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WP-2120-2006

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 16th OF OCTOBER, 2024WRIT PETITION No. 2120 of 2006*M.H. QURESHI**Versus**STATE OF M.P. AND OTHERS*

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Appearance:

Shri K. K. Sharma - Advocate for the petitioner.

Shri Ravindra Dixit - Government Advocate for the State.

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ORDER

With the consent of both the parties matter is heard finally.

2. Petitioner has preferred this petition under Article 226 of the Constitution of India seeking following reliefs:

(1) Respondent No.1 and 2 may be ordered to hold a review D.P.C. to consider the petitioner's case for promotion as Assistant Engineer (Electrical Safety) and Assistant Electrical Inspector.

(2) Respondent Nos. 1 and 2 may be directed to apply the criteria "seniority-cum-merit" in considering the petitioner's case for promotion in the light of the legal averments made in this petition and should ignore the adverse remarks of the year 2001-02 representation against which is still pending.

(3) Respondents Nos. 1 and 2 may be ordered to assign seniority to the petitioner in the cadre of Assistant Engineer (Electrical Safety) and Assistant Electrical Inspector above respondent No.3 S.K. Jain, on his promotion as Assistant Engineer (Electrical Safety).

(4) Respondent Nos. 1 and 2 may be directed to fix this petitioner's salary in the time scale of pay applicable to the Assistant Engineer (Electrical Safety) and Assistant Electrical Inspector from a day earlier than that of respondent No.3 and pay him arrears arising out of fixation of his salary in the pay scale admissible as Assistant Engineer (Electrical Safety) and Assistant Electrical Inspector.

(5) Suitable order as may be deemed fit and appropriate at the facts and circumstances of the case may be passed.



(6) Suitable costs may kindly be awarded.

3. Brief facts of the case are that the petitioner was appointed as a Junior Engineer (Electrical Safety) and Junior Assistant Electrical Inspector in the year 1980. The criteria for promotion is seniority-cum-merit. He was communicated one adverse entry in ACR in the year 2001-2002 vide Annexure P/4, against which he had made a representation (Annexure P/5), therefore, the same was rejected vide order Annexure P/6. Thereafter he filed an appeal against the aforesaid order, however same has not been decided yet. As per law laid down by the Apex Court such adverse remarks cannot be taken into consideration while considering the promotion if the representation is pending and uncommunicated adverse remarks cannot become basis of supersession in the matter of promotion but on the basis of ACRs petitioner has been superseded to the post of Assistant Engineer (Electrical Safety) and Assistant Electrical Inspector though his junior respondent No.3 S.K. Jain and others have been promoted on the same post. Being aggrieved by the same, the petitioner has preferred this writ petition.

4. Learned counsel for the respondents opposes the prayer and prays for its rejection by submitting in their reply that case of the petitioner was also considered by the DPC which was held on 3.9.2005. The criteria for promotion was seniority-cum-merit and annual confidential report i.e. of last five years from the year 1999-2000 to 2003-04 were taken into consideration for promotion cases of 24 employees and as per the criteria laid down by DPC minimum 10 marks ought to be obtained for promotion and none of the confidential report should be "GHA" category. Petitioner has obtained only



four marks and the petitioner was awarded category "GA" in four years and category "GHA" in the year 2001-2002, therefore, petitioner was not found fit for promotion. Petitioner never filed any appeal/representation against order dated 28.6.2003 (Annexure P/6), therefore, the petitioner does not deserves for any relief.

5. Heard learned counsel for both the parties at length and perused the entire documents with due care.

6. From perusal of the record it appears that for the period of 2001-2002 category "GHA" has been awarded to the petitioner. Petitioner made a representation against those entries in ACR but same has been dismissed by order dated 28.6.2003 (Annexure P/6). Learned counsel for the petitioner contended that thereafter petitioner has filed another representation/appeal (Annexure P/8) against the order dated 28.6.2003 but neither there is any acknowledgement of Annexure P/8 by the Department nor there is any averment made by the petitioner that by which mode the petitioner has submitted the appeal, therefore, Annexure P/8 cannot be relied upon and in absence of challenge to the order Annexure P/6, it has attained finality.

7. Learned counsel for the petitioner contended that petitioner was never communicated the adverse ACR for the period of 1999-2000 to 2003-2004 except 2001-2002, therefore, adverse entry in ACR cannot be acted upon him till the opportunity of representation against it has been afforded and considered. Learned counsel for the petitioner has relied upon the following judgments:

(i) The Supreme Court in the case of State Bank of India &



Ors. vs. Kashinath Kher & Ors. reported in (1996) 8 SCC 762.

(ii) The Supreme Court in the case of U.P. Jal Nigam & Ors. vs. Prabhat Chandra Jain & Ors. reported in (1996) 2 SCC 363.

(iii) The Supreme Court in the case of Gurdial Singh Fijji vs. State of Punjab & Ors. reported in (1979) 2 SCC 368.

(iv) High Court of Chhattisgarh, Bilaspur vide order dated 17.12.2021 passed in W.P. No.(s) No.1779/2020 (H.L. Hidco vs. State of Chhattisgarh & Ors).

(v) In the case of S. Maheshwar Rao vs. State of Orissa & Anr. reported in 1991 SCC (L & S) 952.

8. But from perusal of the relief sought by the petitioner it appears that the petitioner did not sought any relief for expunging the adverse remarks made in his ACRs for the period 1999-2000 to 2003-2004 except 2001-2002, therefore the issue regarding admissibility of adverse remarks, ACR cannot be considered in the instant matter.

9. Counsel for the respondent submitted that petitioner is not found fit for promotion as he could not secure minimum prescribed bench-mark as held by the DPC. The relevant portion of return reads as under:

The case of the petitioner was also considered by the DPC which was held on 3.9.2005. The criteria for promotion was seniority cum merit and last five years confidential reports i.e. from the year 1999-2000 to 2003-04 were taken into consideration for the promotion cases of 24 employees was taken into consideration. As per criteria laid by the DPC minimum ten marks a candidate should have obtained for promotion and none of the confidential report should be of Gha "घ" category.

In the present case the petitioner has obtained only four marks as per the grading system adopted by the DPC. The confidential report of the petitioner for the year 1999-2000 is Ga "ग", for the year 2000-2001 is Ga "ग",, for the year 2001-02 is Gha "घ", for the



year 2002-03 it is Ga 'ग', and for the year 2003-04 it is Ga 'ग',. Thus the DPC has rightly considered the case of the petitioner and as per the criteria laid down by the DPC the petitioner is not completing the required conditions and accordingly he was found unfit for promotion. The petitioner was having confidential report for four years to be Ga 'ग', i.e. average having one mark and Gha "घ" for one year i.e. below average having 0 marks. The respondent No.3 i.e. S.K. Jain has obtained 13 marks in all and was having three Ka "क" i.e. very good having three marks each and two Kha "ख" i.e. good having two marks. Thus he was rightly promoted over and above the petitioner.

10. The Co-ordinate Bench of this Court in the case of **Ram Bharose vs. State of M.P. & Ors.** reported in 2012 (3) MPLJ 464 has held as under:

9. The Apex Court had an occasion to consider this aspect in *Union of India and another vs. S.K. Goel and others, (2007) 14 SCC 641*. The Apex Court held as under:

The judgment of the Tribunal did not call for any interference inasmuch as it followed the well settled dictum of service jurisprudence that there will ordinarily be no interference by the Courts of law in the proceedings and recommendations of DPC unless such DPC meetings are held illegally or in gross violation of the rules or there is misgrading of confidential reports. No judicial review of DPC proceedings, which are ordinarily conducted in accordance with the standing Government instruction and rules is warranted. The observations of the High Court were wholly unjustified inasmuch as the post of Commissioner of Customs and Central Excise was a post required to be filled up on selection made strictly on the basis of merit. DPC had made an overall assessment of all the relevant confidential reports of the eligible officers who were being considered. DPC considered the remarks of the reviewing officers. There was clear application of mind. Respondent No.1 did fulfil the bench mark. Hence, the impugned direction of the High Court ought not to have been issued as the same would have the impact of causing utter confusion and chaos in the cadre of the Indian Revenue Service and Customs and Central Excise Service." (Emphasis supplied)

In para 31, the Apex Court held as under:

"31. For the foregoing reasons, we hold that DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by this High Court is not called for." (Emphasis supplied).

10. In *Diploma Engineers sangathan vs. State of U.P., (2007) 13 SCC 300*, the Apex Court has held that in criteria of seniority subject to fitness it does not mean that promotion is automatic on the basis of the seniority. It means that a list of all candidates in



feeder post should be prepared in order of seniority and each candidate as per rank in seniority is considered on merits and whoever is found unfit is rejected.

11. On the basis of aforesaid judgment, this Court is of the considered opinion that even in criteria of seniority-cum-merit, the DPC is empowered to assess and categorise the employees as 'fit' or 'not fit'. For such determination as fit or not fit, the DPC has power to fix the criteria. In the present case no malice is alleged against the proceedings of DPC. This is also settled in law that this Court cannot sit as an Appellate Authority over the finding of DPC/Selection Committee. The DPC proceedings can be interfered with only if it runs contrary to the statutory rule or hits Wednesbury Principles. Therefore, no interference is warranted in the findings of DPC whereby the petitioner was held to be unfit or not able to make the bench mark laid down by the DPC.

12. For the foregoing reasons stated above, no interference is warranted. The instant writ petition is devoid of merit and substance and is dismissed accordingly.

13. No order as to costs.

(ANIL VERMA)
JUDGE

(alok)