

V.K.Bharadwaj Vs. State of Mp

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Court : Madhya Pradesh

Decided On : Oct-29-2012

Appellant : V.K.Bharadwaj

Respondent : State of Mp

Advocate for Pet/Ap. : Shri. Sanjay K. Agrawal

Judgement :

WRIT PETITION No.24159/200

29. 10.2012 Shri Sanjay K.

Agrawal, learned Counsel for the petitioner.

Shri Samdarshi Tiwari, learned Govt.

Advocate, for the respondents No.1 and 2.

The grievance of the petitioner is that he was superseded in the matter of promotion on the post of Assistant District Excise Officer when the cases of persons like respondent No.4 were considered along with the petitioner only because of an average grading in his confidential report of the concerning period.

It is contended that similarly situated person, who too was superseded, came before the Tribunal by way of filing O.A.No.234/1999.

The said O.A. filed by Ram Baboo Sharma was decided on 28.08.1999 and the Tribunal has categorically held that only because of such average entry in the ACR, he should not have been debarred from promotion.

A review D.P.C. was directed.

It was further held that if such an ACR was coming in the way of the said person for promotion, the same was required to be communicated to him but since this was not done, the said ACR was to be ignored.

It is further contended that the State Government preferred a writ petition before the Gwalior Bench of this Court being W.P.No.664/2000 against the order passed by the Tribunal.

The Division Bench of this Court has categorically held in view of the law laid-down by the Division Bench of this Court in the case of Narmada Prasad Saxena versus State of M.P. and others, 2005(3) J.L.J. 26, as also by the Apex Court WRIT PETITION No.24159/2003 2 in case of K.

Samantaray versus National Insurance Co.Ltd., (2004) 9 SCC 286, that such an average entry was to be treated as an adverse entry if it was coming in the way of promotion of the petitioner.

After considering the law laid-down by the Apex Court as also by this Court, the Division Bench of this Court has dismissed the writ petition of the State against the order of the Tribunal and affirmed the order of the Tribunal.

No further action was taken against such order of the Tribunal or this Court by the State Government.

On the other hand, the review D.P.C. was held and the said review D.P.C. considered said Ram Baboo Sharma for promotion in terms of the directions issued by the Tribunal.

The review D.P.C. has found such person fit for promotion and accordingly order dated 10.07.2008 has been issued by the State Government promoting the said person on the post of Assistant District Excise Officer w.e.f. the date the junior to

the said person was promoted.

It is submitted by learned Counsel for the petitioner that the petitioner was also one of the candidates, who were considered along with said Ram Baboo Sharma for promotion by the very same D.P.C. Only because of the average entry in one of the last ACRs of the petitioner, he was not found fit for promotion by the D.P.C. and the recommendation was not made with respect to the promotion of the petitioner.

In view of this, it is submitted by learned Counsel for the petitioner that the case of the petitioner is identical to the case of said Ram Baboo Sharma and he too is entitled to the relief as has been granted to said Ram Baboo Sharma.

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Advocate appearing for the respondents has gone through the order passed by the Tribunal and also by the Division Bench of this Court and has fairly stated after perusing the original record of D.P.C. that the petitioner too was not found fit for promotion only because of average entry in one of his last ACRs. Considering the aforesaid, since the issue has already been decided by the Tribunal and order has already been upheld by the Division Bench of this Court, the writ petition is allowed.

The respondents will examine the case of the petitioner by holding a review D.P.C. in terms of the directions issued in case of Ram Baboo Sharma (supra) and in terms of which the orders have been issued by the respondent on 10.07.2008, within a period of three months from the date of receipt of certified copy of the order passed today and if petitioner is otherwise found fit for promotion, will pass necessary orders in that respect within the aforesaid period in terms of similar directions and similar benefits as were extended by the Tribunal, to said Ram Baboo Sharma.

With the aforesaid the writ petition is allowed to the extent indicated herein above.

There shall be no order as to costs.

Certified copy as per rules.

(K.K.Trivedi) Judge Skc

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