

Kb.SharmA. Vs. the State of Madhya Pradesh

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Court : Allahabad

Decided On : Apr-21-2011

Judge : Rajendra Menon. J.

Acts : The M.P. Public Prosecution (Gazetted) Service Recruitment Rules 1991 - Rule 6 and Schedule 2

Appeal No. : Writ Petition No : 5851 of 2006

Appellant : Kb.SharmA.

Respondent : The State of Madhya Pradesh

Advocate for Def. : Shri J.K. Jain, Adv

Advocate for Pet/Ap. : Shri S.K. Dubey, Adv

Judgement :

1. Challenging the action of the respondents in rejecting the candidature of the petitioner for promotion to the post of Director (Prosecution) vide Annexure R/1 dated 18.1.2008, petitioner has filed this writ petition.

2. Facts that have come on record indicate that petitioner at the relevant time, when this writ petition was filed, was working as Joint Director (Prosecution) in the pay scale 12,000-375-16,500/- and order in this regard is Annexure P/1. However, as a regular incumbent to hold the post of Director (Prosecution) was not

available, petitioner was made Incharge/Acting Director vide order - Annexure P/2. As petitioner was already discharging the duties of a Director in accordance to the provisions of The M.P. Public Prosecution (Gazetted) Service Recruitment Rules 1991 (hereinafter referred to as 'Rules of 1991'), petitioner submitted an application seeking regular appointment on promotion to the post of Director. However, when the same was not considered and when his representation was not taken note of, he filed this writ petition and during the pendency of this writ petition when the representation was rejected vide order-dated 18.1.2008 - Annexure P/6, the petition has been amended and challenge made to the aforesaid order.

3. Taking me through the provisions of the Rules of 1991 and Schedule 2 thereto, Shri Dubey, learned counsel for the petitioner, argued that the post of Director is to be filled up 100% by promotion from the post of Joint Director and for the said promotion no statutory experience in the post of Joint Director is prescribed. It is indicated by learned counsel that under the Rules of 1991, the option and the discretion to the Government to fill up the post by deputation of person belonging to the IAS, IPS and Higher Judicial Service is available only if a departmental candidate is not available and in the present case even though petitioner, a departmental candidate, was qualified and was working as Acting Director, his case for promotion was not considered and a person on deputation was called from the other service.

4. Accordingly, contending that the claim of the petitioner for promotion has not been considered in accordance to the requirement of the Rules of 1991 and placing reliance on an order passed by the State Administrative Tribunal under somewhat similar circumstances, in the case of R.P. Sharma Vs The State of MP and Another, O.A.No.317/94, decided on 6.5.1995; and, another judgment rendered by a Bench of this Court in W.P.No.24618/2003 (N.C. Jain Vs State of MP), on 28.9.2010, learned counsel submits that even if the petitioner has retired, respondents are required to consider his case for promotion by convening a Review DPC and if found eligible, to grant him consequential benefits. Accordingly, seeking consideration of his case for promotion to the post of Director, the writ petition has been filed.

5- Shri J.K. Jain, learned Dy. Advocate General appearing for the respondents, refuted the aforesaid and argued that petitioner is now retired and, therefore, he cannot be granted any benefit. It is further pointed out by learned counsel that as no experience or qualification for promotion from the post of Joint Director to the post of Director is prescribed and as the Government in its wisdom thought it appropriate to appoint a person from Higher Judicial Service on deputation, to man the post of Director, the discretion exercised by the State Government is proper and the same does not warrant any interference after retirement of the petitioner. Inter alia contending that petitioner has no right to be considered for promotion and his representation is rightly rejected vide Annexure R/1 on 18.1.2008, learned counsel seeks for dismissal of this writ petition.

6. I have heard learned counsel for the parties and perused the records.

7. It is clear from the records that promotion from the post of Joint Director to the post of Director (Prosecution) is governed by the provisions of Rule 6 and Schedule 2 to the Rules of 1991. Under the aforesaid Rule, the post of Director is to be filled up 100% by promotion from the eligible Joint Directors. However, no eligibility criteria or period of service as a Joint Director is prescribed in the aforesaid recruitment rule. The rule further contemplates that the Government can, if no suitable departmental candidate is available, fill up the post by deputation from officers belonging to IAS, IPS and Higher Judicial Service. It is clear from the Rules of 1991 that the first option for promotion to the post is to consider the case of eligible Joint Directors available in the Department and if such candidates are not available then the second option can be exercised. In the present case, it seems that the case of the petitioner was not considered and straightaway a person was taken on deputation. When the petitioner was already working as a Joint Director and in the absence of a regular Director when he was appointed to officiate as an Acting Director, it was incumbent upon the respondents to first assess the suitability of the petitioner and if found unsuitable then only the second option and discretion available for filling up the post on deputation could be resorted to, by the department. The department having failed to do so, it is a case where the claim of the petitioner for promotion, even though entitled to, was not considered.

8. This question is already considered by the State Administrative Tribunal in the case of R.P. Sharma (supra) and after taking note of the provisions of the Rules of 1991, in paragraphs 4 and 5, the learned Tribunal has held that the option available to the State Government for filling up of the post on deputation can be exercised only if a suitable departmental candidate is not available. In the said case also, claim of Shri R.P. Sharma was not considered, even after his retirement the direction issued was to consider the case of the petitioner therein Shri R.P. Sharma as his case was ignored and in his place a person was called on deputation without considering his case in accordance to the Rules of 1991. Similar orders have been passed by a Bench of this Court in the case of N.C. Jain (supra) also.

9. In the present case, petitioner was a Joint Director, he was already discharging the duties as an Acting/Officiating Director and without considering his case for promotion as per the Rules of 1991, it seems that a person was brought on deputation and petitioner permitted to retire from the substantive post of Joint Director. This action of the respondents in not assessing the suitability of the petitioner for appointment to the post of Director and not even considering his case is contrary to the Rules and, therefore, to that extent interference has to be made and now even after retirement a direction can be issued to assess the suitability of the petitioner by convening a Review DPC.

10. In view of the above, this petition is allowed. The order impugned dated 18.1.2008 is quashed. Respondents are directed to convene a Review DPC and consider the case of the petitioner for retrospective promotion to the post of Director (Prosecution) in accordance to his entitlement and in case it is found that the petitioner was suitable and was eligible for promotion, benefit be granted to him retrospectively with all consequential benefits till the date of his retirement.

11. Needless to emphasize that in case respondents find that petitioner was not suitable and therefore, he could not be promoted, then it shall be incumbent upon the respondents to record reasons for the same and communicate the decision to the petitioner. The entire exercise be conducted and concluded within a period of 90 days from the date of receipt of certified copy of this order.

12. With the aforesaid, this petition stands allowed and disposed of.

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