
(2013) 03 MP CK 0106
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 4 of 2006

Union of India and Others

APPELLANT

Vs

Radha Krishna Singh

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2013) 137 FLR 628

Hon'ble Judges : S.A. Bobde, C.J.; Rajendra Menon, J

Bench : Division Bench

Advocate : Kanak Gaharwar, for the Appellant; K.G. Ghildiyal, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenge in this appeal u/s 2 (1) of the Madhya Pradesh Uchcha Nyayalay (Khand Nyayapeeth Ko Appeal) Adhiniyam,.. 2005 is made to an order dated 17.1.2006 passed in W.P. No. 3842/96 by the learned Single Judge of this Court. Respondent Shri Radha Krishna Singh was working as a "Havaladar". Complaining his super-session in the matter of promotion to the post of "Naib Subedar" the writ petition in question was filed.

2. It was the case of respondent No. 1 in the writ petition that he was recruited in the Indian Army (Ordinance Corp) as a Recruit on 28th July, 1972. He was promoted as a "Naik" on 1st April, 1981 and became "Havaladar" on 1st October, 1985. It was said that he was due for promotion on the next higher post of "Naib Subedar" w.e.f. 1st May, 1991. Even though, he had completed the qualifying examination for promotion, he had been superseded in an illegal manner, he retired from service on 1st August, 1996 and it was his contention that he came to know about his supersession only on 18th April, 1995. He submitted a statutory appeal which was rejected and, therefore, filed a writ petition being W.P. No. 3842/96. The writ petition was allowed and he is directed to be promoted with 50 % of the monetary benefits after consideration of his case by

the appropriate committee, this writ appeal has been filed challenging the said order passed in the writ petition.

3. The order in question passed by the learned Single Judge is dated 17.1.2006 and the learned Single Judge has found that the A.C.R. of the petitioner for the year 1989 was graded by the competent initiating authority as "high average". If the said grading is graded as "above average", petitioner would have been entitled for promotion. Holding his non-grading as "above average" to be downgrading of C R. for the year 1989, direction issued is to conduct a review D.P.C./selection process. By ignoring the A.C.R. for the year 1989 and if eligible for promotion, the same be granted w.e.f. 1.8.1996 along with 50% of the monetary benefits.

4. Smt. Kanak Gaharwar, learned Counsel took us through the policy of the Government Annexure R-3 dated 18th December, 1985 and argued that the criteria laid down was that out of the 5 years report to be considered, three should be above average and no report should be lower than the average in the last three years. It is stated that as the petitioner did not fulfil this criteria, he was not recommended for promotion. The gradings of the petitioner for the past 5 years for consideration as recorded by the Initiating Officer and as reviewed by the reviewing officer are "high average" by both the authorities for the year 1986, 1989 and 1990, "above average" for the year 1987 and 1988. It is stated that marks are awarded based on the criteria and as the petitioner did not receive 3 or more "above average" grading during the period in question, he was not recommended for promotion. It was submitted by her that the circular has been followed. Marks have been allotted as per this circular and as the respondent did not fulfil the criteria laid down in the circular, his case was not recommended.

5. Contending that the learned Singh Judge has held that there had been downgrading of C.R. for the year 1989 which is not correct, learned Counsel submits that the order passed by the learned Single Judge is not tenable.

6. Shri K.C. Ghildiyal submitted that when the petitioner had received "above average" C.R. for the previous two years i.e. in the year 1987 and 1988, then granting him "high average" a lower grade in the year 1989 was not proper and as this amounted to reduction of his grade for the year 1989 in comparison to the previous two years, the learned Single Judge has rightly interfered into the matter. He submits that even though the word used "downgraded" may not be correct but as the grading for the year 1989 is adverse and lower to the previous two years grading, he submits that the same has been termed as downgraded and placing reliance on a Division Bench judgment of this Court in the case of Shiva Nand Prasad v. Chief of Army Staff and others, 1993 M.P. ST 344 he prays for interference into the matter.

7. We have heard learned Counsel for the parties and perused the records. From the records, it is clear that the case for promotion to the post in question is to be

undertaken in accordance with the principles laid down in the circular Annexure R-3 filed along with the return in the original writ petition. In this circular dated 18th December, 1985, it is clearly laid down that in all promotions, the 5 years confidential report of the individual has to be analysed and out of the five years report, an individual must earn "above average" grading on three occasions and on one occasion this should be on regimental duty or on instructions in the Army School of Instructions. In the rank of "Havaladar", he should not have any report lower than the average in the last three years.

8. In the present case, the A.C.R. grading of the petitioner for the year 1986 to 1990 shows that he does not fulfil the above criteria and after having received the above average for the year 1987 and 1988, he is graded as "high average" in the year 1989. The learned Single Judge has treated this grading for the year 1989 to be downgrading. The confidential report for the year 1989 is graded high average by the initiating authority so also by the reviewing authority and it is not known as to how it can be treated as downgraded. The learned Single Judge treated it to be downgrading only because in the previous two years i.e. 1987 and 1988, the grading was above average and in the year 1989, it came on the lower category i.e. high average. Grading as high average for the year 1989 is based on the subjective satisfaction of the initiating authority and reviewing authority and nothing is brought to the notice to show that the aforesaid grading recorded is in violation to any statutory rules, regulation or provision.

9. It is a case where the C.R. grading of the petitioners for the particular year is graded as high average by the initiating authority and reviewing authority and the competent authorities have based their evaluation on the work of the petitioners based on their subjective satisfaction. A writ Court in the absence of any statutory rule or regulation being shown to be violated cannot interfere into such assessment of work of an officer and the grading granted to him until and unless mala fides or prejudice or statutory provisions are shown to be breached.

10. In the case of Shiva Nand Prasad (*supra*), relied upon by Shri K.C. Ghildiyal, it is seen that the grading granted by the authorities for a particular year was different and, therefore, it was held to be a case of downgrading, in that particular case for the year in question i.e. 1988, the initiating officer had given remark of above average and the reviewing officer downgraded the same as high average. It is based on this change of grading by the reviewing authority that is downgrading of grading,

11. In the present case, there is no change of grading by the reviewing officer after it was recorded by the initiating officer. Both the authorities have given high average" and, therefore, misconstruing to be same to be downgrading without hearing and notice to the petitioners, the order has been passed by the learned Single Judge.

12. That being so, we are of the considered view that the grading high average for the year 1989 in the facts and circumstances of the case cannot be termed as

downgrading. In fact, both the initiating authority and the reviewing authority have graded the work of the respondent as high average and as they have done so based on due evaluation of the work of the petitioners and based on their subjective satisfaction, we see no error in view of the same warranting interference.

13. Accordingly, finding the learned Single Judge to have interfered into the matter on wrong consideration which cannot be upheld, this writ petition is allowed. Order impugned dated 17/01/06 passed by the learned Single Judge is quashed. With the aforesaid, the writ appeal stands allowed and disposed of.

C.C. as per rules.