

(2017) 04 MP CK 0102
MADHYA PRADESH HIGH COURT
Case No: 17841 of 2014

Chamru

APPELLANT

Vs

Smt. Phool Kunwari & Ors.

RESPONDENT

Date of Decision: April 26, 2017

Hon'ble Judges: Subodhabhyankar

Bench: Single Bench

Advocate: Shri Sanjay Kumar Agrawal, Piyush Jain, Ratnakar Prasad Mishra, Ishan Mehta

Judgement

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. Petitioner before this Court is posted as Deputy, Commissioner, Commercial Tax, Bhopal. He is aggrieved by the order dated 14.10.2014 passed in review DPC by the respondents whereby the petitioner's case for promotion has been rejected on the ground of non-eligibility of the petitioner on the basis of the ACRs of the earlier years.
3. In brief the case of the petitioner is that he was initially appointed as a Commercial Tax Officer on 14.01.1988 and subsequently, became the Assistant Commissioner, Commercial Tax on 31.12.2002 after putting in more than 25 years in service, he has an unblemished record and there is no adverse entry in his ACR.
4. The contention of the petitioner is that he was awarded outstanding (A+) grading for the years ending 2006-07 and 2007-08 by the concerned authorities, however, the review DPC, without assigning any reason or giving any opportunity to the petitioner, has lowered the aforesaid ACRs from outstanding (A+) to Very Good (A) and being aggrieved by the downgrading of ACRs, WP No. 15339/2010 was filed by the petitioner, which was disposed of by this Court vide order dated 23.02.2011 and the respondents were directed to decide the petitioner's representation. Pursuant

to the aforesaid order 23.02.2011, the respondents rejected the representation of the petitioner vide order dated 07.05.2011. Against the aforesaid order, petitioner again preferred WP No. 8539/2011(s), which was finally allowed by this Court on 05.12.2012 and the petitioner's ACRs for the years 2006-07 and 2007-08 were considered as outstanding (A+) and the down-grading of ACRs for the aforesaid years was quashed and the matter was remanded back to the Second Reviewing DPC to pass appropriate orders after giving due opportunity of hearing to the petitioner. In compliance to the order passed by this Court on 05.12.2012, the ACR of the petitioner was upgraded as outstanding (A+) on 22.06.2013. It is further contended by the petitioner that earlier DPC was convened on 17.09.2010 for consideration of the cases of eligible Assistant Commissioner to the post of Deputy Commissioner (Commercial Tax). Petitioner's ACR was considered as very good for the years 2006-07 and 2007-08, which were prevailing at that time and thus, the petitioner was not promoted as his ACR was upgraded to Outstanding only on 22.06.2013 by the department after intervention of this Hon'ble Court vide its order dated 05.12.2012.

5. Petitioner's further submission is that the promotion of the petitioner is governed by the M.P. Civil Services Promotion Rules, 2002 and the criterion prescribed is "merit-cum-seniority". The petitioner's contention is that in the original DPC held on 17.09.2010, the ACRs were considered for the years 2006-07 and 2007-08 and since the ACR of the petitioner as well as other similarly situated employees for the year 2009 was not available, therefore, ACRs of the last four years were taken into consideration by the said DPC. The extract copy of the proceedings is filed as Annexure P/3.

6. Since the criteria for promotion was "merit cum seniority", hence the persons whose total evaluation of ACRs came to 20 were classified as outstanding and were recommended for promotion in terms of the merit. After upgradation of the petitioner's ACR, review DPC took place wherein the ACR for the year 2009 was also considered, in addition to the ACRs which were actually considered by the original DPC for the year 2004 to 2008 and after considering the claim of the petitioner, has rejected the same for promotion to the post of Deputy Commissioner. Petitioner's contention is that in the original DPC only four years' ACR were considered but in the review DPC, in order to deprive the petitioner from the promotion, ACR of the year 2009 was also considered which was illegal and arbitrary in nature. It is further contended by the petitioner that had the ACR of the petitioner for the years 2004 to 2008 were considered, then he would have got higher marks and would have been placed on the top of the list on the basis of "merit cum seniority" criteria and would have been placed above the persons who were recommended for promotion in DPC dated 17.09.2010.

7. In return, the respondent/State has submitted that the ACR of the years 2005 to

2009 were taken into consideration. The grading of the petitioner was "very good" and his total marks were 19. There were three posts under the unreserved category and the petitioner was placed at Sr. No.7. The individuals who were comparatively senior than the petitioner and who fulfilled minimum criteria were promoted, hence the petitioner was not recommended by the review DPC for promotion. It is further contended by the State that in the DPC held on 17.09.2010 the ACRs which were to be considered were of the last four years i.e. from 2005-09, but due to non-availability of ACR for the year 2009, DPC, as per the procedure had taken into consideration the ACR of the year 2004 of the officers, who were in the zone of consideration and were found fit and although the petitioner was also in the zone of consideration but his marks were lower than the officers and his case was not considered. It is therefore, submitted that the procedure adopted by the respondents was in line with the guidelines issued in this behalf and in the petitioner's case, since ACR for the year 2009 was also available with the review DPC hence zone of consideration was kept from the years 2005 to 2009 and thus, it is submitted that the contention of the petitioner is misconceived and no benefit can be derived by the petitioner by drawing any parity with the case of the other officers who have already been promoted.

8. Learned counsel for the intervener has supported the contention raised by the State and has submitted that his case of promotion was considered on merits, which was available on the basis of ACRs, which were filed on the date of consideration and no illegality has been committed by the review DPC in considering the case of the petitioner while taking into account the ACR for the year 2009 also.

9. Heard the learned counsel for the parties and perused the record. The question before this court is that whether on 14.10.2014 the Review DPC was justified in considering the case of the petitioner by adopting the criterion other than the one which was adopted for the similarly situated employees at the time of original DPC on 17.09.2010.

10. So far as the procedure to be adopted for DPC is concerned, the same is provided under Clause 7 of the Minutes of the Meeting dated 17.09.2010 and the same reads as under :-

"VERNACULAR MATTER OMITTED"

11. Admittedly, initially the case of the petitioner was considered along with other employees on the same criterion as provided in Clause 7 as above. If the petitioner's ACR for the year 2006-07 and 2007-08 were wrongly downgraded from outstanding (A+) to Very Good (A), which were subsequently upgraded back to

outstanding (A+) after a hard fought legal contest wherein he was required to knock on the doors of this High Court twice by filing WP No. 15339/2010 and then WP No. 8539/2011 (s), in that case the petitioner cannot be said to be responsible for his low ACR.

12. Thus, it cannot be said that there was any fault on the part of the petitioner and in fact the respondents were duty-bound to consider the case of the petitioner on the same benchmark which was applied earlier in the year 2010 at the time of original DPC. It is a clear case of discrimination so far as the petitioner is concerned. The parity sought by the petitioner cannot be said to be unjustified and specially when he has fought tooth and nail to get his ACRs upgraded and the benefit of the same cannot be denied on hyper technical grounds. The contention raised by the counsels for the State as well as the Intervener cannot be accepted that the approach of the Review DPC in taking into account the ACR for the year 2009 was correct and was in accordance with the procedure provided for the same. This court is of the view that had it not been for reason that petitioner was awarded wrong ACRs for the aforesaid two years, he would have also had made it to the top of the list of DPC, but, as the luck would have it, he had to wait for further 9 years to get the record straight and to get the ACRs as "out standing" in place of "very good". In such circumstances, the Review DPC dated 18.09.2014 ought to have kept the parameters of considerations identical as that of original DPC held on 17.09.2010

13. On the other hand, if the benefit of the orders passed by this court is not extended to the petitioner then the whole exercise undertaken by him would turn out to be a futile exercise and would certainly be a defeat of the justice delivery system itself. People turn to this court or to any other court for that reason, with a flicker of hope that justice must one day prevail, but even after getting justice from this court and getting his ACR upgraded, if the petitioner is still left with an air of despair, then we cannot ignore the same as the fault in his stars. As has been aptly worded by William Shakespeare in Julius Caesar, "The fault, dear Brutus, is not in our stars/ But in ourselves, that we are underlings". In fact, these are the only testing times as, "the justice should not only be done, but should manifestly and undoubtedly be seen to be done", it may sound like an old cliché but its importance can never be lost sight of for the dispensation of justice.

Thus, I find substance in Shri Agrawal's contention that at the time of reconsideration of the petitioner's case for promotion in the year 2014, the review DPC ought to have followed same benchmark which was followed in the case of other officers whose names were considered along with the petitioner's name on 17.09.2010.

In view of the aforesaid facts and circumstances, the petition deserves to be and is hereby allowed. Consequently, the impugned order dated 14.10.2014 is hereby quashed. The respondents are directed to confer the promotion to the petitioner from the date on which he first became entitled for the same with all the consequential benefits. The aforesaid exercise be completed by the respondents within a further period of six weeks from the date of receipt of certified copy of this order.

No order as to costs.