

S. Paramasivam Vs. the Chief Security Officer Railway Protection Force, Southern Railway, Madras Beach Station and ors.

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SooperKanoon Citation : sooperkanoon.com/830206

Court : Chennai

Decided On : Dec-24-1998

Reported in : (1999)1MLJ645

Appellant : S. Paramasivam

Respondent : The Chief Security Officer Railway Protection Force, Southern Railway, Madras Beach Station and ors.

Judgement :

ORDER

P. Sathasivam, J.

1. Aggrieved by the proceedings of the 1st respondent dated 14.2.1985 the petitioner has filed the above writ petition for quashing the same and also for direction directing the respondents 1 and 2 herein to promote him as Inspector, Railway Protection Force with regard to his due seniority with all attendant benefits.

2. The case of the petitioner is briefly stated hereunder:

According to him he was appointed in the Department as Rakshak. After completion of his initial course training at Training Centre, Kimber, Garden,

Tiruchirapalli he was posted to Royapuram, crime prone area of Southern Railway on 1.12.1974. In the year 1976 he was selected through Railway Service commission of the post of Sub-Inspector of Protection Force and the same were communicated to him on 6.3.1976. Among 37 Sub-Inspector of protection Force cadets from Southern Railway, petitioner stood first and his seniority was fixed in the first among 37 S.I.P.F. cadets based on the marks secured in the training centre, Lucknow. After completion of his initial training, he was asked to undergo practical training at Tondiarpet Mashalling yard. Thereafter, He had been posted to Golden Rook Workshop on 17.3.1977 after completion of his initial and practical training. In March, 1978 he was transferred to Tiruchirapalli Division Plain Cloths from Golden Rock. After successful completion of probation he was confirmed as Sub-Inspector of Protection Force on 1.8.1979 as per order dated 19.4.1980. He had also received more than 25 awards which includes cash awards and commendation during his service, In the past 10 years he had received only one censure in 1982. In the seniority list prepared as on 1.4.1983 and communicated to all persons, his rank was fixed at No. 57. Recently, 40 posts of Inspector of Protection Force Grade II was sanctioned to southern Railway. In view of his merits and ability he was expecting order of promotion. However he was not served with any such order, whereas all his juniors in his batch as well as some Juniors from subsequent batch got promotion and by order dated 14.2.1985. Having no other efficacious remedy he has filed the above writ petition.

3. On behalf of the respondents, first respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that the petitioner was initially appointed as a Rakshak. He was subsequently, selected by Railway Service Commission as Sub-Inspector/ Railway Protection Force. A selection for the post of the Inspectors was held in the month of December, 1984. The records of 84 eligible candidates for the period of 5 years from 1979 to 1983 were scrutinised by the selection Committee constituted by the Director General of Railway Protection Force. Among the eligible candidates 46 candidates were recommended by the selection committee for promotion to the rank of Inspector. The remaining candidates were found 'not fit' for promotion. The petitioner is one among the candidates who have been found 'not fit' for promotion and hence he was not selected to the post of Inspector. It is further stated that Railway Board

have sanctioned 40 posts of Inspector, Railway Protection Force under restructuring and the Director General, Railway, Protection Force, New Delhi issued separate guidelines, to fill up the upgraded posts, in that it has been decided that 'One time' departure to normal regulations made under Rule 26 of Railway Protection Force Rules (hereinafter referred to as the Rules), in respect of promotions in the upgradation in the restructure on the basis of record of service only be made applicable to promotions against the posts which existed on 31.12.1983 and the new posts which had been sanctioned in the restructuring and the 'one time' departure shall not apply to the posts that fell vacant on or after 1.1.1984. In such instant promotions, previous 5 years' annual remarks, namely, for the years 1979, 1980, 1981, 1982, and 1983 were taken into consideration. It is further stated that normally adverse entries in confidential reports are being communicated to the staff concerned. But in regard to the remarks made under 'Integrity' the remarks are not to be communicated to the staff as per extant, orders. The petitioner was not recommended for promotion by the selection committee in view of the adverse entry about his 'integrity' in the Annual Confidential report was taken in consideration against him as per the guidelines of Railway Board. The candidates whose records were found without adverse entry during the period of 5 years from 1979 to 1983 and who were not undergoing any punishment as on 1.4.1984 were declared as selected and promoted, on the recommendations of selection committee with effect from 1.4.1983 and accordingly order dated 14.2.1985 was issued. With these averments they prayed for dismissal of the writ petition.

4. In the light of the above pleading, I have heard Mr. Venkatachalapathy, learned senior counsel for the petitioner and Mr. Venkataeswara Rao for respondents 1 and 2.

5. Mr. Venkatachalapathy, learned senior counsel for the petitioner after taking me through the entire career particular of the petitioner has contended that inasmuch as no adverse remarks or entry, the petitioner could have been promoted and placed before 14th respondent herein as Inspector. He also submitted that, in the light of Regulation Chapters XVII 2(c), (d) and 3(a) (iii) of the Railway Protection Force Regulations, 1966 (hereinafter referred to as 'the Regulation'), failure to

communicate the adverse entry in the confidential Report, the impugned order cannot be sustained. On the other hand, Mr. Venkateswara Rao, learned Counsel appearing for the respondent 1 and 2 after taking me through the relevant Regulations, guidelines issued by the Director General of Railway Protection Force has contended that, the action of 2nd respondent was a departure from the normal course in order to clear the back-log, accordingly the conditions prescribed in the Regulations were not applied. He also contended, the selection committee after assessing the entire service records found the petitioner, unfit, accordingly he was not selected. He further contended that, inasmuch as the petitioner was given further promotion, if any order is passed in favour of the petitioner, it will have serious consequence because of the delay.

6. I have carefully considered the rival submissions.

7. It is seen from the particulars furnished in the counter-affidavit that the Railway Board have sanctioned 40 posts of Inspector, Railway Protection Force under restructuring and the Director General of Railway protection Force, New Delhi in his letter No. 83/Section (E) 138/2 dated 8.9.1984 issued separate guidelines to fill up the upgraded post. It is also stated in the said guidelines, it has been decided that 'one time' departure to normal regulations made under Rule 26 of the Rules in respect of promotion in the upgradation, restructure on the basis of service record only be made applicable to the promotions against the posts which existed on 31.12.1983 and the new posts which had been sanctioned in the restructuring. It is also clear from the said guidelines the said 'one time' departure was not applied to the post that fall vacant on or after 1.1.1984. In the light of the said guidelines for promotions, previous 5 years' annual remarks, namely, for the years 1979 to 1983 were taken into consideration. In other words, according to the respondents, in view of the guidelines the selection list for the post of Inspector Grade II is a departure from the normal course.

8. Now, I shall consider the relevant provisions regarding character and service roll of members of the Railway Protection Force. Chapter XVII of the Regulation deals with regard to record of service and confidential reports. We are concerned with Regulation 2 and 3. Regulation 2 deals with 'character and service Roll of

Members'. Among the other clauses, we are concerned with 2(c) and (d), which are as follows:

2. Character and service Roll of Members:

(a)....

(b)....

(c) All entries in the character and service Roll shall be made under the signatures of a superior officer. There should be no erasure or over writing. A superior officer Will not normally cancel an entry once recorded in the character Roll, unless a specific order has been made by the competent superior officer for its cancellation or alteration. The Chief Security Officer may, however, direct a superior officer on his Railway to make, alter or cancel an entry in the Misconduct section of the character Roll either (i) on the petition of the member concerned where, on enquiry, it is shown that the entry was unjustified or (ii) where owing to the length of time that has elapsed or on account of good services subsequently rendered, he thinks that the entry should no longer be taken into consideration in deciding the member's claim to promotion. In the first case, the entry should be scored out with a suitable remark that it was unjustified. In the second case, the chief security officer should take a note below the misconduct entry in the character Roll to the effect that for reasons given, it should no longer be taken into consideration. He should then score out the entry.

(d) Copies of character Roll should not be given to the members, but every entry which may adversely affect promotion of a member should be communicated to him and a note that this has been done must be made below the entry itself. Before such entry is made, an opportunity must be given to the member concerned to show cause either verbally or in writing as to why it should not be made.

It is clear that, all the entries in the character and service Roll of a person in the Force have to be made under the signature of the superior officers. It is also clear that, every entry which may adversely affect the promotion of the member should

be communicated to him. It also enables the Authority before making such entry, an opportunity must be given to the member concerned to show cause either verbally or in writing as to why it should not be made, Regulation 3 speaks about confidential reports. Here again, among other clauses we are concerned with 3 (a)(iii). The said provision also enables the concerned authority, when an unfavourable report is made on officer of the Force, the relevant extract or substance of such a report has to be communicated to him.

9. By relying on the above provisions, Mr. Venkatachalapathy, learned senior counsel appearing for the petitioner would contend that, if any adverse remark or entry is made, the same has to be communicated to the petitioner. The petitioner has not been served with any unfavourable report or copies of such entries which may adversely affect his promotion at any point of time. However, Mr. Venkataswara Rao by relying on Rule 26 of the Rules has contended that, in order to give effect to special claims or to meet any special case or situation, it is open to the appointing authorities to provide for appointments otherwise than as prescribed. Chapter V of the said Rules speaks about 'appointment and promotion'.

Section 21: relates to 'direct recruitment and promotion' of the Rakshaks.

Section 22: Speaks about 'qualifications for direct recruitment.

Section 26: relates to 'appointment in special cases'. Since separate guidelines were issued to fill up the upgraded posts, which according to the respondents 'one time' departure to normal regulations, the same was made under Rule 26 of the Rules. Among the above mentioned Rules, 26 is relevant, which is as follows: 26. Appointment in special case: The Central Government, may, by order, provided for appointment being made otherwise than as prescribed in this chapter to give effect to special claims or to meet any special case or situation.

10. The perusal of Regulations 2(c), (d) and 3(a)(iii) in chapter XVII of the Regulations undoubtedly make it clear that, if any adverse entry is made or report is entered, the same has to be communicated to the person concerned. Mr. Venkataswara Rao has also produced the relevant selection proceedings

conducted for the post of I.P.F., during 1984, The selection Board consists of:

(i) Shri R. Ramalingam, I.P.S. - Chief Security Officer, Southern Railway.

(ii) Shri Ram Ratan, I.P.S. - Chief Security Officer, Central Railway.

(iii) Shri G. Gurunatha Rao, I.P.S. - Chief Security Officer, South Central Railway.

The above mentioned selection Board constituted under the orders of Director General, Railway Protection Force, New Delhi met at Secunderabad on 18.12.1984 and conducted the selection for the posts of Inspector Grade II on the basis of record of service, in accordance with the guidelines issued under Railway Board's letter No. 84/Sec(E) of 8/9.5.1984 and 23.5.1984. Learned Counsel appearing for the respondents 1 and 2 has also placed the proceedings of the selection committee which contains list of Sub-Inspectors in the order of seniority. The above said selection committee has remarked 'unfit' in so far as the-petitioner, whose serial number is 21.

11. In the above mentioned factual position, now I shall consider the decisions cited on either side, Mr. Venkatachalapathy, learned senior counsel for the petitioner has very much relied on an unreported decision of the Kerala High Court rendered in O.PNO. 1582 of 1986 dated 2.11.1990. Before the Kerala High Court the very same selection was questioned by one K.J. Joy. The contention of the petitioner before the said court is that, he should have been promoted as Inspector Grade II on regular basis with effect from 1.4.1983, the date on which his juniors in service were promoted. Similar contention was raised by the Railway Authorities before the (learned Judge. There also according to the respondents in that case, the petitioner therein was found 'unfit' for promotion. There also it is the definite case of the petitioner that the alleged adverse entry in his confidential report at no point of time had been intimated to him. After referring the decision of the Supreme Court in Gurdial Singh v. State of Punjab : [1979]3SCR518 , the learned single Judge came to the conclusion that the petitioner ought to have been promoted before his juniors were promoted, accordingly granted the relief and allowed the petition filed by the petitioner therein. The said judgment of the learned single Judge of the Kerala High Court supports the contention of the petitioner.

12. The next decision referred to is reported in Vijaya Kumar, I.A.S. v. The State of Maharashtra AIR. 1988 S.C. 2660. In that case their Lordships have concluded.

It is settled principle that an uncommunicated adverse report should not form the foundation to deny benefits to Government servant when similar benefits are extended to his juniors.

13. Mr. Venkateswara Rao, learned Counsel appearing for the respondents 1 and 2 has very much relied on the following passage in the decision of the Apex Court reported in Mir Ghulam v. Union of India : (1973)ILLJ417SC ..Absence of adverse remarks is no criterion of the quality of an officer.

The said decision is not directly helpful to the respondents contention.

14. After going through the relevant provisions namely, Regulations 2(c)(d) and 3(a)(iii) of chapter XVII of the Regulation in the absence of any proof that adverse entry or remarks have been communicated to the petitioner and in the light of the judicial decisions referred to above, I am of the view that the impugned proceedings which affects the claim of the petitioner alone are liable to be quashed. Even though the learned Counsel relying on Rule 26 of the Rules, has contended that, in view of special guidelines issued by the competent authority, the regular regulations are not applicable to petitioner's case, I am unable to accept the said contention for the reasons mentioned above. Even though it is stated in Rule 26 of the Rules, it is open to the Central Government to provide for appointments being made otherwise than as prescribed, in view of the words used in Rule 26, namely, 'otherwise than as prescribed in this chapter', 'which means chapter V, it is not open to the respondents either to prepare seniority list or select persons de hors to chapter XVII of the Regulations. Even though the selection committee has expressed the services Of the petitioner as 'unfit' as rightly contended, namely adverse entry or remarks have been communicated at any point of time to the petitioner. As observed by their Lordships in Gurdial Singh v. State of Punjab : [1979]3SCR518 , in accordance with the Rules of natural justice, the adverse report in confidential roll cannot be acted upon to deny promotional opportunities to the person concerned so that he has an opportunity to improve his work or to explain the circumstances leading to the report. Such an opportunity is

not an empty formality, its object, partially being to enable the superior authorities to consider the explanation offered by the person concerned whether the adverse report is justified. As stated earlier, even the selection proceedings produced by the learned Counsel for the respondents 1 and 2 does not show any material, except the recommendation of the committee, namely 'unfit'. Likewise even though it is stated that the impugned proceeding is only a seniority list and not a promotion in the light of the statutory provision as well as the legal position explained, I am unable to accept the contention of the learned Counsel for the respondents 1 and 2, As rightly contended by the learned senior Counsel appearing for the petitioner, by citing as 'one time' appointment, the respondents cannot take away the right of the petitioner. Accordingly, I accept all the contentions raised by the learned senior counsel appearing for the petitioner.

15. The petitioner has also impleaded all the necessary parties while challenging the impugned proceedings, but none of them have chosen to contest the claim of the petitioner.

16. Net result, the writ petition is allowed and the respondents 1 and 2 are directed to promote the petitioner as Inspector, Railway Protection Force with regard to his due seniority with all attendant benefits within a period of 8 Weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.