

Government of T. N. and Another

Vs

K. N. Rathinavelu

Civil Appeal No. 2141 of 1994

(S. Saghir Ahmed, G. B. Pattanaik JJ)

20.01.1998

ORDER

1. The respondent, who was appointed initially as a Junior Assistant, was ultimately promoted to the post of Deputy Tahsildar, in the year 1975 and was placed on deputation in the Tamil Nadu Civil Supplies Corporation, where he committed misconduct causing financial loss to the Corporation for which a charge-sheet dated 6-5-1985 was issued to him.
2. In 1987, while the disciplinary proceedings were still pending, a panel of names for promotion to the post of Tahsildar was prepared, for which the respondent, who was one of the eligible candidates, was also considered, but on an assessment of his service records, he was not found suitable and consequently his name was not included in the panel.
3. Non-inclusion of the name in the panel was challenged by the respondent before the Tamil Nadu Administrative Tribunal, which by its judgment dated 19-2-1993, allowed the petition and directed that the name of the respondent be included in the panel for promotion to the post of Tahsildar prepared for the year 1987 by placing his name just above his junior and all consequential benefits be given to him.
4. It may be stated that the disciplinary proceedings on the basis of the charge-sheet issued to him in the year 1985 have since been completed and punishment of stoppage of one increment together with recovery of a part of the amount of monetary loss caused to the Corporation, was inflicted upon him.
5. The Tribunal has found that the name of the petitioner was not considered for promotion to the post of Tahsildar because of the pendency of a the disciplinary proceedings against him in 1987. The Tribunal for this purpose placed reliance upon the averments made by the appellants in their counter-affidavit filed before it. The Tribunal was of the opinion that mere pendency of the disciplinary proceedings on the basis of which charge-sheet issued to him in 1985 which had not been concluded up to the date of consideration of names for promotion would not disqualify the respondent from being considered.
6. We have gone through the judgment of the Tribunal and we feel that the Tribunal has committed a grave factual error which vitiates its judgment.
7. A copy of the counter-affidavit filed before the Tribunal by the appellants has been filed here also and is available on our record. In para 3 of the counter-affidavit, it has been stated as under :

"It is submitted that Thiru K. N. Rathinavelu, the applicant in this case was originally recruited as Junior Assistant in Thanjavur District Revenue Unit by the Tamil Nadu Public Service Commission in the year 1958. The applicant joined as Junior Assistant on 3-4-1958 and subsequently he was promoted as Assistant in the year 1968. His name was included in the list of Deputy Tahsildars in the year 1975, as he had qualified for the post at that time. While drawing the list of Tahsildars for the year 1987, among others, the name of the applicant was also taken up for consideration. At that time, disciplinary proceedings initiated under Rule 1(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules by the Senior Regional Manager, Tamil Nadu Civil Supplies Corporation Limited, Thanjavur in his RC No. 6040/85, dated 6-5-1985 for certain lapses noticed in his work while he was working in the Tamil Nadu Civil Supplies Corporation on deputation, were pending against him. As the charges were serious in nature involving loss of corporation money to the tune of Rs. 13,913.90, his name was not included in the list of Tahsildars for the year 1987 by the Special Commissioner and Commissioner of Revenue Administration, Madras-5 as per his notification issued in D2/54793/89, dated 6-9-1989. Against the orders of the Special Commissioner and Commissioner of Revenue Administration, the applicant preferred an appeal to the Government. The Government after careful examination of the contentions of the applicant, rejected his appeal in GOMs No. 2126, Revenue, dated 5-10-1990. Now the applicant has filed OA No. 213 of 1991 against the orders of the Government."

8. It is this para of the counter-affidavit which has been relied upon by the Tribunal. But the Tribunal has completely ignored para 4 of the counter-affidavit which reads as under :

"Regarding the averments made in para 6(i) of the application, it is submitted that the applicant's name was not included in the list of Tahsildars for the year 1987 on the grounds that serious charges were pending against him. His plea that pendency of the charges should not be taken as a bar for promotion holds no good. He has pointed out that the Hon'ble High Court and the Hon'ble Tribunal have taken this view in a several cases. But he has not mentioned the details of the cases in which the above view was taken by the High Court and the Tribunal. In the absence of these details, his contention will not hold good. Even if the view as contended by the applicant has been taken by the High Court/Tribunal, that has to be considered for that case only. Further, the nature of the charges vary from one case to another. Further, the name of the applicant was considered along with others for inclusion in the panel of Tahsildars for the year 1987 and after considering all the aspects i.e. seriousness of the charges which involve corporation money to the tune of Rs. 13,000 his name was not included. Therefore, his contention that his name was not considered is not correct. The contention of the applicant that the reasons for the rejection of his appeal were not communicated to him by the Government holds no good, since the Government, as appellate authority have considered all aspects before taking such a decision. Mere non-furnishing of details in the orders passed by the Government would not amount that his appeal was not considered properly. It is the official practice that only the gist of the order on the appeal is communicated to the persons concerned."

9. In para 4 of the counter-affidavit extracted above, it was clearly pleaded by the appellant before the Tribunal that the name of the applicant was considered along with others for inclusion in the

panel for the year 1987 but considering all aspects, including the seriousness of the charges against him, he was not found fit for being included in the panel of names for promotion to the post of Tahsildar.

10. Once the respondent was considered for promotion to the post of Tahsildar and on an assessment of his service records, he was not found meritorious or fit for promotion, the appellants were justified in not including his name in the panel. The respondent had the right to be considered for promotion and this right was not denied to him as he was duly considered but was found to be unfit.

11. The Tribunal committed the mistake of not reading the whole of the counter-affidavit and coming to the conclusion, merely on the basis of para 3 thereof, that the petitioner's name was not included in the panel because of the pendency of disciplinary proceedings.

12. For the reasons stated above, the judgment passed by the Tribunal cannot be sustained and is liable to be set aside. The appeal is consequently allowed. The judgment and the order dated 19-2-1993 passed by the Tribunal is set aside and the claim petition filed by the respondent is dismissed. There shall be no order as to costs.