

STATE OF MADHYA PRADESH

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v.

SRIKANT CHAPHEKAR

SEPTEMBER 2, 1992

[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

B

Service Law:

Promotion—Departmental Promotion Committee—Annual confidential reports—Evaluation of—Supersession of employee based on—Partial expungtion of remarks later—Subsequent promotion—Retrospective claim—State Administrative Tribunal—Directing promotion retrospectively—Validity of—Courts to direct reconsideration of case only.

C

The respondent, an Assistant Director in the Town & Country Planning Office of the appellant State, was superseded by the Departmental Promotion Committee on the basis of adverse annual confidential reports which were partially expunged later. The respondent was subsequently promoted. He filed application before the State Administrative Tribunal claiming promotion from the date of his supersession.

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The Tribunal allowed the application holding that the remarks left unexpunged could not be sole basis to deny promotion. It directed the State to treat the respondent to have been promoted from a day earlier than his junior was promoted. The State filed the appeal by special leave.

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Allowing the appeal, this Court,

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HELD: 1. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. [pp. 347 G-H; 348-A]

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2. In a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It was not within the competence of the Tribunal to have ordered deemed promotion of the respondent. [p. 348 A-B]

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A 3. This is not a fit case where even a direction to consider the respondent for promotion from the year 1981 can be given. The adverse reports were expunged on October 11, 1982. The only representation made by him was in the year 1984. Thereafter, the respondent kept quiet till November, 1991 when he approached the Tribunal. It would not be in the interest of justice to issue any such direction after a period of more than a decade. [p. 348 B-C]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No.3507 of 1992.

C From the Judgment and Order dated 21.2.92 of the Madhya Pradesh Administrative Tribunal Indore Bench in Original Application No.2854 of 1991.

Rajindra Singhvi and S.K. Agnihotri for the Appellant.

D S.S.Ray, S.K. Gambhir and Vivek Gambhir for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

E Srikant Chaphekar, Assistant Director, Town and Country Planning Office, Madhya Pradesh was considered alongwith other Assistant Directors by the Departmental Promotion Committee (DPC) on March 18, 1981 for promotion to the post of Deputy Director and was not found fit for promotion on the basis of his service record. It is not disputed that a person junior to him was promoted. Chaphekar was, however, promoted to the post of Deputy Director on January 24, 1986. He filed an application before the Madhya Pradesh Administrative Tribunal in November 1991 seeking promotion to the post of Deputy Director with effect from 1981 when a person junior to him was promoted. The Tribunal by its order dated February 21, 1992 allowed the application directing the State of Madhya Pradesh to promote him to the post of Deputy Director with effect from 1981 and to consider him for further promotion to the post of Joint Director from the date when the person junior to him was promoted. This appeal by way of special leave is by the State of Madhya Pradesh against the order of the Tribunal.

H It is not disputed that the DPC superseded the respondent on March

18, 1981 on the basis of adverse reports in his service record for the years 1977-78 and 1978-79. His representation against the adverse reports was accepted on October 11, 1982 and the remarks for the year 1978-79 were completely expunged whereas for the year 1977-78 were partially expunged. On May, 8, 1984 he submitted a representation to the Government requesting that he be considered for the post of Deputy Director as the adverse remarks from his service record stood expunged. There is nothing on the record to show that the respondent made any other representation before the State Government. The Tribunal went into the merits of the service record of the respondent and came to the conclusion that he could not be superseded for promotion. The Tribunal based its findings on the following reasonings:

"In our opinion, the remarks left unexpunged are not such as may disentitle him for consideration. The remarks that 'he is intelligent officer' out weights the remarks that 'he is late lazy and a late comer'. The remarks 'he is lazy, he is late comer' are vague and are of general nature. They cannot be the sole basis to deny promotion particularly so when such remarks were not repeated in the following years. The respondents themselves found him fit and also promoted him to the post of Deputy Director in the year 1986. Therefore, the applicant's non-consideration and supersession in 1981 was wholly unjustified... The petition succeeds, the respondents are directed to treat the petitioner as deemed to have been promoted a day earlier than his immediate junior was promoted to the post of Deputy Director on proforma basis."

We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The Remarks in the annual confidential report are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of a general nature. In any case, the Tribunal 'outstepped its jurisdiction in reaching the conclusion that the adverse remarks were not sufficient to deny the respondent his promotion to the post of Deputy Director. It is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis. It is for the DPC to evaluate the same

- A** and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was not considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It was not within the competence of the Tribunal, in the facts of the present case, to have ordered deemed promotion of the respondent.
- B**

We are further of the view that this is not a fit case where even a direction to consider the respondent for promotion from the year 1981 can be given. The adverse reports were expunged on October 11, 1982. The only representation made by him was in the year 1984. Thereafter the respondent kept quiet till November, 1991 when he approached the Tribunal. It would not be in the interest of justice to issue any such direction after a period of more than a decade.

C

We allow the appeal set aside the order of the Madhya Pradesh Administrative Tribunal, Indore Bench dated February 21, 1991 and dismiss the application of the respondent before the Tribunal. There shall be no order as to costs.

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R.P.

Appeal allowed.