

(1988) 01 MP CK 0015

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 1347 of 1986

Jagat Narain Tiwari

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: Jan. 8, 1988

Citation: (1989) 59 FLR 517 : (1989) JLJ 536 : (1990) 1 LLJ 561 : (1988) MPLJ 745

Hon'ble Judges: S. Awasthy, J; B.C. Varma, J

Bench: Division Bench

Advocate: V.S. Dharmadhikari, for the Appellant; R.K. Thakur, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

B.C. Varma, J.

The petitioner was initially appointed as Assistant Engineer. He was later promoted as Executive Engineer and then in the year 1973 further promoted as Superintending Engineer. In the gradation list of Superintending Engineers (Irrigation) as on August 22, 1979, the petitioner is shown at Serial No. 21 and the respondents No. 2 to 6 ranked lower. The petitioner, therefore, says that they are juniors to him. All those respondents are now Chief Engineers. Respondent No. 2 G.S. Jaspal, was so promoted in August, 1984 and the other respondents thereafter. Rules have been framed governing the services of gazetted officers in the Madhya Pradesh Irrigation Service. They are known as Madhya Pradesh Irrigation Engineering Services (Gazetted Recruitment) Rules, 1968. According to the Schedule 4, annexed to those rules the next higher post of promotion from Superintending Engineer is that of Chief Engineer. The posts of Chief Engineers can be filled in only by promotion. The criteria for such promotion is laid down in Rule 15 of the said rules.

The petitioner's grievance in this petition is that while the respondents No. 2 to 6 who are juniors to him as Superintending Engineers, have been promoted as Chief

Engineers and thus he has been wrongly superseded by them. According to him, this appears to be so because of certain adverse entries contained in his service roll for period between April 1, 1980 to March 31, 1981 and April 1, 1981 to March 31, 1982. These adverse entries were admittedly communicated to the petitioner on January 8, 1986 and on January 15, 1986. The petitioner vide documents No. 11 and 12 tiled with the petition represented against these adverse entries submitting a detailed explanation. When this petition was filed in April, 1986, the representations were pending consideration and no decision was taken thereon. However, during the course of hearing the learned counsel for the petitioner placed before the Court certain orders of the State Government in Irrigation Department dated July 13, 1987, by which the representations against the adverse entries for the years 1980-81 and 1981-82 stand rejected. However, that order was modified by another order dated November 9, 1987. A part of the adverse entry communicated to him for that year was quashed. The adverse entry which thus stands removed from the character roll of the petitioner for the year 1980-81 is as follows:-

"KARY GYAN TATHA CHAMTA AUSAT DARJE KA HA. KARY AUSAT DARJE KA HA. LAGAN TATHA PARIKAM KI AVASHKTA HA".

It may also be mentioned that similar adverse entries were communicated to the petitioner on March 10, 1986 and were received by him on March 12, 1986 relating to the year 1979-80. The petitioner's allegation is that in the meeting of the Screening Committee (Departmental Promotion Committee) constituted under Rule 14 of the said Rules held in July, 1983 for considering the cases of eligible Superintending Engineers including the petitioner for promotion to the post of Chief Engineers, these entries were taken into account although they were till then not communicated to him. Similar was the situation when such Committee again met in February, 1985 for like purpose. In the subsequent meeting of the Committee held in March, 1986 again these adverse entries were taken into account to assess the petitioner's merits although the representations against these entries were pending consideration before the authorities and had till then been not decided. The submission is that these uncommunicated adverse entries could not have been taken into account while considering the petitioner's merit for promotion as Chief Engineer.

The feet that aforesaid adverse entries have been taken into account by the Screening Committee in its meeting in July, 1983, February, 1985 and March, 1986 has been specifically averred by the petitioner in para 17-A of the petition. This is how the allegation runs "Those entries were taken into consideration by the Departmental Promotion Committee while considering the case of the petitioner in the years 1982, 1983 and 1985 and in the month of March, 1986". In answer to this allegation all that has been stated in the return filed by the State of Madhya Pradesh (respondent No. 1) is that the petitioner's case was considered for promotion every time since 1981 onwards till March, 1986 and the petitioner was always found unfit

for promotion. In the middle of that paragraph it is stated that all other allegations made in para. 17 are denied. The reading of this entire paragraph 16 of the return would clearly indicate that it contains no denial of the allegation that such adverse entries were taken into consideration in all meetings of the Screening Committee which met to consider the petitioner's case for promotion as Chief Engineer.

It is also worthy of note that State Government in its General Administration Department has issued a notification bearing No. 767/1871/Va. Para. Sa./1/84, dated November 29, 1984 whereby it is directed that the adverse entries against any employee must be communicated to him within three months. This has approval of the Sub-Committee of the Cabinet. It is further stated in the same memo that in case for any reason such adverse entry could not be communicated within the period of three months, then those entries may only be communicated to the concerned employee after obtaining approval from the General Administration Department.

During the course of hearing, learned counsel for the respondent No. 1 appearing for the State produced for perusal of the Court the petitioner's service rolls and the relevant proceedings of the Screening Committee (D.P.C.).

The contention advanced on behalf of the petitioner is that the proceedings in the meeting of the Screening Committee in July, 1983, February, 1985 and March, 1986 stand vitiated because while assessing the petitioner's merit, the uncommunicated adverse entries were taken into account. These entries could not have been considered also for the reason that after the expiry of the period of three months they had become extinct and the subsequent communication without the approval of the General Administration Department was also inconsequential, in view of the aforesaid notification of the State Government dated November 29, 1984. That such entries had been taken into account is a fact which, as we have earlier shown, has not been denied by the respondent No. 1 in its return. From the averment made in para. 14 of the return also it can safely be inferred that those entries were not communicated to the petitioner when his case for promotion was considered and rejected by the Screening Committee. Obviously, the purpose of communicating adverse remark against any officer is to apprise him of his shortcomings and to give opportunity to improve. Adverse remarks are not punishment awarded to any officer. In State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another, the object of communicating such adverse entries is said to be to give an opportunity to the officer concerned to improve his performance, conduct and character, as the case may be. The adverse remarks should not be understood in terms of punishment; but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay. In the case the relevant rules required that everything including the communication of the adverse remarks should be completed within the period of seven months. Although the rules

were held to be directory the Supreme Court opined that this period cannot be stretched to twenty seven months, simply because these rules are directory. The Supreme Court did not approve of the inordinate delay made in communicating the adverse remarks to the official. In the case in hand, the specific instructions with the approval of the Sub-Committee of the Cabinet are that the adverse entries must be communicated to the concerned employee within three months whereafter they become inconsequential. However, after assigning good reason and obtaining prior approval of the General Administration Department, such entries may be communicated even after the expiry of the period of three months. The delay here is of about three years. The entries were communicated only after this petition was filed in this Court. The representations were not decided even before the matter was taken up in the last meeting of the Screening Committee held in March, 1986. We also find that partly representation was accepted and part of the entry was expunged. In our opinion, all these factors vitiate the decisions taken by the Screening Committee (D.P.C) in those three meetings held in July, 1983, February, 1985 and March, 1986 in assessing the merits of the petitioner's case and judging his suitability for promotion to the post of Chief Engineer. We are of the opinion that those adverse entries cannot even now be taken into consideration for the reason that they had lost all their efficiency as they remained uncommunicated for a period of three months and did not have the approval of the General Administration Department when they were communicated. The communication was inordinately delayed. The adverse entries, therefore, for the period 1980-81 to 1981-82 as also for the period 1979-80 should not be taken into account for assessing the petitioner's suitability for promotion. In Gurdial Singh Fiji Vs. State of Punjab and Others, It was held that "the principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object particularly being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to consider his explanation and decide whether the report was justified. This principle was further reiterated and approved in a subsequent decision by the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, For the aforesaid reasons we are of the opinion that while assessing the petitioner's suitability for promotion in those three meetings held in July, 1983, February 1985 and March, 1986, the adverse entries made against the petitioner for the years 1979-80, 1980-81 and 1981-82 could not have been taken into consideration. The subsequent communication of these entries after about 3 years is wholly inconsequential being against the notification issued by the State Government dated 29th November, 1984 and, therefore, the

petitioner's suitability has to be assessed after completely ignoring these adverse entries against him.

For the aforesaid reasons, this petition is allowed. A direction shall issue to the State Government/respondent No. 1 to consider the petitioner's case in accordance with the Madhya Pradesh Irrigation Engineering Service (Gazetted Recruitment) Rules, 1968 afresh after ignoring the aforesaid entries and judge his suitability as if he was being considered in July 1983, February 1985 and March 1986. If he is found suitable at any stage he should be given due promotion and also assigned consequential due seniority. There shall be no order as to costs. Security amount be refunded to the petitioner.