

(2012) 10 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 456 (SB) of 2004, 700 (SB) of 2002, 1502 (SB) of 2004 and 1482 (SB) of 2003

Union of India and Others

APPELLANT

Vs

R. Bharadwaj and Another

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 2 ADJ 266

Hon'ble Judges : Vinay Kumar Mathur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Asit Kumar Chaturvedi and Pankaj Srivastava, for the Appellant;

Judgement

1. The matter involved in all the aforesaid writ petitions is for promotion of Senior Administrative Grade and as such, they are taken up together for common orders.

Heard Mr. Pankaj Srivastava, Mr. Pratul Kumar Srivastava, Mr. Chandra Shekar Sinha, learned counsel for the petitioners and Mr. Abdul Moin, learned Counsel for respondent No. 1 in Writ Petition No. 1482 (SB) of 2003.

In order to adjudicate the matter, it is necessary to mention some relevant facts of Writ Petition No. 1482 (SB) of 2003, which are hereunder:

When the claimant was not promoted to the post of Senior Administrative Grade of the Indian Railway Medical Service, he filed an Original Application before the Central Administrative Tribunal with a direction to promote him in the Senior Administrative Grade of the Indian Railway Medical Service (hereinafter referred to as IRMS) w.e.f. 17.2.1997 after maintaining his seniority as given in the selection grade of IRMS. The Tribunal after all aspects of the matter allowed the Original Application, vide judgment and order dated 26.5.2003, with a direction to the petitioners to reconsider the applicant for promotion to the SAG level by holding a review DPC of the DPC held on 12.9.1996 after ignoring the adverse

remarks for the year 92-93 recorded by the reviewing officer and after ignoring the downgrading of the ACRs for the years 93-94 and 95-96 from "Very Good" to "Good" Being aggrieved, the aforesaid writ petitions have been filed.

2. Learned Counsel for the petitioners submit that no opportunity was given by the Tribunal to explain the Annual Confidential Report of the year 1992-93 as after submission of ACR on 25th April, 2003, no hearing took place upto the delivery of judgment and order dated 26th May, 2003. Further, it is not the case that no reasons have been recorded for downgrading in the years 1993-94 and 1995-96. Further, the grading recorded in the ACRs is of no avail as the Departmental Promotion Committee has to make its own assessment on the basis of entries in the ACRs. In the years 1993-94 and 1995-96, it has not been indicated by the Accepting Authority that any unfavorable remark including shortcomings had to be conveyed to the claimant and as such, there is no adverse remark in the ACR in the year 1993-94 and 1995-96. Further, the benchmark required for promotion to Senior Administrative Grade was "Very Good" and as such, the persons whose performance was below the benchmark were not eligible for empanelment to Senior Administrative Grade.

3. Mr. Abdul Moin, learned counsel for the claimant submits that the petitioners have themselves admitted that the benchmark required for promotion to the Senior Administrative Grade is "Very Good" and as such, those persons whose performance are below the benchmark are not eligible for empanelment to the Senior Administrative Grade, meaning thereby that though the benchmark of "Very Good" may not be an adverse benchmark in its entirety, but for the purposes of being considered for promotion to the Senior Administrative Grade, it would be adverse as the officer who has been given entry below "Very good" benchmark shall not be considered as suitable enough for being promoted to the SAG. As such, the contention that the DPC after assessing the Confidential Reports and applying its own mind declares an office fir for promotion cannot be treated to be in isolation particularly keeping in view the fact that once an officer has been graded below benchmark, then obviously such an officer shall be declared unfit for promotion. Accordingly, any entry below the benchmark of "Very good" has to be treated as adverse for the purpose of promotion to the Senior Administrative Grade keeping in view the law laid down by the Apex Court in the case of U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, .

4. He farther submits that non-consideration of selection of the claimant to Senior Administrative Grade is self-explanatory as the claimant had been given an adverse remark for the year 1992-93 that had not been communicated to him and also for the year 1993-94 and 1995-96, the claimant had been graded as "Good" which was below the benchmark. As the same have not been communicated to him, it could not have been acted on by the Selection Committee. Therefore, the Tribunal has rightly directed for holding a review DPC for the year 1986 by ignoring the adverse remarks for the years 1992-93, 1993-94 and 1995-96. In support of his submissions, he has relied upon by the

Apex Court's judgment dated 22.10.2008 passed in SLP (Civil) No. 26556 of 2004 Abhijit Ghosh Dastidar v. Union of India and others.

5. Considered the submissions made by the learned Counsel for the parties and perused the record. In the aforesaid writ petitions, though the adverse-entries are there in respect of claimants for different years, yet the same have not been communicated to them. In the case of Abhijit Ghosh Dastidar (supra), relied upon by Mr. Moin, the Apex Court while allowing the appeal observed that though the benchmark "Very good" is required for being considered for promotion admittedly the entry "good" was not communicated to the appellant. The entry of "good" should have been communicated to him as he was having "Very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrarily and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted, to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

As the case of claimants is squarely covered by the aforesaid decision of the Apex Court, all the writ petitions lack merit and are hereby dismissed.