

(2004) 08 P&H CK 0058

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 18511 of 2003

R.S. Raperia

APPELLANT

Vs

Central Warehousing
Corporation and Another

RESPONDENT

Date of Decision: Aug. 17, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2005) 139 PLR 37

Hon'ble Judges: S.S. Nijjar, J; Adarsh Kumar Goel, J

Bench: Division Bench

Advocate: S.S. Godara, for the Appellant; Rajesh Garg, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.

The petitioner has invoked the extraordinary jurisdiction of this Court, by filing the present petition under Article 226/227 of the Constitution of India. He prays for the issuance of a writ in the nature of Certiorari quashing the action of the respondents in down grading the ACRs of the petitioner for the period from 1992 to 1997. He also prays for issuance of a writ in the nature of Mandamus directing the respondents to reconvene the DPC meeting to reconsider the petitioner's case for promotion as Executive Engineer w.e.f. 23.7.1998.

2. It is the pleaded case of the petitioner that to the best of his knowledge, his reports for the year 1992 to 1997 were "Very Good". The Reviewing Authority has also assessed the work of the petitioner during the aforesaid period as "Very Good". The Countersigning Authority has, however, assessed his work as "Good". The petitioner was due for promotion for the post of Executive Engineer and was promoted as such by order dated 23.7.1998. However, the petitioner felt aggrieved by his being placed below the names of juniors. Consequently, the petitioner

submitted representation dated 4.1.1999. Ultimately, the representation of the petitioner has been decided by the respondents by order dated 18..2003. The petitioner has been informed as follows:-

"In the case of promotions made for induction to Group "A" posts/services from lower group, while the Bench Mark will continue to be good, the DPC shall grade the officers as outstanding", very Good, Good, Average and Unfit as the case may be, and the officers will be arranged according to the grading obtained, placing the outstanding officers on top followed by those graded as very good and so on the select panel to the number of vacancies, with the officers having the same grading maintaining their inter-se-seniority in the feeder grade."

Your over all grading was good i.e. in the benchmark. Therefore, in the interse-seniority officer having higher grading has been placed above according to their grading. As regards providing documents of DPC, the same can not be supplied as these are privileged documents."

3. On receiving the aforesaid order, the petitioner again represented to the respondents. Till date, the petitioner has not been given any reason as to why the grading of the petitioner had been reduced from "Very Good" to "Good". In fact, the petitioner has not been granted any opportunity of hearing before the ACRs have been down graded by the Countersigning Officer.

4. Mr. S.S. Godara, learned counsel for the petitioner vehemently argued that the action of the respondents is arbitrary and it violates the principles of natural justice. Juniors of the petitioner having been placed higher in rank, the action of the respondents is also violative of Article 14 and 16 of the Constitution of India. Mr. Godara, in support of his submissions has cited the judgment of the Supreme Court in U.P. Nigam and Ors. v. Prabhat Chandra Jain and Ors. 1996 (1) S.L.R. 743.

5. Mr. Rajesh Garg, learned counsel for the respondents, however, submits that the writ petition deserves to be dismissed on the short ground that the petitioner has approached this Court after inordinate delay. Learned counsel also submitted that none of the Executive Engineers who would be affected by the decision of the writ petition has been impleaded as a party. He further submitted that only adverse ACRs are to be communicated to an affected employee. Since the overall grading of the petitioner remained good, it was not necessary to send any intimation to the petitioner.

6. We have considered the submissions made by the learned counsel for the parties.

7. In our opinion, the judgment cited by Mr. Godara is not applicable to the facts and circumstances of this case. In the aforesaid judgment, the Supreme Court has observed as follows:-

"2. The first respondent was down graded at a certain point of time to which the service Tribunal gave a correction. Before the High Court, the petitioners" plea was

that down grading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets to the employee, since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an "outstanding" report in a particular year which, in a succeeding one, and without his knowledge, is reduced to the level of "satisfactory, without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not down grading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable but if the graded entry is of going a step down, like falling from very good to good that may not ordinarily be an adverse entry since both are a positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, be not reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can seriously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jail Nigam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

8. The aforesaid observations make it abundantly clear that the Supreme Court was dealing with a case where the ACR had been downgraded. In the present case, the submission of the learned counsel that the ACRs for the years 1992 to 1997 have been downgraded, is wholly misconceived. It is the pleaded case of the petitioner that the process of recording Confidential Reports of an Assistant Engineer working in the respondents-Corporation is channelised as under:-

"Reporting Authority- Executive Engineer

Reviewing Authority - Superintending Engineer.
Countersigning Authority - Chief Engineer."

9. The petitioner himself states in paragraph 7 of the writ petition that as per the norms reproduced above, it is the Countersigning Authority which endorses the confidential reports of an Assistant Engineer at final stage. It is the grading recorded by the said authority which is taken into consideration for all intents and purposes, including promotion. From the aforesaid pleadings, it becomes apparent that the final grading of the ACR is the grading given by the Countersigning Authority. The petitioner has undoubtedly accepted the norm for recording of the ACR. Year-wise details of the petitioner's Confidential Reports as well as the grading granted by the competent authority are as under:-

"Year	Remarks by Reporting Authority	Remarks by Authori	Reviewing Remark Countersigning Au
1992	Very Good	Very Good	Good
1993.	Very Good	Very Good	Good
1994	Very Good	Very Good	Good
1995	Very Good	Very Good	Good
1996	Very Good	Very Good	Good
1997	Very Good	Very Good	Good

10. Since the Countersigning Authority has graded the petitioner- as "Good" there has been no downgrading of the ACR. In view of the above, the aforesaid observations made in the case of U.P. Jal Nigam (supra), by the Supreme Court would not be applicable.

11. This apart, the petitioner cannot be granted any relief, in view of the law laid down by the Supreme Court in the case of [P.S. Sadasivaswamy Vs. State of Tamil Nadu](#), . The Supreme Court has clearly held as follows:-

"A person aggrieved by an order of promoting a junior over his head should approach the Court atleast six months or at the most a year of such promotion. It is not that there is any period of limitation for the Court to exercise their powers under Article 226 nor is it that there can never be a case where the Courts can not interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward state claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

12. We are of the considered opinion that the aforesaid observations are fully applicable to the facts and circumstances of this case. The petitioner has been representing against the alleged supersession since 4.1.1999. He sat over his rights and did not care to approach this Court by presenting a petition under Sections 226/227 of the Constitution of India for almost five years. The petition is therefore, liable to be dismissed as barred by delay and laches. In such circumstances we are of the opinion that no manifest injustice has been done to the petitioner.

13. Consequently, the writ petition is dismissed. No costs.