
(2006) 08 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6225 of 1997

V.V. Dixit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Rajasthan Co-operative Service Rules, 1954 — Rule 11(B)

Citation : (2006) 4 RLW 3292

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Sandeep Saxena, for the Appellant; S.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

K.S. Rathore, J.—The present writ petition is directed against the order dated 3.10.97 passed by the Rajasthan Civil Services Appellate Tribunal in appeal No. 159/95 whereby the Tribunal vide its order dated 3.10.97 has allowed the appeal of the respondent No. 2 and directed to promote him on the post of Joint Registrar against the vacancy of 1987-88 in the category of merit and the promotion given to the petitioner was set aside and in place of the petitioner, respondent No. 2 was given promotion on the post of Joint Registrar.

2. The case of the petitioner is that he was appointed on 28.2.97 as deputy Registrar on urgent temporary basis and was later on selected by the Departmental Promotion Committee and was regularly appointed as Deputy Registrar on 26.2.81 and was thereafter confirmed on this post.

3. The seniority list of confirmed Deputy Registrars was published vide order dated 20.7.85 as on 15.7.85 and in this seniority list the name of the petitioner was shown at No. 32.

4. The D.P.C. was held for considering the cases for promotions for the post of Joint Registrar for the year 1984-85. The Departmental Promotion Committee considered the cases for promotions against 9 posts. Out of these 9 vacancies, 5

were filled on the basis of seniority-cum-merit and 4 on the basis of merit. The petitioner was included in the Review and Revision order. Separate orders were passed for giving promotion vide order dated 6.4.85. Besides 9 appointments made from the main list, 3 appointments were made from the review and revision list.

5. In regard to 1 regular promotions which were made in the cadre of Joint Registrar against the vacancies of 1984-85 to 1986-87, the petitioner raised grievance that the vacancies in the cadre of Joint Registrar whereby promotions were made from the respective year 84-85 to 86-87, have not been properly determined in accordance with the Rajasthan Cooperative Service Rules, 1954 and for which a separate writ petition has been filed by the petitioner before this Court which has been registered as SB Civil Writ Petition No. 307/88.

6. The petitioner also challenged the reversion order of the petitioner from the post of Joint Registrar which he was holding in pursuance to the order dated 6.4.85 vide order dated 29.1.88. During the pendency of the writ petition, the petitioner was again considered and promoted as Joint Registrar against the quota of 1988-89 vide order dated 20.8.88 and in the seniority list prepared for the Joint Registrars, the petitioner's name find place at No. 16 and the respondent No. 2 who at that time was promoted against the quota of 1987-88 in the cadre of Joint Registrar, is at No. 13 in the said seniority list.

7. The order dated 29.1.88 whereby promotions were made on the basis of merit; was questioned by one Shri K.L. Yadav before the Tribunal by way of appeal and which was decided by the Tribunal on 28.1.94 whereby the order dated 29.1.88 was set aside with a further direction to review the D.P.C. for the post of Joint Registrar and to consider the candidature of Shri Yadav from the date his juniors were considered for promotion.

8. In the light of the decision of the Tribunal dated 28.1.94, the review DPC was convened and promotions for the post of Joint Registrar were made vide order dated 31st December, 1994 on the basis of merit and seniority-cum-merit and the review DPC found the petitioner to be suitable against the merit against the quota of 1987-88 and subsequently vide order dated 7.9.95, the petitioner was further promoted on the post of Additional Registrar which is highest post in the cadre against the quota of 1995-96.

9. This order dated 7.9.95 is challenged by the respondent No. 2 before the Service Tribunal and the Tribunal vide its impugned order dated 3.10.97 quashed and set aside the promotion order of the petitioner and ordered to promote respondent No. 2 on the post of Joint Registrar for the year 1987-88 in the cadre of merit.

10. Several issues are raised by both the sides and undisputedly the dispute is with regard to promotion on the post of Joint Registrar against the vacancy of 1987-88 on the basis of merit alone. Learned Counsel for the respondent No.2 submitted that the order impugned dated 3.10.97 passed by the Tribunal is

absolutely correct and no interference whatsoever is required as the respondent No. 2 being senior and was rightly given promotion on the post of Joint Registrar in the cadre of merit alone.

11. Having heard learned Counsel for the parties, the petitioner is able to demonstrate that the respondent No. 2 though was senior than the petitioner but was not found meritorious in comparison to the petitioner and has disputed that the post is required to be filled by merit alone and the review DPC adjudging the suitability of the petitioner being meritorious in comparison to the respondent No. 2, given promotion to the petitioner on the post of Joint Registrar against the vacancy of 1987-88.

12. I have carefully perused the order impugned dated 3.10.97 passed by the Tribunal. No where the Tribunal has considered this aspect that the government or the appointing authority as per Rule 11B of Rajasthan Cooperative Service Rules, 1954 is competent to order for the review of the proceedings of the DPC held earlier on account of some mistake or error apparent on the face of record, or on account of a factual error substantially affecting the decision of the DPC or for any other sufficient reasons e.g. change in seniority, wrong determination of vacancies, judgment/direction of any Court or Tribunal, or where adverse entries in the confidential reports of an individual are expunged or toned down or a punishment inflicted on him is set aside or reduced.

13. As regards to the submission made on behalf of the respondent that the decision passed in the case of Yadav cannot be extended in favour of the petitioner as the Service Tribunal has allowed the appeal of Yadav and was confined to the extent of Yadav only, learned Service Tribunal has failed to appreciate this aspect that at the time of review, government or the appointing authority is empowered to review the DPC on the basis of grounds mentioned in Rule 11B and further the review is only regarding one person. The DPC have to be reviewed and the DPC have to be adjudged the suitability of the candidate on the merit basis and the DPC is only empowered to adjudge the suitability on the merit alone and since the DPC has considered the petitioner meritorious in comparison to the respondent No. 2, the Service Tribunal had no occasion to reverse the recommendation of the DPC and direct the respondent to promote the respondent No. 2 on the post of Joint Registrar against the vacancy for the year 1986-88 in the cadre of merit which is in my considered view is without jurisdiction and the Tribunal has exceeded its jurisdiction and has not considered Rule 11B.

14. Consequently, the impugned order dated 3.10.97 passed by the Service Tribunal is hereby quashed and set aside. And the writ petition stands allowed.