
(2016) 07 KAR CK 0069

KARNATAKA HIGH COURT

Case No: Writ Petition Nos. 35070-35071 of 2016 (S-CAT)

Government of India

APPELLANT

Vs

Dr. Raghunath Sharma

RESPONDENT

Date of Decision: July 19, 2016

Citation: (2017) 1 AirKarR 505 : (2016) ILRKarnataka 4333 : (2016) 3 KCCR 343 : (2017) LIC 1051

Hon'ble Judges: Jayant Patel and B. Sreenivase Gowda, JJ.

Bench: Division Bench

Advocate: Sri B.S. Venkatesh Kumar, for Caveator Respondents, for the Respondents; Smt. Manjuladevi R. Kamadalli, Advocate, for the Petitioners

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Jayant M. Patel, J. - Rule. Mr. Venkatesh Kumar B.S., learned Counsel appears for the respondents and waives notice of Rule.

2. With the consent of learned Advocates appearing for both the sides, the petitions are finally decided.

3. The short facts of the case appear to be that the respondents were not considered as fit for promotion on account of not reaching the requisite benchmark in Annual Confidential Record (for short ACR) for the last five years. As per the respondents, when ACR grading was given, all the columns before reaching to the conclusion of grading were not filled up by the competent officer and only final grading was given. As the respondents were not found fit for the selection, they approached the Central Administrative Tribunal (hereinafter referred to as "the Tribunal" for short) by preferring original application before the Tribunal. The Tribunal at the conclusion found that the consideration of benchmark on the basis of last five years ACR is not proper and the Tribunal also found that certain gradings were given in case of the respondents herein

without filling up of the requisite columns by the competent authority in the ACR and therefore the Tribunal ultimately issued two fold directions. One is that the ACRs of both the applicants-respondents herein which were incomplete due to many columns being left blank should not be considered for promotion to the next higher grade by DPC and the DPC was directed to consider the case of the respondents-applicants after taking into account ACR of 2006-07 onward within the period of three months from the date of receipt of the copy of the order. The additional direction given by the Tribunal is that the Department of Personnel & Training (herein referred to as "DOPT" for short) should review the existing instruction within a period of three months from the date of receipt of the order, in the light of the observations made by the Tribunal in its order. Under the circumstances the present petitions before this Court.

4. We have heard Smt. Manjuladevi R. Kamadalli, learned Counsel appearing for the petitioners and Mr. B.S. Venkatesh Kumar, learned Counsel appearing for the respondents.

5. In order to appreciate the contention, we may reproduce the operative direction issued by the Tribunal at paragraphs-18(a) and 18(b) which reads as under:

"18. Therefore, after a detailed consideration of all the facts and circumstances of the case, we order as follows:

a) In case of both the applicants the ACR for the year 2006-07 which according to us is held as incomplete due to many columns being left blank and reviewing officer reviewing the same in spite of adequate time at his disposal should not be taken into reckoning for considering their promotion to the next higher grade under DACP. Accordingly the respondents should take steps for holding a revised DPC to consider their promotion without taking into account the ACR for the year 2006-07. This should be done within a period of three (3) months from the date of receipt of the copy of this order.

b) As observed in the preceding paras, the Department of Personnel and Training (DOPT) is directed to review the existing instructions pertaining to bench mark prescription for promotion to the JS level and above and make necessary amendments in terms of our observations made earlier so that it becomes logical and an official does not suffer unduly. This should be done within three (3) months from the date of receipt of copy of this order."

6. We may now examine the matter direction-wise. The grievance raised by the learned Counsel for the petitioners for direction at para No. 18(a) was that the Tribunal could not have issued such a direction nor it is possible to get the complete ACRs of the respondents because those Officers who were competent to write ACRs have already retired and it was submitted that when the final grading is already given, there is no reason why such grading of ACRs should be ignored merely because some columns were kept blank. She therefore submitted that the direction No. 18(a) issued by the

Tribunal is illegal and this Court may interfere.

7. Whereas the learned Counsel appearing for the respondents while supporting the order passed by the Tribunal, more particularly for direction No. (a) submitted that if all the columns were kept blank or some columns were kept blank, the Tribunal was well within its power to ignore such ACRs and as the injustice is caused to the respondents, the order passed by the Tribunal is correct and this Court may not interfere.

8. In our view, when any ACR is to be written by the competent Officer, it is required for him to fill up all the columns. Filling up of the columns is not mere formality but is a step one by one to reach ultimate conclusion for grading of any Officer in the respective year. If all the requisite columns are not filled up and the final grading is given in the ACRs, such can be said as vitiated like order passed without any reasons or no sufficient reasons are recorded. It is true that the principles of writing a quasi-judicial order may not strictly apply in the process of writing of ACRs, but at the same time, when the various yardsticks are provided for ultimate grading of any Officer, the competent Officer needs to address on each and every yardstick for assessing the respective faculties and the nature of work. After he addresses each and every yardstick, he should be able to reach the ultimate conclusion for grading of an Officer for that respective year. If the columns are kept blank, meaning thereby, the yardsticks are not addressed and if the yardsticks are not addressed while writing the ACRs, the ultimate conclusion may not have full legs to stand and it would fall to ground. It can also be said that the ultimate decision of grading of the Officer would be vitiated. As it was reported that the competent Officers who wrote the ACRs have retired, the Tribunal has exercised the discretion by directing the authority to exclude and ignore such ACRs where the columns are kept blank by the competent Officer. Such an exercise of the discretion by the Tribunal cannot be said to be illegal or perverse. Under these circumstances, we find that there is no merit in the contention of the learned Counsel for the petitioners that the direction No. 18(a) could not have been issued by the Tribunal.

9. So far as direction at para No. 18(b) is concerned, the learned Counsel for the respondents submitted that as such, direction is issued to Department of Personnel and Training of the Government of India and therefore it would be for the said Department to make grievance and therefore he left the matter to the Court for appropriate orders.

10. Whereas the learned Counsel for the petitioners submitted that in absence of the Department being joined as a party and without giving any opportunity such a direction could not have been issued by the Tribunal. She also submitted that the Tribunal in any case, could not sit in appeal over the method and mode of considering any Officer as fit for promotion or otherwise and therefore the direction issued by the Tribunal are erroneous and may not be maintained by this Court.

11. In our view, if the direction at para No. 18(b) is considered in the light of reasonings recorded by the Tribunal at paras-14 and 15 of the order, we find that the Tribunal has

exercised the power as that of the appeal against the wisdom of the Department in finding out the suitability of any Officer as fit for promotion or not. In what manner, the merit of the Officer is to be assessed whether the ACRs of five years or ACRs of two years or any year is to be considered or not, are essentially within the domain of the employer and the Tribunal while examining the said aspects cannot sit in appeal by substituting its own reason in place of the employer. Further in any case, the DOPT was not joined as the party and without any notice to the petitioners, such direction could not have been issued by the Tribunal.

12. Under these circumstances, we find that the direction at para No. 18(b) cannot be maintained and deserves to be quashed and set aside.

13. In view of the aforesaid observation and discussion, the direction issued by the Tribunal in the impugned order at para No. 18(a) is not interfered with, but the direction issued by the Tribunal at para-18(b) is quashed and set aside.

14. The petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly.

Considering the facts and circumstances, no order as to costs.