

**S. Krishna Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Mar-25-1985

**Reported in :** ILR1985KAR357

**Judge :** Doddakale Gowda, J.

**Appeal No. :** W.P. No. 8297 of 1977

**Appellant :** S. Krishna

**Respondent :** State of Karnataka

**Advocate for Def. :** S.V. Narasimhan, HCGP for R-1 and ;V.L. Narayana Rao, Adv. for R-2

**Advocate for Pet/Ap. :** M. Narayanaswamy, Adv.

**Judgement :**

ORDER

**Doddakale Gowda, J.**

1. Petitioner and Respondent-2 who were simultaneously recruited as Regional Transport Officers in the Department of Motor Vehicles in Karnataka vie for earlier promotion and for consequential seniority in higher cadres. Admittedly, second Respondent is senior to petitioner in the cadre of R.T.Os.

2. Mode of filling up of the cadre of Deputy Transport Commissioner as per C & R Rules of the Department is promotion by selection of R.T.Os. Departmental Promotion Committee constituted for the purpose after examining claims of all eligible officers opined that petitioner is suitable for promotion as Deputy Transport Commissioner. Departmental Promotion Committee further held on consideration of service records of Respondent-2, that he is not suitable for promotion as Deputy Transport Commissioner. It is open to the State Government either to accept the recommendation or to reject it. In case of rejection, Government on evaluation of merits of all eligible candidates may reach a conclusion of its own. State Government discarded the views of the Promotional Committee, as it felt that there is no justification to supersede the claim of second Respondent for promotion and promoted him accordingly. It is the validity of the said promotion that is challenged in this Writ Petition.

3. There is no controversy regarding principles governing consideration of promotion, but its application. In order to decide as to whether there is a proper application of principles or consideration, it is necessary to mention in brief principles governing consideration.

4. Supreme Court in Sant Ram Sharma - v. - State of Rajasthan and Others, : (1968) IILLJ830SC has stated thus: at page 11914:

'xx xx In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that it is a well established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to Selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore available. xx xx xx'

What emerges from the above principle is seniority plays its predominance if merit is equal.

The theory of fair and equitable consideration as enunciated in Union of India - v. - M.L. Kapoor and others, : (1973) IILLJ504SC reads thus:

'In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections conferred upon them by Articles 14 and 16 of the Constitution, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly, as this is practically the only remaining visible safeguard against possible injustice and arbitrariness in making selections xx xx xx xx.'

It is in the light of these well established principles, the question as to whether there is a proper consideration by the Government before promoting second Respondent as Deputy Transport Commissioner or not, has to be decided. As already indicated, the Departmental Promotion Committee on an examination of the service records of all the candidates eligible for promotion, found that petitioner alone is eligible for promotion as Deputy Transport Commissioner and the second respondent though senior, his service records are not good and is not suitable for promotion. Object of securing aid or assistance of the Departmental Promotion Committee is to avoid possibility of arbitrariness and nepotism; assessment made by the Selection Committee can be departed, if special circumstances exist. A look at the Government records goes to show that it has considered the case of 2nd Respondent alone and not of others. Government has proceeded on the premise that mode of promotion is by seniority cum merit and there is no good ground to supersede his promotion as he is placed at the top of seniority list of R.T.Os. But, unfortunately, method of filling up of posts by promotion by selection and in that process, Government was under an obligation to consider independently merits of each candidate in case it did not accept the views of the Departmental Promotion Committee. In promotion by selection, merit is the sole consideration and process involves a comparative merit and suitability of eligible candidates and best among them should be selected. In other words, there must be evaluation of merit and suitability of all eligible candidates with reference to the record of performance. Consideration of the second Respondent's case alone cannot be treated as consideration of the claims of all eligible candidates. As Supreme Court often repeated only visible safeguard to eliminate arbitrariness and non application of mind is to ascertain from records whether reasons are assigned

for selecting one in preference to others.

5. Contention of Government Pleader as well as Learned Counsel for Respondent-1 is that entire records including the views of the Committee were before Government and Government has examined the merits of respective claims of eligible candidates. Mere presence of records before the authority does not suffice, but there must be an application of mind with reference to these records. As has been already mentioned in minute of Government, except considering the case of 2nd Respondent there is no reference to others' claim. Government appears to have acted as an appellate authority so as to set aside the order of super session. In order to overcome this infirmity, it is urged next that it must be deemed to have considered the claims of all eligible persons and/or it must be inferred that there is an implied rejection of claims of others. Such 'deemed rejection' will not be in consonance with the declaration of law by Supreme Court to the effect that authority must assign reasons in a manner which would disclose consideration of record of each officer superseded and how it stood in relation to the records of others who are preferred. There is not even a whisper, let alone detailed consideration of records of other candidate for being promoted as Deputy Transport Commissioner. Promotion of the 2nd Respondent without considering the claim of all eligible candidates is illegal and has resulted in substantial prejudice infringing Constitutional Guarantee.

6. Hence, Writ Petition succeeds. Impugned promotion is declared as null and void and is hereby quashed. First respondent is directed to consider claims of all eligible candidates afresh in accordance with law. However, second Respondent is permitted to continue in the present post for a period of 6 months. After 6 months, the case of promotion afresh in accordance with law. His continuation in the post will not affect the rights of the petitioner particularly having regard to the fact that he has been subsequently promoted as Deputy Transport Commissioner and further promoted as Joint Commissioner for Transport.

7. In connected Writ Petition No. 19550/83 second Respondent has questioned the validity or correctness of promotion of the present petitioner as Joint Commissioner for Transport is seniority-cum-merit. Unless, seniority in the lower

cadre is determined, it may not be possible to who is no other than the 2nd Respondent in this case, hence, hearing of W.P. NO. 19550/1983 is deferred.

8. Rule made absolute.

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