the grounds taken by the petitioner. It was submitted that there were several other relevant considerations which weighed with the Departmental Promotion Committees in the years 1959, 1961 and 1963 then it was further submitted that the writ petition has been filed after an inordinate delay of several years and, therefore, no relief be granted to the petitioner.

5. I have heard learned Counsel for the petitioner and the learned Deputy Government Advocate Regarding the question of delay learned Counsel for the petitioner submits that the petitioner had been making his representations and there is no upper limit nor any lower limit of time within which the petitioner can invoke the extraordinary jurisdiction of the Court under Article 226 of the Constitution and the petitioner should not be refused any just relief simply on account of the delay as in the present case no rights had by the time the writ petition was filed became vested in any of the respondents who were only

officiating Executive Engineers till then. Learned Counsel referred me to two recent decisions of the Supreme Court *Jogindernath v. Union of India* AIR 1973 and *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, . On the other hand, learned Deputy Govt. Advocate relied on *M.K. Krishnaswamy v. Union of India* AIR SLWR 793 and he further invited attention to an unreported decision in S.B. Civil Writ Petition No. 1566 of 1972 *S.B. Srivastava v. State* decided on 1811-72. Learned Counsel however are on common ground that the last mentioned decision is a subject matter of a special appeal which is still pending. That being so, the decision of the learned Single Judge being sub judice cannot justly be considered as a precedent the choice now lies between the Supreme Court case cited by learned Deputy Government Advocate and the two cases cited by learned Counsel for the petitioner the cases cited by learned Counsel for the petitioner, are of latter dates than the one relied on by learned Deputy Government Advocate. That being so. I am bound to consider the application of the two later cases of their Lordships of the supreme Court particularly when they are also of Constitutional Benches like the one cited by learned Deputy Government Advocate.

6. In the present case it is not disputed that by the time the writ petition was filed none of the Assistant Engineers who was junior to the petitioner had been confirmed as Executive Engineer. It is also not denied that the petitioner had made representations regarding his super session In view of these circumstances, therefore, the matter has got to be considered in the merits of the case. It is common ground that the entry extracted above did exist in the confidential record of the petitioner and further when notice of it was given to the petitioner he made a representation against it and the Government had expunged the same the question then arises whether this entry was considered by the Departmental Promotion Committee against the petitioner at the time he was considered for promotion in the years 1959, 1961 and 1963, Learned Deputy Government Advocate, no doubt, submits that there were other matters besides the impugned entry which were considered by the Departmental Promotion Committee and on the totality of all relevant considerations the petitioner was superseded. It is very difficult for this Court to be able to assess how far this entry had weighed with the Departmental Promotion Commits but having looked into the proceedings of the Departmental Promotion Committee learned Deputy Government Advocate was good enough to state at the Bar that this adverse entry was in fact considered by the Departmental Promotion Committee. He had further stated that at one time this entry was assigned 1? marks being treated as an adverse entry & at other time it was assigned 2 marks being treated as "unsatisfactory" I am unable to appreciate the logic, but here is no gain saying the fact that the entry did play a significant part in the assessment of the petitioner's merit for promotion by the Departmental Promotion Committee the extent to which the entry played the part cannot properly be determined without knowing "he position in respect of other candidates An adverse entry like the present one does have a bearing on one's promotion to the higher post

therefore, to consider such an adverse entry against the petitioner without affording him an opportunity of explaining the same certainly violates the principles of natural justice. In a case decided by me *Nareshwar Lal Joshi v. State of Rajasthan* 1970 (1) R.L.W. 140 it was observed:

A perusal of the Rules of promotion for the employees shows that in the matter of making promotions the Departmental Promotion Committee has to have before it the Character Rolls and Personal Files of the Government servants concerned therefore, if adverse entries which will be germane to the consideration of promotion of the Government servants concerned exist in his record of service, then it is but fair that at some stage the Government servant concerned be afforded an opportunity of having his say against such adverse entries. Without this the formality of communicating the adverse entries to the Government servant will be meaningless. Such unexplained entries being placed before the Departmental Promotion Committee might have some damaging effect in the assessment of the Govt. servant's merits for promotion. It is true, question of promotion depends on a variety of factors and considerations and while one factor may pull in one direction another factor may pull in the opposite direction and at times the over all effect of all factors bearing on the merits of a Government servant for promotion has to be taken. It may not, therefore, be possible to hold in every case that merely because the adverse entries were there and there was no opportunity or making a representation by the Government servant the promotion will necessarily be vitiated; but one can certainly conceive of cases where lack of communication of such adverse entries may result in the case of a particular civil servant being not considered fairly and justly.

Almost the same thing has been laid down by the Delhi High Court in a case reported as *Mallinath Jain v. Municipal Corporation of Delhi and Ors.* 1973 (1) SLR 413.

7. This entry made in 1959 could certainly be taken into consideration for a period of five years as has been said to be the practice. It is true, the petitioner is now officiating as Executive Engineer since 1965 and that only goes to create an impression that with the expunction of the entry the petitioner was considered fit for the post of an Executive Engineer in the year 1965. Looking to all the facts and circumstances of the case, therefore, it is just and proper that the respondent State is directed to reconsider the case of the petitioner vis-a-vis such of the respondents as were junior to him as Assistant Engineers against the vacancies available in the year 1959, 1961 and 1963.

8. In the result, therefore, I allow this writ petition and direct the respondent State to constitute a Departmental Promotion Committee for reconsideration of the case of the petitioner vis-a-vis such of the respondents who were junior to the petitioner as Assistant Engineers taking into consideration all relevant facts, but ignoring the impugned adverse entry.

9. The parties are left to bear their own costs.