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Uoi Vs S.S.Bansal

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Court : Delhi

Decided On : Oct-25-2010

Judge : Mr. Pradeep Nandrajog ; Mr. Siddharth Mridul. J J.

Appeal No. : W.P.(C) 3269/2010

Appellant : Uoi

Respondent : S.S.Bansal

Advocate for Def. : Mr.S.S.Bansa, Adv.

Advocate for Pet/Ap. : Mr.A.S.Chandhiok ; Mr.D.S.Mehandru, ; Mr.Sanjeev Bajaj, Advs.

Judgement :
1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

ORDER

1. Vide impugned order dated 15.12.2008, allowing OA No.1326/2007, noting that the benchmark for promotion was 3 Very Good and the remainder Good in the preceding 5 years ACRs and that the gradings awarded were below benchmark,

noting the decision of the Supreme Court reported as Dev Dutt vs. Union of India, 208 (7) SCALE 403, directions have been issued by the Tribunal that below benchmark ACR gradings be conveyed to the respondent who would be at liberty to represent against the same and the Competent Authority would decide the representation and if the ACR gradings are enhanced, Review Screening Committee would be convened.

2. Relevant facts are that the respondent joined service as an Assistant Engineer in the year 1968 and earned promotion to the post of Executive Engineer in the year 1980. His claim for second up-gradation under the ACP scheme matured in the year 1999. The Screening Committee considered the ACRs of the respondent for the preceding 5 years and found him unfit for the reason prescribed benchmark was 3 Very Good which was not achieved. The Screening Committee had met on 25.2.2000.

3. It may be noted that by the time the Screening Committee met two disciplinary proceedings were pending against the respondent; one of which resulted in a penalty of sever displeasure being inflicted upon the respondent vide order dated 25.2.2000 and the other being dropped vide order dated 16.1.2003. In the meanwhile, the respondent superannuated from service on 31.7.2000.

4. The respondent filed OA No.1751/2004 questioning his being declared unfit at the Departmental Screening Committee which met on 25.2.2000. He pleaded in the OA that the pendency of the two disciplinary proceedings against him had influenced the departmental screening committee; a plea which we find is factually incorrect, for the reason what weighed with the screening committee was not that the respondent was facing two departmental enquiries, but the fact that his ACR gradings were below the prescribed benchmark.

5. For unexplainable reasons, in a short and a cryptic order dated 3.8.2005, the Tribunal, contrary to the record of the Departmental Screening Committee held that the pendency of the two disciplinary proceedings against the respondent had resulted in the respondent being declared unfit. It was directed that a review committee be constituted to reconsider the grant of second financial up-gradation to the respondent.

6. The petitioner filed an application seeking review of the order dated 31.8.2005 pointing out to the Tribunal that Departmental Screening Committee had not considered the fact that two disciplinary proceedings were pending against the respondent. It was highlighted that the respondent was unfit inasmuch as he could not secure the prescribed benchmark. Unfortunately, the application seeking review was filed beyond the period of limitation and as a result thereof, was dismissed vide order dated 21.9.2006 on being held as barred by limitation.

7. The petitioner completed the ritual of convening a review DPC which considered the ACR grading of the respondent for the preceding five years i.e. year 1994-95 till the year 1998-99 and needless to state returned the finding that the respondent was unfit on account of not acquiring the prescribed benchmark.

8. This compelled the respondent to file OA No.1326/2007, which as noted above, has been allowed vide judgment and order dated 15.12.2008. The reason for allowing the OA has been noted by us in para 1 hereinabove.

9. It is true that in Dev Dutt's case (supra) the Supreme Court has held that the ACR grading which is not conventionally treated to be as adverse has to be treated as adverse if it is below the prescribed benchmark. The reason is obvious. Such an ACR grading has adverse consequence qua the promotion of the candidate concerned. To this extent, prima facie, at first blush, one may conclude that the direction issued by the Tribunal is in conformity with law.

10. But the question which would arise would be : whether on the facts of the instant case the ratio of law in Dev Dutt's case (supra) can be applied.

11. It may be noted that the Departmental Screening Committee had considered the case of the respondent and other eligible persons on 25.2.2000 and on said date decision in the Dev Dutt's case (supra) had yet to see the light of the day. Dev Dutt's case (supra) was decided on 12.5.2008. The law which governed the field as on said date i.e. 25.2.2000 was that only entries which were adverse as conventionally understood had to be communicated to the government servant concerned. It may be noted that till as late as year 2006, in the decision reported as Satya Narain Shukla vs. Union of India (2006) (9) SCC 69 the Supreme Court

held as under:

"The appellant also argued that the remarks made in the ACR were not communicated to him. It was also urged by the appellant that his Court should direct the authorities to streamline the whole procedure so that even remarks like Good or Very Good made in the ACRs should be made compulsorily communicable to the officers concerned so that an officer may not lose his chance of empanelment at a subsequent point of his service. In our view, it is not our function to issue such directions. It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides."

12. Mr.A.S.Chandhiok, learned Additional Solicitor General has urged that since the directions issued by the Tribunal, vide its order dated 3.8.2005 when OA No.1751/2004 was allowed, was to simply convene a review Departmental Screening Committee, the petitioner had to simply convene a review Departmental Screening Committee and do no more. The said Departmental Screening Committee had to consider the ACRs which existed without any further tinkering. Learned counsel for the petitioner urged that who knows many other persons may be situated in the same position as of the year 2000.

13. We agree.

14. Dev Dutt's case (supra) decision cannot be interpreted to upset events of the past as also such departmental actions which were predicated on the law as it was founded in the past. The Departmental Screening Committee in the instant case had met on 25.2.2000. The Review Screening Committee had to consider the candidature of the respondent as of said date and we see no reason as to why law as understood as on said date be not followed.

15. Accordingly, we hold that in view of the special facts of this case which we have noted hereinabove, the Tribunal has seriously erred in directing compliance with the ratio of law laid down in Dev Dutt's case (supra).

16. Noting that the respondent had failed to achieve the prescribed bench mark, we allow the writ petition. The impugned order dated 15.12.2008 is set aside. OA No.1236/2006 filed by the respondent is dismissed.

17. Since the respondent is a retired government employee, we refrain from imposing any costs.

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