

W.P.No.6310/2012

10.09.2015

Shri Sanjay K. Agrawal, learned counsel for the petitioner.

Shri Pushendra Yadav, learned Govt. Advocate for the respondent No.1 and 2.

The petitioner has filed the present writ petition challenging the order dated 20/1/2011 issued by respondent No.1 thereby promoting respondents No.3 to 5 to the post of Superintending Engineer although the petitioner was senior to respondents No.3 to 5 in the cadre of Executive Engineer and the order dated 20/9/2011 thereby rejecting his representation.

2. Brief facts of the case are that the petitioner is working on the post of Executive Engineer in the Public Works Department. He was initially appointed on the post of Assistant Engineer vide order dated 15/3/1984. He was thereafter promoted to the post of Executive Engineer in the year 2006 w.e.f. 1991. In compliance of the order dated 15/2/2008 passed by Gwalior Bench of this Court in W.P. No.1295/2004 a revised seniority list of Executive Engineer was published and the petitioner is placed at serial No.139 in the seniority list while respondents

No.3 to 5 were placed below to the petitioner. Thereafter a DPC was convened on 14/1/2011 for considering the cases of the eligible Executive Engineers for promotion to the post of Superintending Engineer. In the said DPC, the case of the petitioner as well as respondents No.3 to 5 was considered. On the recommendations of the said DPC, respondents No.3 to 5 were promoted on the post of Superintending Engineer vide order dated 20/1/2011. As the juniors were promoted, the petitioner, therefore, made enquiries and applied for issuance of copy of minutes of the DPC as well as copy of CR for the period under consideration. These documents were supplied to the petitioner.

3. On receipt of the aforesaid documents, the petitioner has found that the CR for the 2000-01, the reporting authority awarded 'Very good' grading to the petitioner. The grading of the reporting authority was also accepted by the reviewing authority, however, the accepting authority has down graded the grading from 'Very good' category to 'good' category, accordingly awarded 'B' category without assigning any reason whatsoever. Similarly, for the period 1/4/2001 to 31/3/2002 the

reporting authority awarded 'very good' grading i.e. 'A', the reviewing authority awarded 'outstanding' grading i.e. A+, however, the accepting authority i.e. Chief Engineer, PWD, Jablapur has downgraded the CR for the said period by awarding 'average' grading i.e. 'C'. The petitioner has further stated that he was denied promotion only because for the year 2000-01 and 2001-02 the CRs of the petitioner were downgraded to 'good' and 'average' by the accepting authority and the DPC accepted the grading awarded by the accepting authority without making overall assessment of the grading awarded by the reporting authority as well as reviewing authority. He further submits that the Executive Engineer is a Class-I post and Superintending Engineer is also Class-I in the higher scale of pay. As per the provisions of Rule 4(3) of the M.P. Civil Services (Promotion) Rules, 2002, the criteria for promotion is merit-cum-seniority and because of the downgrading the petitioner could not get promotion to the higher post. He further submits that before downgrading the CRs, no opportunity of hearing whatsoever was afforded to the petitioner by the accepting authority. The petitioner, therefore,

submitted a detailed representation dated 9/4/2011 to the respondents, however, the respondents have rejected the said representation vide order dated 20/9/2011.

4. Learned counsel for the petitioner contends that in the case of one Kanakmal Jain whose CRs were also downgraded by the accepting authority, the respondents have reconsidered his case of downgrading by the accepting authority, has expunged and declared the said grading as *no nest*. To support his arguments, learned counsel for the petitioner placed reliance on a judgment passed by this Court in the case of **Tara Chand Soni Vs. State of M.P. and others** reported in **2015 MPHT 319** as well as the order dated 5/12/2012 passed by this Court in **W.P. No.8539/2011(s)**.

5. On the other hand, learned counsel for the respondents/State by filing return, has submitted that the accepting authority has downgraded the CRs of the petitioner on the basis of overall evaluation of his CRs. It is further submitted that review DPC has rationally evaluated each and every CRs of the petitioner which were under consideration, accordingly, appropriate grading was awarded. The Secretary

of the Department had no authority to reevaluate the grading assigned by the DPC and after issuance of the promotion order pursuant to the recommendations made by the DPC. It is further submitted that the petitioner was aware about the remarks assigned to him in the respective ACRs by the respective authorities since 2000, but he did not make any representation whatsoever before the department and only when the petitioner was declared unfit by the DPC, he filed a representation. Learned counsel for the respondents placed reliance on the judgment passed by Hon'ble the Apex Court in the case of **Dev Dutt Vs. Union of India and others** reported in **AIR 2008 SC 2513**. It is, therefore, prayed that the writ petition may be dismissed.

6. I have heard learned counsel for the parties and perused the record. From perusal of the record, it appears that for the year 2000-01 reporting authority has awarded 'very good' grading to the petitioner. The aforesaid grading was awarded by the reporting authority after making proper evaluation. The grading awarded by the reporting authority was also accepted by the reviewing authority and both have awarded 'Very good'

grading to the petitioner for the period 1/4/2001 to 31/3/2002. The accepting authority considered the said grading for the period 21/12/2000 to 31/3/2001 i.e. only for a period of three months. For the said period of three months the accepting authority has downgraded the grading from 'very good' to 'good' category however, grading 'good' category to the petitioner, it appears that no reason whatsoever has been assigned by the accepting authority in downgrading CR to the petitioner nor any notice or opportunity of hearing has been given to the petitioner before downgrading the CR. Similarly, the CRs for the year 1/4/2001 to 31/3/2002 the reporting authority awarded 'very good' grading i.e. 'A', the reviewing authority awarded outstanding grading i.e. 'A+' to the petitioner, however, the accepting authority has downgraded the said CR by three stages awarding 'Average' i.e. 'C'. For the said downgrading no reason whatsoever has been assigned and no opportunity of hearing or notice was given to the petitioner.

7. This Court in the case of **Tara Chand Soni (supra)** in paragraph-8 has held as under :

“8. Now, in context of the aforesaid, it is to be seen how the ACRs of the petitioner were down graded and how they have been treated as insufficient to grant promotion to the petitioner. In the ACR of the year 1976, the Initiating Authority has treated the working of the petitioner as 'Very Good'. The immediate Senior Officer of the Initiating Authority recorded that the petitioner is required to take more interest in the land record work. He had graded the petitioner as “Good”. However, the Final Authority simply recorded that the work of the petitioner is satisfactory and graded him as “Average”. A “Very Good” remark by the Initiating Authority was converted into “Average” remark without any cogent reason. It was not the sweet will of the officer concerned to finally downgrade the petitioner in such manner. He was required to record the reason as to why he has downgraded the petitioner in the said ACRs. Similar was the situation for the ACRs of the years 1977 and 1978. The Initiating Authority has graded the petitioner as “Good”, which was treated to be “Average”

by the Final Authority that, too, without recording any reason. On one occasion, the Collector himself has written that he was agreeing with the assessment made by the Tehsildar. If the said Tehsildar has graded the petitioner as “Good” then grading of the ACR was to be treated as “Good”.

8. In the said judgment, this Court has held that the accepting authority is required to record the reason as to why he has downgraded the petitioner in the said ACR. Similarly in the case of **Shambhu Dayal Richhariya Vs. State of M.P. and another (W.P. No.8539/2011(s)) dated 5/12/2012**, this Court has held as under :

“Even though, Shri Sanjeev Kumar Singh tried to emphasize that the representation has been decided in accordance with the circular Annexure R-1 dated 30th June, 1992. The fact remains that the initiating authority and the first reviewing authority have graded the applicant as outstanding i.e. A+ for the years in question and the second reviewing authority has downgraded the same to A, in the light of

law laid down by the Supreme Court in the case of **Devdutt (supra)**, the principles of natural justice has to be applied with in such cases and the downgrading by the second reviewing authority for the years in question having been done without notice to the petitioner and without hearing him, the same is unsustainable. To that extent, the relief has to be granted to the petitioner.”

9. From perusal of the aforesaid judgment, it is clear that an opportunity of hearing or show cause notice is required to be given to the petitioner before downgrading his CRs. Thus, from perusal of both the judgments, as well as in the facts of the present case as no opportunity of hearing or any notice was issued to the petitioner before downgrading the CRs as well as no reason whatsoever has been assigned by the accepting authority in downgrading the CRs and, therefore, the action of the respondents in downgrading the CRs of the petitioner is not sustainable in law. Para-47 of the order passed by the Apex Court in the case of **Dev Dutt (supra)** relied on by learned counsel for the respondents relates to upgrading of CRs and,

therefore, para-47 of the said judgment is not applicable in the present case.

10. Accordingly, the writ petition is allowed. The impugned order dated 20/9/2011 issued by respondent No.1 by which respondent has rejected the representation of the petitioner is set aside. Downgrading of ACRs for the year ending 2000-01 and 2001-02 as given by the accepting authority is quashed. The matter is remanded back to the accepting authority to issue show cause to the petitioner indicating the reasons for downgrading of the ACRs after giving opportunity of hearing to the petitioner and decide the matter in accordance with law within a period of three months thereof and if the Accepting Authority does not conclude the procedure within the aforesaid time, then the ACRs recorded by the Initiating Authority and Reviewing Authority shall be maintained and affirming the same, the matter shall be proceeded with in favour of the petitioner for grant of promotion and all consequential benefit along with his juniors.

(Ms.Vandana Kasrekar)
Judge