
(2011) 02 GAU CK 0073

In the Gauhati High Court

Case No : Writ Petition (C) No"s. 32 (K) of 2004 and 160 (K) of 2008

U.C. Panda (Dr.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 1 GLT 614

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Advocate : N.K. Luikham, for the Appellant; T.B. Jamir, C.G.C., for the Respondent

Judgement

C.R. Sarma, J.—Heard Mr. N. K. Luikham, learned Counsel, appearing for the Petitioner. Also heard Mr. T.B. Jamir, learned CGC, appearing for the Respondent Nos. 1 to 3. None appears for the private-Respondent Nos. 4 and 5.

2. The above, mentioned two writ petitions, filed by the same Petitioner, involve same question of law and facts and the parties are represented by the same set of Advocates.

In view of the above, for the sake of convenience and as agreed to by the learned Counsel, appearing for both the parties, these two writ petitions are taken up for disposal by this common judgment and order.

3. The writ Petitioner, on being selected by the Union Public Service Commission, joined the Border Road Organization, on 31.10.1982, as a Medical Officer Grade-I and he was posted at the Head Quarters, Chief Engineer(P), Sewak (GREF), C/O 99 APO, Dimapur, Nagaland. On the basis of his selection and appointment, he was senior to the private Respondent Nos. 4 and 5. Subsequently, the Petitioner obtained the P.G. Diploma in Public Health and he was deputed for foreign service in 1997 and accordingly he was posted in Bhutan in 19 BRTF as Senior Medical Officer (SMO). According to the Petitioner, during the tenure of his

foreign service, he was discharging the duty of Deputy Chief Medical Officer (DCM) and as per the seniority list prepared and published by the Department, in October, 2002, the Petitioner's name was placed at Sl. No. 3 i. e. above the private Respondent Nos. 4 and 5. On 25.10.2002, a meeting of the Departmental Promotion Committee (hereinafter called "the DPC") was held for consideration of promotion of the Medical Officer Grade-I to the post of Deputy Chief Medical Officer and the said DPC, superseding the Petitioner, promoted the Respondent Nos. 4 and 5. As the Petitioner was not furnished with any reason regarding supersession by his juniors, he had submitted representations, on 12.11.2002, 27.12.2002 and May, 2003. In response to the said representations, the Respondent-authority, by letter, dated 10.03.2003, informed the Petitioner that the DPC did not find the Petitioner fit for promotion to the post of Deputy CMO. As the Petitioner was superseded by his juniors, without any communication regarding the remarks in his AC Rs, the Petitioner being aggrieved has approached this Court by filing writ petition No. W. P. (C) No. 32(K) of 2004, seeking a direction for setting aside the result published by the DPC, held on 25.10.2002, and the communication, dated 10.03.2003 aforesaid.

4. The official Respondents contested the Petitioner's claim by filing affidavit-in-opposition. In the said affidavit-in-opposition, the contesting Respondents, at para-14, contended as follows:

14. That with reference to the statement made in paragraph 13 of the writ petition, the deponent begs to submit that the promotion in BRO is being done on the basis of DOPT guidelines on Department Promotion Committee. As per these instructions the Bench Mark for all posts carrying pay scale of Rs. 12300-16500 and above is "Very Good". Since the Petitioner was lacking Qualitative Requirements, the Departmental Promotion Committee did not find him fit for the higher rank. It is further submitted that there is no provision of communicating the positive grading. As regards the ACP, it is submitted that the Government did not accept the recommendation of 5th CPC with regard to ACP for Group A Officers.

5. Admittedly, during the pendency of this writ petition, the Respondent-authority promoted the Petitioner to the post of Deputy CMO on the basis of the recommendation, made by the DPC, held on July 2006, without giving any consequential benefits with retrospective effect. Subsequently, during pendency of the said writ petition, the Respondent-authority, vide Notification No. BRDB/04/1 73 1/2007/GE-I, dated 20.02.2008, promoted the Respondent No. 4 to the post of Deputy Chief Medical Officer (Selection Grade). Aggrieved by the said promotion, made in favour of Respondent No. 4, the Petitioner preferred another writ petition being W. P. (C) No. 160 of 2008, with the following prayers:

In the premise aforesaid, it is respectfully prayed that Your Lordships would be graciously pleased to admit this petition, issue a Rule calling upon the Respondents to show cause as to why a writ as prayed for should not be issued to quash and set aside the impugned order dated 20.02.2008 (Annexure- A) and

the impugned letter dated 26.02.2008 (Annexure-B) in respect of the promotion of the Respondent No. 4. Call for the records and on cause or causes being shown and upon hearing the parties be pleased to make the rule absolute and further issue direction to the Respondents to consider the promotion of the Petitioner in the grade of Deputy Chief Medical Officer (Selection Grade) restoring inter-se seniority with all consequential benefits. And/or pass such other order or orders as Your Lordships may deem fit and proper to pass in the interest of justice.

6. By filing affidavit-in-opposition, in the said writ petition, the official Respondents contended that the Respondent No. 4 was promoted to the post of Deputy CMO (Selection Grade) on the basis of his seniority. The contention made by the said official Respondents, in para-6 of their affidavit-in-opposition, dated 05.03.2009, reads as follows:

6. That as regard to the statements made in paragraph 4 of the writ petition, the answering deponent respectfully state that the Petitioner Dr. U. C. Panda was appointed in GREF (BRO) as Medical Officer Grade -I on 31.10.1982 and promoted to the grade of Deputy Chief Medical Officer (DCMO) w.e.f. 18.07.2006. Whereas, Respondent No. 4 Dr. Iftakhir Hussain, presently serving as Deputy Chief Medical Officer (DCMO) SG was appointed in GREF (BRO) as Medical Officer Grade-II on 21.11.1977 and was promoted to Medical Officer Grade-I through Departmental Promotion Committee (DPC) on 01.06.1986. He has been further promoted to the grade of Deputy Chief Medical Officer (DCMO) through DPC w.e.f. 30.10.2002 and DCMO SG w.e.f. 29th Feb. 2008.

7. Mr. N. K. Luikham, learned Counsel, appearing for the Petitioner, referring to the case of Dev Dutt v. Union of India and Ors. AIR 2008 SC 2513 and Abhijit Ghosh Dastidar v. Union of India and Ors. (2009) 16 SC 146, has submitted that, as the Petitioner was never communicated about the remarks made in his AC Rs, he was deprived from submitting representation before the authority for upgrading the remarks in his AC Rs and thus, he was denied natural justice. It is also submitted, on behalf of the Petitioner, that the Petitioner, who has already retired from service, during his service period performed his duties with all sincerity to the satisfaction of the authority concerned and that at no point of time he received any adverse remarks from his superior.

8. Mr. T. B. Jamir, learned CGC, appearing for the official Respondents, has submitted that, at the relevant time there was no provision/rule for communicating the entries in the AC Rs, which was not otherwise adverse and that the DPC, considering the benchmark of the respective candidates, found the Respondent Nos. 4 and 5 more suitable for promotion to the post of Deputy Chief Medical Officer and that the Respondent No. 4 was considered for promotion to the post of Deputy Chief Medical Officer (Selection Grade), on the basis of the seniority acquired by him, by virtue of his earlier promotion.

9. Having heard the learned Counsel, appearing for both the parties and

considering the materials on record, I find that at no point of time, the Petitioner was informed about the entries/remarks made in his AC Rs and the promotions were made on the basis of the benchmark obtained by the Petitioner and the private Respondent Nos. 4 and 5.

10. In the case of Dev Dutt (supra), the Appellant was in the service of the Border Roads Engineering Service, which is governed by the Border Roads Engineering Service Group "A" Rules, as amended. As per these rules, since the Appellant was promoted as Executive Engineer on 22.02.1988, he was eligible to be considered for promotion to the post of Superintending Engineer on completion of 5 years in the grade of Executive Engineer, which he completed on 21.02.1993. Accordingly, the name of the Appellant was included in the list of candidates eligible for promotion. The meeting of the Departmental Promotion Committee (DPC) held on 16.12.1994, held that the Appellant was not eligible for promotion, but his juniors were selected and promoted to the rank of Superintending Engineer. Aggrieved, the Appellant preferred a writ petition, before the High Court, which was dismissed. The judgment passed in the said writ petition was challenged before a Division Bench and the Division Bench upheld the judgment and order passed by the learned Single Judge. Aggrieved by the said order of dismissal of the appeal, the Appellant preferred a SLP before the Supreme Court. The grievance of the Appellant was that he was not communicated the "good" entry for the year 1993-94. He submitted that had he been communicated that entry, he would have had an opportunity of making a representation for upgrading that entry from "good" to "very good", and if that representation was allowed, he would have also become eligible for promotion. Hence, he submitted that the rules of natural justice were violated. In reply to the said contention, the learned Counsel for the Respondent submitted, that a "good" entry is not an adverse entry and it is only an adverse entry, which has to be communicated to an employee. Hence, he submitted that there was no illegality in not communicating the "good" entry to the Appellant. Allowing the said appeal, the Supreme Court, in para Nos. 45, 47 and 48, observed as follows:

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution,

47. We are informed that the Appellant has already retired from service. However, if his representation for upgradation of the "good" entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the "good" entry of 1993-94 be communicated to the Appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the Appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is

promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the "good" entry be communicated to the Appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the Appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter, if his entry is upgraded the Appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the Appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

11. In the case of Abhijit Ghosh Dastidar (supra), the Supreme Court, referring to the decisions made in the case of Dev Dutt (supra), reiterated that non-communication of entries in the AC Rs of a public servant (except in the armed forces) has civil consequences as it may affect his promotion or other benefits. The Supreme Court further observed that non-communication of entries in the AC Rs would be arbitrary and violative of Article 14 of the Constitution.

12. In the light of the above principles laid down by the Supreme Court, there is no difficulty in understanding that, as the present writ Petitioner was not considered for promotion on the basis of the benchmark, obtained by him, the non-communication of the entries made in his Annual Confidential Reports (AC Rs) was arbitrary and violative of Article 14 of the Constitution. There could be no dispute that if the entries, made in his AC Rs, were communicated to the Petitioner at the appropriate time, he would have got an opportunity to submit representation for upgrading those entries and in the event of upgradation of the entries, made in his AC Rs, he would have been entitled for promotion at the time, when his juniors were promoted. Declaring the Petitioner unfit for promotion at the time, when his juniors were promoted, on the basis of the benchmarks obtained by him, without communicating the entries made in his AC Rs, amounted to depriving the Petitioner his right to make representation against such entry. Therefore, I have no hesitation to hold that there was violatidn of natural justice.

It is informed that the Petitioner has already retired from service. Therefore, in the event of his promotion he will get financial benefits including pensionary benefits. There can be no doubt that the employee concerned has the right to know about the remark/entry made in his AC Rs with regard to his performance and get an opportunity to make! representation for modification of the remarks in his ACR. That apart, communication of the entry, made in the ACR, provides an opportunity to the employee to know about the assessment of his performance and to make an endeavour for improvement in respect of his performance. This certainly helps the employee to improve his efficiency and contributes towards human resource development, thereby enhancing the

performance of the institution/establishment, where such employee is required to work. Therefore, non-communication of the entries in the AC Rs causes much prejudice to the Petitioner and the same amounts to violation of principle of natural justice.

13. Considering entire aspect of the matter, these two writ petitions are disposed of, directing the authority concerned to communicate the writ Petitioner in respect of the entries made in his AC Rs, within a period of 2 (two) months from the date of receipt of a copy of this judgment and order and on being so communicated, the writ Petitioner may submit fresh representation, if so advised, against the said entries, within 2(two) months thereafter. The representation, if any, submitted by the Petitioner shall be disposed of by the authority concerned within a period of 3 (three) months thereafter. It is made clear that if the entries made in respect of the writ Petitioner is upgraded then the writ Petitioner shall be considered for promotion with retrospective effect from the date on which his juniors were promoted, within a period of 3 (three) months thereafter and in the event of his selection for promotion with retrospective effect, the writ Petitioner shall be given all consequential benefits including arrear pay, pensionary benefits etc. as may be admissible in law.

A copy of this judgment and order be furnished to Mr. T. B. Jamir, learned CGC, appearing for the Respondent Nos. 1 to 3, for doing the needful.

14. With the above observations and directions, these two writ petitions are disposed of. No costs.