

S.S. Phogat Vs. the Chief of Naval Staff and Others

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Court : Mumbai

Decided On : Dec-10-1998

Reported in : 1999(1)ALLMR3; 1999(1)BomCR688

Judge : Ashok Agarwal, Actg., C.J. and; S.S. Parkar, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226

Appeal No. : Writ Petition No 666 of 1998

Appellant : S.S. Phogat

Respondent : The Chief of Naval Staff and Others

Advocate for Def. : H.V. Kantharia, Adv.

Advocate for Pet/Ap. : Shyam Mehta, Adv. i/b ;Satyendra Kumar

Judgement :

ORDER

S.S. Parkar, J.

1. Petitioner who was holding the rank of Chief Petty Officer (Signal) in Navy has filed this petition seeking writ of mandamus to promote him to the post of Master Chief Petty Officer II.

2. Brief facts leading to the present petition are as follows :

The petitioner joined Indian Navy as Sailor (Signal Branch) on 13th September, 1974. After completion of training at Signal School in Cochin in September, 1975 he was promoted to the rank of Leading Signal Man on 5th November, 1982. On 15th January, 1985 he was further promoted to the rank of Petty Officer (Signal) and thereafter to the rank of Chief Petty Officer (Signal) from 1-10-1990. It appears that during his tenure as Chief.Petty Officer the petitioner had incurred disqualification because of some negligence on his part on 12th March, 1993 when he did not notice and, therefore, did not report about the theft of a TV from the place of which he was in charge. Under the rules of Navy a minimum of continuous period of 4 years of Very Good Conduct is required for being considered for further promotions. It is one of the criteria for eligibility for promotion to the higher post. Having incurred warrant punishment on 12th March, 1993, he became ineligible for being considered for promotion for a period of four years ending 12th March, 1997. Despite the ineligibility incurred by him, petitioner's name was placed before the Promotion Board for being considered for promotion to the post of Master Chief Petty Officer II in September 1994, in September 1995 and in September 1996. According to the petitioner he was placed at the first position on the merit list for the selection to the said post in September 1994 and at second position in September 1995 and again at first position in September 1996 but was not recommended for promotion by the Promotion Board due to the ineligibility suffered as aforesaid. The petitioner thereafter filed writ petition in this Court bearing No. 2166 of 1996. That petition came to be disposed of by the Division Bench of this Court on 23rd September, 1997 wherein after considering the fact that petitioner's ineligibility period had expired on 12th March, 1997 and had 4 years of very Good Conduct, the respondents were directed to consider the petitioner's case for promotion to the post of Master Chief Petty Officer II as early as possible.Pursuant to the said direction Special Promotion Board was appointed by the Chief of Naval Staff in January 1998. However the Board did not recommend the petitioner for promotion as he was not found fit for promotion since he lacked various attributes mentioned in para 14 of the Navy Order No. (Star) 40/94.

3. On behalf of the respondents an affidavit in reply dated 20th April, 1998 has been filed. Para 7 of the said affidavit mentions the reasons for not recommending

the petitioner for promotion which are as follows :

'With reference to para 7 I say that, the break in VG conduct was not the only obstacle in the petitioner's way for his promotion to MCPO II. I say that in accordance with the judgment of this Court on 23 September, 97 a Special Promotion Board was appointed by the Chief of the Naval Staff in January 98. The Board observed that the professional knowledge and the performance of the petitioner was good however his integrity, moral fibre and ability to shoulder high responsibilities was doubtful. The Board was of the opinion that the petitioner was not fit for promotion to the rank of MCPO since he lacked various attributes mentioned at para 14 of Navy Order 40 (Star)/94. Therefore, the Board did not recommend the sailor for promotion.'

4. Denying the allegations made and contentions raised in para 8 of the petition, it is further stated in para 8 of the reply affidavit of the respondents as follows :

'With reference to para 8(a) of the petition, I say that, professional record of the petitioner is good. However, as brought out earlier he did not possess the qualities required by a MCPO rank. The Promotion Boards did not recommended (sic) the petitioner for promotion in 1994, 1995 and 1996 because he did not possess the various attributes in accordance with para 14 of Navy Order 40 (Star)/94. Therefore, it is not correct to say that the break in VG conduct was the only hurdle for his promotion. In accordance with the judgement of this Honourable Court in writ petition No. 2166/96, a Special Promotion Board was held for the petitioner and even this Board did not find the petitioner fit for promotion. In 1994, 1995 & 1996, the petitioner stood at position 48, 01 and 14 respectively in the promotion boards.'

5. Shri Mehta, learned Counsel appearing on behalf of the petitioner contended that when the petitioner had already suffered for a period of four years during which period he was rendered ineligible for being even considered for promotion on account of warrant punishment to which he was subjected to on 12th March, 1993 due to some lapse in his duty, he cannot be disqualified for being promoted on the same ground when under the rules he is otherwise eligible for being considered for promotion especially when his service record is very good and he

fulfills all the criteria laid down under para 14 of the aforesaid Navy Order. He brought to our notice the copies of the certificates of merits which were received by him from time to time from the Naval Officer of the rank of Rear Admiral, Vice Admiral, and Commanding Officer. For instance Exhibit 'A' is the copy of the certificate issued in August 1988 by the Rear Admiral wherein it is stated that the petitioner had displayed highest standards of professionalism and determination and his professional competence, zeal, enthusiasm and devotion to duty are in keeping with the highest traditions of the service. Similarly he was admired for his untiring efforts, professional skill and willingness to shoulder additional tasks by Vice Admiral in the certificate issued to him copy whereof is annexed as Exhibit 'B' to the petition. Exhibit 'C' is the copy of the Citation issued in April 1995 by the Commanding Officer wherein it is stated that the petitioner's confidence and professional knowledge is of a calibre that made him the best in the Western Fleet and a much sought after individual. It is further stated that he had been a tremendous asset to the WF and had put in hard work to produce outstanding results during his stay of about two years. His various achievements also have been referred to in the said Citation. Similarly Exhibit 'D' is the copy of the certificate issued by Vice Admiral recognising his utmost dedication and professional competence of a very high order, stating further that his exemplary performance was in keeping with the finest traditions of the Indian Navy. Not only that but in para 5 of the reply affidavit it is conceded by the respondents that the Promotion Board of 1995 had placed the petitioner at Serial No. 1 in the Merit List but the petitioner was not recommended for promotion as he was not eligible for being considered for promotion in that year due to the ineligibility suffered by him as stated above. It is true, as pointed out by the petitioner, that though the petitioner was not eligible for being considered yet his name was placed in the selection list before the Promotion Board in the past three years of 1994, 1995 and 1996 and although admittedly in the year 1995 he was placed at Sr. No. 1 in the merit list he was not recommended for promotion due to the four years' eligibility bar for being considered for promotion. The Counsel for the petitioner has rightly contended that the averment in para 5 of the reply affidavit that in 1995 the petitioner, though was placed at Sr. No. 1 in the merit list, was not recommended as his integrity and loyalty were in doubt and he did not possess the various

attributes required of an MCPO II in accordance with the Navy Order 40 (Star)/94 cannot be relied on as this was not the case of the respondents in reply to the earlier petition filed by him in this Court being Writ Petition No. 2166 of 1996 which was disposed of on 23rd September, 1997. Secondly, if the petitioner did not really possess various attributes required for the said promotional post or his integrity or loyalty were in doubt, as alleged, he would not have been placed at Sr. No. 1 in the merit list of 1995 by the Promotion Board as admitted by the respondents in their reply affidavit. It is fairly pointed out on behalf of the respondents that in the year 1995 merit list of 24 persons was prepared by the Promotion Board and the petitioner stood at Sr. No. 1 but he was not selected obviously due to the ineligibility he suffered at that time.

6. Shri Kantharia however submitted that after the expiry of the embargo on the eligibility of the petitioner on 12th March, 1997, the petitioner could be considered for promotion which has been done by the respondents. He, however, contends that it is not incumbent on the respondents to promote him when he is considered for promotion. According to him, as stated in para 7 of the reply affidavit, though the professional knowledge and the performance of the petitioner was good, however his integrity, moral fibre and ability to shoulder higher responsibilities was doubtful and, therefore, the petitioner was not considered fit by the Board for promotion to the rank of MCPO and, therefore, was not recommended for promotion. On being asked Shri Kantharia fairly conceded that the CR of the petitioner was good and has also not disputed the various certificates and the citations of the merits issued to the petitioner by various higher ups in the Indian Navy copies whereof are annexed to the petition. His contention is that although the petitioner was eligible for being considered after the expiry of four years embargo on his eligibility, the Promotion Board has found him unsuitable to shoulder higher responsibilities because of the incident of 1993 due to which he was subjected to warrant punishment on 12th March, 1993. We are, however, unable to accept the submission made by Shri Kantharia on behalf of the respondents. The service lapse on the part of the petitioner had incurred him the punishment for not being considered for promotion for a period of four years. Since the petitioner is now eligible for being considered for promotion after earning continuous 4 years very Good Conduct the warrant punishment incurred earlier in

March 1993 cannot incur him disqualification on merits for his further promotion when he otherwise becomes eligible for promotion. If the argument which is advanced on behalf of the respondents is accepted, it would mean that although under the rules the disqualification is to be incurred by the petitioner for a period of four years only, the Promotion Board can consider the same again as disqualification on merits for recommending him for further promotion even after he earns the very good conduct continuously for four years which is required for further promotion. In other words if the contention were to be accepted it would only mean that for the said one lapse on the part of the petitioner, he incurs disqualification in perpetuity i.e. first technical ineligibility for 4 years and thereafter on merits permanently, though under the regulations he is now eligible for being considered for promotion.

7. Shri Kantharia then relying on the decision of the Supreme Court in the case of State Bank of India & others. v. Mohd. Mynuddin, reported in : (1988)ILLJ142SC contended that unless and until; the selection for the promotional post is vitiated by bias or mala fides on the part of the Promotion Board, the Court cannot give direction to promote the petitioner. It is no doubt true that in the aforesaid decision the Supreme Court relying on its earlier decision in the case of State of Mysore v. Syed Mahmood, reported in : (1970)ILLJ370SC held that when the promotion to a post has to be made on the basis of merits the Court cannot substitute its own opinion about the merits of the candidate and issue direction to the authorities to promote a person who was denied promotion unless the promotion is denied to him because of bias or mala fides on the part of the selection authority like the Promotion Board in this case. There is no dispute that the petitioner has not alleged any mala fides or bias against the Promotion Board.

8. As we are of the opinion that when the Rules make the petitioner ineligible for being considered for promotion for a period of four years only due to the warrant punishment imposed on him on 12th March, 1993, after the expiry of the said ineligibility period, the above warrant punishment cannot now be treated as disqualification by the Promotion Board while considering petitioner's promotion after he earns continuous four years verygood conduct. In that view of the matter the petitioner is now entitled to be reconsidered for promotion on merits after

excluding from consideration the incident of the year 1993 which incurred warrant punishment on him on 12th March, 1993.

9. In the result we allow the petition and direct the respondents to consider the petitioner for further promotion when the next Promotion Board considers the selection of the candidates for the promotion to the post of Master Chief Petty Officer II disregarding the incident due to which he had incurred warrant punishment on 12th March, 1993. Rule is made absolute accordingly with no order as to cost.

10. Petition allowed.

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