

(1991) 12 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 155 of 1980

Sunirmal Dhar Choudhury

APPELLANT

Vs

Central Warehousing Corporation

RESPONDENT

Date of Decision : 10-12-1991

Acts Referred:

Citation : (1992) 1 GLJ 13 : (1992) 1 GLR 346

Hon'ble Judges : S.N.Phukan, J and W.A.Shishak, J

Bench : Division Bench

Advocate : B.Das, Advocates appearing for Parties

Judgement

W.A. Shishak, J.—In this application under Article 226 of the Constitution of India, the petitioner assails two orders namely, order dated 7.9.78, Annexure L and order dated 18.7.80, Annexure M, both passed by the Managing Director (respondent No.2) by which respondents 3 to 11 were promoted to the rank of Assistant Engineers, according to the petitioner, ignoring the claim of the petitioner.

2. The petitioner obtained Diploma in Mechanical Engineering in 1966. He joined service as Works Assistant on 6.5.70 in the Central Warehousing Corporation which is a statutory body. In course of his employment in the aforesaid capacity the petitioner was selected and appointed as Sectional Officer under the same Corporation with effect from 25.8.71. After the completion of a period of probation of 2 years the petitioner was declared regular Sectional Officer by office order dated 13.6.77 which was to take effect from 1.1.75. "

3. The petitioner claims that he was due to cross Efficiency Bar in the scale of pay on and from 1.1.78. However, the petitioner states that he was not allowed to cross the Efficiency Bar and according to him no reason was given for not allowing him to cross Efficiency Bar with effect from 1.1.78. The petitioner was however informed by the Deputy Manager by office memorandum dated 19.1.78 that he was not allowed to cross Efficiency Bar along with others as his

performance was not found to be satisfactory at the relevant time. Thereafter the petitioner represented to the authority to let him know the adverse remarks in his confidential report. In response to the representation dated 6.3.78 the petitioner was informed by office memorandum dated 23.3.78 by the Senior Assistant Manager (Establishment) that the decision earlier taken would not be changed. It was mentioned in that letter that the petitioner's case would be reviewed again on 1.1.79.

4. The petitioner has taken a grievance that withholding of his increment at the stage of Efficiency Bar on the ground that the petitioner's performance was not found satisfactory is illegal inasmuch as he was not duly informed of any such shortcoming in the performance of his service in the Corporation before the order of refusal to allow the petitioner to cross Efficiency Bar with effect from 1.1.78, was not made.

5 We have perused the petition and all the affidavits filed in this case. We also have heard the learned counsel on both sides at length.

6. In support of his contention the learned counsel for the petitioner relies on a case AIR 1988 SC 2060, Vijay Kumar vs. State of Maharashtra in which case the main grievance of appellant before the Tribunal was that the confidential report relied upon to deny senior time scale was not communicated to him. In this case the Supreme Court held : "it is a settled principle that an uncommunicated adverse report should not form the foundation to deny benefits to a Government servant when similar benefits are extended to his juniors." In AIR 1976 SC 1766, Regional Manager vs. Pawan Kumar Dubey the reversion of the petitioner for the reason given in the reversion order was held to amount to unjustified stigma which cannot be said to be "denied of an element of punishment." The order of reversion was held to be bad because the Court found that on the one hand there was fulsome praise, in testimonials given by the superior officers for meritorious work done by the petitioner but on the other hand preceding the order of reversion, there was a spurt of warning and very vague complaints and adverse remarks.

7. In paragraph 18, AIR 1979 SC 1622, Kurtial Singh vs. State of Punjab, it was held; "that an officer was not found suitable, is the conclusion and not a reason in support of the decision and to supersede him. True, that it is not expected that the Selection Committee should give anything approaching the judgment of a Court but it must at least state, why it came to the conclusion that the officer concerned was found to be not suitable for inclusion in the select list. In the absence of any such reason, we are unable to agree with the High Court that the Selection Committee had another reason for not bringing the appellant on the select list."

8. The learned Govt. Advocate submits that the impugned orders were validly passed and that the petitioner has not made out any case for interference of the impugned orders by this Court in exercise of jurisdiction under Article 226 of the

Constitution. The submission of the learned Government Advocate is that, in the instant case the petitioner's case was reasonably considered by Departmental Promotion Committee. The reason for not allowing the petitioner to cross Efficiency Bar was because of the fact that the performance of the petitioner was not found to be satisfactory as assessed on 1.1.78. Obviously the Departmental Promotion Committee sits once in a year for such purpose and as such according to the learned Government Advocate, the petitioner was found fit to cross Efficiency Bar when his case was reviewed on 1.1.79 and accordingly he was allowed to cross Efficiency Bar from 1.1.79 and in such circumstances, the consideration of the petitioner's case for crossing Efficiency Bar with effect from 1.1.79 cannot be said to be unreasonable. The learned counsel submits that the Departmental Promotion Committee considered the case of the petitioner on 1.1.78 on the basis of materials placed before it and he further submits that it is not for Departmental Promotion Committee to make investigation as regards confidential report or record in respect of the petitioner.

9. Having regard to the facts and circumstances of the case and following the principles of the decisions referred to above, we are of the view that refusal to allow the petitioner to cross Efficiency Bar with effect from 1.1.78 is unreasonable as it was done on confidential report of poor performance of the petitioner inasmuch as such pitfall or unsatisfactory or poor performance was not intimated to the petitioner before such order was passed. In the result, the petition is allowed and the rule is made absolute.

The petitioner shall be entitled to hold a post of Assistant Engineer under the Corporation from September 1978, and in this view of the matter, the petitioner shall find his appropriate place in the seniority lists in so far as the impugned orders dated 7.9.78 and 18.7.80 (Annexure L & M), are concerned.

With the above observations and directions this petition is disposed of.

No costs.