

(2013) 06 KAR CK 0209

In the Karnataka High Court

Case No : Writ Petition No. 42113 of 2012 (S-CAT)

Union of India and Others

APPELLANT

Vs

S.N. Venkatesh and Another

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Citation : (2014) 1 AKR 37 : (2013) 5 KarLJ 370

Hon'ble Judges : D.V. Shylendra Kumar, J;B.S. Indrakala, J

Bench : Division Bench

Advocate : M. Vasudeva Rao, for the Appellant; S. Girija Shankar and Sri P.S. Dinesh Kumar, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Union of India is the petitioner in this writ petition questioning the order dated 16-3-2012 passed in OA No. 316 of 2011 where under the Tribunal had allowed the application and had directed the Union of India to accord deemed promotion to the applicant to the post of Junior Time Scale of IA and AS from the date on which his Juniors had been promoted to this post and to give him all consequential benefits. The applicant had since retired from service with effect from 31-12-1991 in the post of Senior Audit Officer without such promotion.

2. The peculiar facts of the present case is that the applicant-respondent who had joined the services in IA and AS of the Union of India as a UDC on 8-11-1954 and was on deputation to Regional Provident Fund Office at Bangalore, from 1-4-1979 to 31-3-1981 and was working there as Senior Audit Officer, was implicated in a case of fraud while he was on such deputation and CBI which was examining the matter arrested him and he was in custody for more than forty-eight hours and as a result he was kept under suspension with effect from 14-7-1981. However, the suspension it appears was revoked on 20-1-1982.

3. The CBI registered first information report against the applicant-respondent in

the year 1985 and had filed charge-sheet against him in the CBI Court. During this period, the petitioner was due for promotion to the post of JTS as he was within the zone of consideration for promotion and for such purpose, meeting of the DPC was held in the office of Union Public Service Commission. The DPC had recommended panel of 39 officers for promotion to JTS of IA and AS. However, the petitioner's consideration was kept in sealed cover and outcome in his case was not made known.

4. The Court case against the applicant-respondent it appears continued for as long as 28 years and finally as per the judgment dated 31-10-2008, the CBI Court acquitted the applicant-respondent exonerating him of all the charges. The applicant-respondent thereafter represented for considering his promotion to the post from the year 1986 and on receiving such representation, the petitioner-Department's made efforts to find out the records and the sealed cover. However, it appears the UPSC which had the custody of the sealed cover, containing the opinion of the DPC in respect of the respondent-applicant had destroyed the records after keeping it for twelve years retention period of such records etc.

5. In the circumstances, the Union of India formed a review DPC and as per the review DPC, the applicant was not eligible for promotion as there were other more meritorious candidates according to the review DPC, at the relevant point of time. In this view of the matter, the respondent-applicant was informed that he was not eligible for promotion.

6. Being aggrieved, the respondent-applicant approached the Tribunal seeking for relief by filing the application. The application came to be allowed and directions issued thereafter.

7. It is aggrieved by this order, the present writ petition by the Union of India.

8. It is urged on behalf of the petitioner by Sri Vasudeva Rao, learned Senior Central Government Standing Counsel that as the original records of the recommendation of the then DPC was not available, the review DPC was constituted and the review DPC found that the respondent-applicant was not eligible and therefore the Tribunal committed an error in issuing directions to the contrary etc.

9. It is also urged that the recommendation of the Selection Committee cannot be questioned before the Court and the Court does not act as an Appellate Authority over the recommendations of the selection committee; that the mere destruction of the proceedings of the year 1986 kept in a sealed cover cannot accord promotion to the respondent-applicant if he was not otherwise eligible for the same; that the Tribunal could not have on assumption and presumption held that the review DPC was not aware of the rules that prevailed in the year 1986 for promotion as the review DPC had not even mentioned the requisite number of years of service in the feeder channel.

10. We find that the respondent-applicant was not facing any departmental proceedings, but a criminal case pending and because of that reason, consideration of his promotion was withheld in the year 1986. The suspension earlier had been revoked by then and he was working. It is also seen from the record that the respondent-applicant had superannuated by the year 1991. His remaining services was for about five years from the date of consideration of his case.

11. Sri Girija Shankar, learned Counsel for respondent-applicant submits that the relevant rule actually provides for retention of the record by the UPSC for a period of five years from the date of the judgment in the case, because the pendency of which case, the sealed cover procedure had been followed.

12. The respondent 2-Union Public Service Commission, on the other hand, takes the stand that they had followed normal procedure in the absence of any specific instructions by the concerned Department/Ministry and they had destroyed the record after twelve years.

13. We are also told at the Bar that the first respondent is now aged 80 years. The first respondent had been given certain benefits as per the order passed by the Tribunal i.e., promotion from the date his juniors had been promoted and consequential benefits. That would definitely fetch some monetary benefit/relief to the first respondent at this point of time. Irrespective of the legality of the direction issued by the Tribunal, in a matter of this nature, we are not inclined to interfere in the exercise of writ jurisdiction to deprive certain benefits which he has got in the evening of his life. It is speculative to say as to whether the first respondent would have got promotion in the year 1986. The report of the review DPC, cannot be a precise substitute for the report of the regular DPC who had assessed the respondent-applicant in the year 1986. May be he would have got promotion also but for no fault of his, he did not get it because of the pending case which has now resulted in his acquittal.

14. It is for this reason, we do not find any justification or need to interfere with the order of the Tribunal and dismiss this writ petition. The petitioner-Union of India shall strive to give effect to the order passed by the Tribunal within three months from today.