

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESHAT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

ON THE 8th OF MARCH, 2022

WRIT PETITION No. 1564 of 1996

Between:-

**INDRABHAN GAUTAM, S/O SHRI SAMPATI
KUMAR GAUTAM, AGED 43 YEARS,
WORKING AS MANAGER VILLAGE
INDUSTRIES AT DISTRICT INDUSTRIES
CENTRE; SATNA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI D.K. MISHRA, ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH, THROUGH
SECRETARY, GRAMODYOGA VALLABH
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. MANAGING DIRECTOR M.P. KHADI AND
GRAMODYOG BOARD CHITTORCOMPLEX
MAHARANA PRATAP NAGAR, BHOPAL
(MADHYA PRADESH)**
- 3. CHAIRMAN PROMOTION COMMITTEE
KHADI AND GRAMODYOG BOARD
CHITTORGARH COMPLEX; MAHARANA
PRATAP NAGAR BHOPAL (MADHYA
PRADESH).**
- 4. PRAFULL KUMAR DIXIT DEPUTY
DIRECTOR, DISTRICT INDUSTRIES
CENTRE, INDORE (MADHYA PRADESH)**
- 5. SWANTRA KUMAR SHARMA, S/O NOT
KNOWN, DEPUTY DIRECTOR, DISTRICT
INDUSTRIES CENTRE; BILASPUR (MADHYA
PRADESH).**
- 6. ANANDI LAL JAIN DEPUTY DIRECTOR,
DISTRICT INDUSTRIES CENTRE, REWA
(MADHYA PRADESH).**
- 7. SOMADATT SHARMA, DEPUTY DIRECTOR
KHADI AND GRAMODYOG BOARD,
CHITTOR COMPLEX, MAHARANA PRATAP
NAGAR, BHOPAL (MADHYA PRADESH).**

8. **ASHOK KUMAR PANDEY, DEPUTY DIRECTOR, DISTRICT INDUSTRIES CENTRE, BHOPAL (MADHYA PRADESH).**

...RESPONDENTS

(BY SHRI RITWIK PARASHAR, GOVERNMENT ADVOCATE FOR RESPONDENT NO.1 AND SHRI UDYAN TIWARI, FOR RESPONDENTS NO.4 TO 8)

This petition coming on for hearing this day, this court passed the following:

ORDER

The petitioner is aggrieved by the order dated 31.01.1996 (Annexure-P-9), whereby, the petitioner has been superseded and the private respondents have been promoted on the post of Deputy Director. The petitioner has also prayed for various other consequential reliefs.

2. The facts of the case are that the petitioner joined the services of the respondent- M.P. Khadi and Gramodyog Board on 01.08.1978 on the post of District Inspector. Vide order dated 27.07.1979, the petitioner was promoted and was appointed as Manager for a period of two years on probation. The respondent No.2 vide order dated 30.07.1995, published the seniority list of Managers as on 01.04.1995. The name of the petitioner was at Serial No.15 and the names of respondents No. 6, 7 & 8 are at Serial Nos. 16, 17 & 18. The petitioner had a grievance against his placement in the seniority list and, therefore, he made a representation to the respondents for appropriate correction in the seniority list.

3. The respondent-Board is constituted in accordance with the provisions of M.P. Khadi Tatha Gramodyog Act, 1978 (hereinafter referred to as the 'Act of 1978' for short) and the Board has adopted the Service Rules known as M.P. Civil Services (Classification, Control and Appeal) Rules, 1961 (hereinafter referred to as the 'Rules of 1961' for short). It is not disputed at bar that the M.P. Public Service (Promotion) Rules, 2002 are

also applicable to the officers of the Board. The petitioner stated that in accordance with the Service Rules of the Board, there were 14 posts for the main office and 6 posts for regional offices and in all there were 20 posts of Deputy Director and those posts were 100% promotional from the post of Manager and the experience of 12 years was necessary and the petitioner was fulfilling all the eligibility criteria to be promoted on the post of Deputy Director.

4. The petitioner states that when promotion on the said posts were likely to take place, the respondent-Board vide Annexure-P/6 dated 12.10.1995, communicated an adverse confidential report of the year 1994-95 to the petitioner. The petitioner submitted his reply and prayed to expunge the adverse remark in the ACR. The respondent vide order dated 08.01.1996 rejected the representation submitted by the petitioner against the adverse remark made in his ACR. Thereafter, vide order dated 31.01.1996, order of promotion on the post of Deputy Director to other eligible officers were issued where the name of the petitioner did not find place.

5. The respondents have filed their reply and it has been stated by respondent Nos.1 to 3 that after inviting objections on the provisional seniority list, a fresh provisional seniority list was prepared and was published on 30.03.1993 reflecting the seniority as on 01.04.1992 where the name of respondent Nos.4 and 5 were above the name of the petitioner. The name of respondent Nos.6 to 8 were just below the name of the petitioner. The petitioner did not challenge his placement in the seniority list, however, the objections filed by the individual candidates were decided.

6. Learned counsel for the petitioner submits that respondent No.4 to 8 are junior to the petitioner who have been promoted and therefore, non-promotion of the petitioner on the post of Deputy Director is violative of Article 15 and 16 of the Constitution. By way of amendment, the petitioner has also prayed for quashing the adverse entries in his ACR of the

concerned year. The learned counsel appearing for the petitioner places reliance on a decision of the Supreme Court in the case of *Dev Dutt Vs. Union of India and others*¹. It is alleged that in view of the law laid down by the Supreme Court in the said case, the action of the respondents suffers with arbitrariness in not considering the case of the petitioner for promotion.

7. This petition was earlier disposed of by this Court vide order dated 07.09.2006. In the said order, the submission of the learned counsel for the petitioner was recorded that the confidential report for the year 1992-93, 1993-94 and 1994-95 were communicated to the petitioner and the same were not the adverse entries, but it was advisory in nature. This Court while finding that there was nothing on record to show as to how the DPC considered the confidential reports of those years and under such circumstances, the employer was directed to hold a review DPC to consider the case of the petitioner afresh. The said order dated 07.09.2006 passed in the present case was challenged in Writ Appeal No. 1074/2006 by the respondent-employer before the Division Bench of this Court. The Division Bench of this Court in Writ Appeal No.1074/2006, vide order dated 05.12.2013, has interfered with the order passed by this Court and has found that the learned Single Judge did not adhere to the contents of the Document Annx.R/9 (Annexure-P-6 to the writ petition) and under those circumstances, the finding recorded by this Court that the ACR pertaining to the year 1994-95 was advisory in nature was set aside and the parties were relegated to this Court for the examination of the issue afresh.

8. The Supreme Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right. It has been held that there is no fundamental right to promotion but an employee always has right to be considered, when the occasion arises, in accordance with the relevant rules (*See: Director, Lift Irrigation Corporation Limited Vs. Rawat Kiran Mohanti*²). It is also settled law that if a person who satisfy

1 (2008) 8 SCC 725

2 (1991) 2 SCC 295

the eligibility and the criteria for promotion, but still is not considered for promotion, then there will be clear violation of his/her fundamental right (*See: Ajit Singh and Others Vs. State of Punjab and Others*³). No officer has a vested right to a promotional post which is restricted to that of consideration according to law.

9. There is no dispute with regard to the fact that name of the petitioner finds place at Serial No.15 in the seniority list, however, it has been stated that respondent No.4 and 5 had always been shown as senior to the petitioner right from the year 1979. The petitioner did not earn good grading for the last 3 years before the date of DPC for the promotion on the post of Deputy Director and the adverse remark were duly communicated. Since the respondent Nos. 4 to 8 did not earn adverse remark and their grading was good, hence, they were considered for promotion. It has also been stated in the reply that not only of the year 1994-95, but even for the year 1992-93, 1993-34 also, the ACR of the petitioner was not good and the adverse remark in his ACR of those years was also communicated to him vide Annexure R/7 and R/8. The petitioner had given representations which were rejected.

10. This Court has perused the proceedings of the DPC dated 08.01.1996, produced by the employer. The DPC has considered the following criteria for considering the eligible candidates for promotion on the post of Deputy Director :-

- (1) दिनांक 01/01/96 की स्थिति में प्रबन्धक/उद्योग अधिकारी/प्रबन्धक ग्रेड-1 वेतनमान रूपये 2200-4000 के पद पर सेवा अवधि दिनांक 1-1-96 को 12 वर्ष की पूर्ण होना चाहिए।
- (2) विगत 5 वर्षों की गोपनीय चरित्रावलियों का अवलोकन किया जाय और यदि 5 वर्षों में एक वर्ष की गोपनीय चरित्रावली न हो तो पिछले वर्ष की गोपनीय चरित्रावली देखी जाय।
- (3) 5 वर्षों की गोपनीय चरित्रावली में यदि 3 वर्ष की चरित्रावली अच्छी श्रेणी "ख" एवं 2 वर्ष की चरित्रावली सामान्य श्रेणी "ग" तथा कोई "घ" श्रेणी न हो तो उन्हें पदोन्नति हेतु विचार में लिया जाय।

- (4) यदि एक वर्ष की चरित्रावली "घ" श्रेणी है तथा उसके बाद के वर्षों में श्रेणी बहुत अच्छी "क" श्रेणी या उत्कृष्ट "+क" श्रेणी है तो "घ" श्रेणी की पूर्ति "क" अथवा "+क" श्रेणी से हो जायेगी। अतः ऐसे प्रकरणों पर पदोन्नति हेतु विचार किया जावे।
- (5) पाँच वर्षों की गोपनीय चरित्रावली में अंतिम वर्ष की गोपनीय चरित्रावली सामान्य श्रेणी "ग" या घटिया श्रेणी "घ" नहीं होनी चाहिए। यदि अंतिम वर्ष की गोपनीय चरित्रावली "ग" या "घ" श्रेणी की हो तो उसे पदोन्नति के योग्य नहीं माना जावे।
- (6) जिन प्रकरणों में विभागीय जाँच चल रही है, ऐसे प्रकरणों में पदोन्नति समिति का निर्णय बन्द लिफाफे में रखा जावे।
- (7) पदोन्नति से भरे जाने वाले 20 पदों में से रोस्टर के अनुसार 12 पद सामान्य श्रेणी, 3 पद अनुसूचित जाति एवं 5 पद अनुसूचित जन जाति के आते हैं।

11. The perusal of condition No.(5) clearly shows that ACR of the last five years was to be considered and the ACR of the preceding year immediately to the year of DPC should not be in any case be 'Ga' or 'Gha'. If the ACR of the preceding year to the year of DPC is 'Ga' or 'Gha', such candidate is ineligible for promotion. The case of the petitioner has been considered in General Category at Serial No.16 and on account of the adverse ACR for the year 1994-95, which was 'Gha', he was not found eligible for promotion.

12. The Hon'ble Supreme Court in the matter of *Dev Dutt Vs. Union of India and others* after considering the law laid down in earlier decision of *U.P. Jal Nigam V. Prabhat Chandra Jain*⁴, has held in paragraph No.36 that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation.

4 (1996) 2 SCC 363

13. The perusal of the record of the DPC and the fact that the petitioner earned adverse entry in his ACR of the year 1994-95, which has been found to be duly communicated to him and his representation against the said entry was also rejected by the employer, shows that the said ACR was duly communicated to the petitioner.

14. The Hon'ble Supreme Court in the matter of *Union of India and another V. C. Ganayutham*⁵ has held that to adjudge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters have not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test. There is no doubt that under the power of judicial review the Constitutional Court can always interfere with the adverse remark made in the concerned ACR. However, the scope of interference is quite limited and the same has to be keeping in mind the principles laid down in the case of *Union of India and another Vs. C. Ganayutham (supra)*.

15. It is thus evident that the petitioner had adverse ACR for the year 1994-95, which was 'Gha', and hence he was not found eligible for promotion on the post of Deputy Director. The said adverse remark was duly communicated to him. The petitioner made a representation against the said ACR, which was rejected. This Court, therefore, does not find any infirmity in the impugned decision of the respondents.

⁵ (1997) 7 SCC 463

There is no substance in the instant petition, which is accordingly dismissed.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

A.Praj.