
(2013) 12 RAJ CK 0034

In the Rajasthan High Court

Case No : Civil Writ Petition No. 19847 of 2012

Union of India and Another

APPELLANT

Vs

Vijay Kumar Sajnani and Others

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Citation : (2014) 1 CDR 184

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Instant petition is directed against order of Central Administrative Tribunal ("Tribunal") dt. 29.02.2012. The relevant facts which culled out from the record for our consideration are that the respondent-applicant who is member of Indian Telecommunication Services joined in 1984 and was granted senior scale in 1990 and was eligible for being considered for Senior Administrative Grade of Indian Telecommunication Services Group-A and the promotions were made for vacancy of the year 2006-07 & 2007-08 and record of the previous five years (2000-01-2006-07) was taken into consideration and it is also not in dispute that the promotions are made on the basis of seniority-cum-merit. However, one of the person who was immediate senior to the respondent, namely Ashok Kumar Tiwari was promoted on the recommendations of the committee vide order dt. 28.12.2007 and the persons who were junior to the present respondent applicant too were promoted, which was challenged by filing original application before the Tribunal and his grievance was that his total record of service is either outstanding/very good but as he was inflicted with penalty vide order dt. 07.03.2002 which might have been considered as one of the basis for holding him unsuitable but at the same time one Ashok Kumar Tiwari who was immediate senior to him & found to be fit for promotion he too was inflicted with penalty vide order dt. 12.02.2002 and both of them being similarly situated, decision of the committee in holding one incumbent suitable & the applicant

unsuitable was discriminatory and in violation of Art. 14 of the Constitution.

2. The learned Tribunal after taking note of the material which came on record & so also the fact that Ashok Kumar Tiwari was also the person who was inflicted with penalty vide order dt. 12.02.2002 and the applicant was inflicted penalty vide order dt. 07.03.2002 and under these perspectives was of the view that candidature of the respondent-applicant deserves to be reviewed & reconsidered in the light of the material which came on record and accordingly directed the petitioner to undertake the exercise expeditiously obviously by holding review DPC and consider the candidature of the respondent-applicant for promotion on the post of Senior Administrative Group of Indian Telecommunication Group-A.

3. The main thrust of submission of counsel for petitioner is that although the Tribunal has directed for review/reconsider candidature of the respondent-applicant but there was material on record which could justify regarding his unfitness which was recorded by the committee in its report and that has not been properly appreciated by the Tribunal while passing order impugned.

4. Counsel for respondent submits that the learned Tribunal looked into the material came on record and took note of the nature of punishment inflicted upon the respondent-applicant dt. 07.03.2002 & so also upon another incumbent namely Ashok Kumar Tiwari dt. 12.02.2002 and after appreciation of the record of service which was looked into by the DPC, was of the view that the applicant's candidature deserves to be reviewed obviously in the light of the observations made under order impugned. But no such directions have been issued to the authorities for granting grade of the post claimed and the only direction of the Tribunal is to reconsider candidature of the respondent applicant fairly in accordance with law.

5. We have heard the parties & also perused the material on record. From the impugned judgment of the Tribunal we find that after taking note of the facts of the parties placed on record, the learned Tribunal has directed the authorities to reconsider candidature of the respondent-applicant by holding review DPC and have fair consideration for promotion against the vacancy of the year 2006-07 & 2007-08 for which at one stage was found to be unfit by the committee. However, there is no such direction of the Tribunal to grant him promotion or to record a finding of his overall suitability.

6. In our considered view once the respondent applicant was able to convince the Tribunal that the recommendation made by the DPC deserves to be reviewed based on the material which came on record, we do not find any error being committed by the learned Tribunal while passing order impugned which may require interference. Consequently, the petition is devoid of merit and accordingly dismissed. We now direct the petitioner to undertake the exercise expeditiously holding review DPC and reconsider candidature of the respondent-applicant in accordance with law within a period of six months. No cost.