

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

(33)

ORIGINAL APPLICATION NO. 608 of 1987

DATE OF JUDGMENT: 27-12-1990

BETWEEN:

Ex Mr. M.S.R.Prabhakara Rao .. Applicant

AND

The Salt Commissioner,
Government of India,
Jaipur, Rajasthan. .. Respondent

FOR APPLICANT: Mr. B.S.A. Swamy, Advocate

FOR RESPONDENT: Mr. E. Madan Mohan Rao, Addl. CGSC

CORAM: Hon'ble Shri J.Narasimha Murthy, Member ..
Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioner seeking a relief to issue a direction to the respondent to upgrade him to the grade of Superintendent of Salt with retrospective effect commencing from the date on which his junior took over as Superintendent of Salt. The facts of the case are briefly as follows:-

The applicant joined the Salt Department as Inspector of Salt on 25.1.1954 as a direct recruit. He was promoted to the grade of Deputy Superintendent of Salt, Class-II on 25.4.1978 and he has completed nine years of service as Deputy Superintendent of Salt. But, when further promotion to the Gazetted grade of Superintendent of Salt was due during the first quarter of 1987 consequent on the arising of some vacancies, to his surprise, his juniors S/Shri S.Ramalingam and M.J.Varadarayana were promoted overlooking his legitimate claim for promotion to the grade of Superintendent of Salt. He got only two years service left for superannuation. By not getting promotion, he was subjected to humiliation ~~ignorance~~ and mental torture.

2. The applicant was awarded certain punishment in Salt Commissioner's C.No.13013/1/84/Vig/157 dated 30.9.1985 stopping his increment for a period of 12 months from 1.4.1986 to 31.3.1987 without cumulative effect. For no fault of his, certain allegations were made against him and he underwent the punishment imposed on him. According to him, denial of promotion to the grade of Superintendent of Salt tantamounts to the second punishment since he already underwent with the punishment of stoppage of increment. There were no adverse reports against the applicant prior to or subsequent to the inflicting of the punishment. The action of the respondent is unfair and violates the principle of "Double Jeopardy" under Article 20(2) of the Constitution of India. So, the present application is filed for the above said relief.

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3. The respondent filed a counter with the following contentions:-

The petitioner claimed that his juniors were promoted without giving him any promotion but those juniors were not added as parties to this application. The present claim he made cannot be sustainable without adding his juniors as parties to this application. The post of Deputy Superintendent of Salt is a selection post. The posts of Superintendent of Salt under the Indian Salt Service Recruitment Rules 1987 are filled 50% by promotion and 50% by direct recruitment. All the promotions are on the basis of merit-cum-seniority. The applicant's claim that he was senior Deputy Superintendent of Salt and was anxiously expecting promotion to the Gazetted Grade of Superintendent of Salt and that he was unjustly overlooked while promoting his juniors etc., does not have any substance. It is wholly irrelevant for the applicant to mention in this application under what circumstances he had committed certain lapses and he had been charge-sheeted and penalised. The applicant was promoted on adhoc basis as Deputy Superintendent of Salt w.e.f. 25.4.1978 but he was given a regular promotion with effect from 1.6.1979 when a regular vacancy became available. The post of Deputy Superintendent of Salt is a selection post and promotion to this post is made on the basis of selection, i.e., merit-cum-seniority. The applicant got adhoc promotion to the post of Deputy Superintendent of Salt on 25.4.1978 and regular promotion on 1.6.1979 on approval by a duly constituted Departmental Promotion Committee on the basis of merit-cum-seniority. The applicant was considered for promotion along with other eligible Deputy Superintendents of Salt

after the cessation of the penalty imposed on him. Based on the assessment accorded by the Departmental Promotion Committee, the applicant was found not fit and thus superceded by his juniors. As per the explanation given under Rule 11 of the CCS (CCA) Rules, 1965, non-promotion of a Government servant whether in a substantive or officiating capacity, after consideration of his case, to a service or a post for promotion to which he is eligible, will not tantamount to a penalty. Since no second penalty has been imposed on him, the applicant cannot allege that he has been subjected to double jeopardy. Therefore, the question of violation of Article 20(2) of the Constitution of India does not arise. For a selection post the applicant cannot claim promotion as Superintendent of Salt merely on the basis of his seniority. For the above reasons, the respondent states that the application is liable to be dismissed.

4. Shri B.S.A. Swamy, learned counsel for the applicant and Shri E. Madan Mohan Rao, learned Additional Standing counsel for the Respondent/department, argued the matter.

5. The applicant was considered ~~as~~ for promotion along with the other eligible Deputy Superintendents of Salt after cessation of the penalty imposed on him. The Confidential Reports were assessed by the Departmental Promotion Committee along with the other eligible candidates. Based on the assessment so accorded, the applicant was found not fit and thus he was superseded by his juniors. There is no question of overlooking him for considering his case for promotion. The applicant was considered for promotion

To

1. The Salt Commissioner,
Government of India,
Jaipur, Rajasthan.
2. One copy to Mr. (E. S. A.) Swamy, Advocate,
Plot No. 41, S. R. K. Nagar, Golkonda 'X'
Roads, Hyderabad - 500048.
3. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC. ~~CAT Hyderabad Bench~~
4. One copy to The Hon'ble Mr. R. Balasubramanian,
Member (A), C.A.T., Hyderabad Bench, Hyderabad.
5. One Spare Copy.

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by the Departmental Promotion Committee which met and perused the records as the same was done by the DPC. The petitioner was seniority, but he was not upto the mark for selection as Superintendent of Salt. So, his juniors were promoted. The respondents also produced the relevant Departmental Promotion Committee proceedings and it was disclosed therein that the name of the applicant was considered and he was one of the senior most candidates but he was not selected by the DPC. The selections were made according to the seniority-cum-suitability. So, the claim of the petitioner that he is senior most person and his name was not considered for promotion is not correct. It is an admitted fact that the applicant underwent certain punishment and even after the punishment period is over, his name was considered but he was not upto the mark in the selection for the post of Superintendent of Salt. The various contentions raised in the application are not tenable and there are no proper grounds to entertain the petitioner's contentions. So, we hold that there are no merits in the petition. Hence, the petition is dismissed. No costs.

M.S'

(J.NARASIMHA MURTHY)
Member(Judl.)

R.BALASUBRAMANIAN

(R.BALASUBRAMANIAN)
Member(Admn.)

Dated: 27 December, 1990.

Evelyn Ramamurthy
S.R. Deputy Registrar (J)