

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 7355 of 2007

* Roshan-Singh Sinsinwar,
Age 36 years,
Occupation : Service,
R/o RB-1, 741 E,
Chandmari Chal, R.P.D. Road,
Bhusawal, District Jalgaon. .. **Petitioner.**

Versus

- 1) Union Government of India,
Through Director General,
Railway Board,
Ministry of Railways,
New Delhi.
- 2) Chief Security Commissioner,
Railway Protection Force,
Mumbai, R.P.F., C.S.T., Mumbai.
- 3) Divisional Security Commissioner,
Railway Protection Force,
Bhusawal, District Jalgaon.
- 4) Virendra Ojha,
Age Major,
A.S.I., Railway Protection Force
Thana, Administration,
Local Train Platform No.1,
C.S.T. Mumbai. .. **Respondent.**

Shri. S.S. Wagh, Advocate, for petitioner.

Smt. Dipali Jape-Ansingkar, Counsel for respondent Nos.1
and 2.

Shri. D.V. Soman, Advocate, for respondent Nos.3 and 4.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Judgment reserved on : 3 April 2018

Judgment pronounced on : 6 April 2018.

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed under Article 226 of the Constitution of India for issuing directions to the respondents to give promotion to the petitioner to the post of Assistant Sub Inspector and for declaring that he was selected in Limited Departmental Competition conducted by respondents from 26-8-2005 to 28-8-2005. Both the sides are heard.

2) The petitioner joined Indian Railway as Constable in Railway Protection Force in the year 1991. In the year 2002 he was promoted to the post of Head Constable. In the year 2005 Limited Departmental Competition was held as per the rules of the Department for giving promotions to the Constables and the Head Constables to the post of Assistant Sub Inspector. The petitioner participated in the said process. The petitioner

was not selected and respondent No.4 was selected and he stood first in the merit list of that category. He was also senior to the petitioner.

3) It is the case of the petitioner that the annual confidential reports for the years 2000, 2001 and 2002 were lost in fire but the annual confidential reports for the years 2003, 2004 and 2005 were available. It is his contention that some marks were fixed on the basis of gradation given in the annual confidential reports and the grading ought to have been given on the basis of the annual confidential reports which were available but the grading was given as "average" and due to that he got less marks than respondent No.4. It is the contention of the petitioner that the annual confidential reports for these years ought to have been treated as "very good" and on that basis the marks ought to have been given to him but that was not done. It is his contention that he had approached the higher authority by making the representations and the higher authority had given directions to respondent No.3 to treat the aforesaid annual confidential reports as "very good". It is

contended that though such directions were given in the year 2007 on that basis the respondents ought to have reviewed the previous process and ought to have given promotion to the petitioner to the post of Assistant Sub Inspector.

4) The submissions made show that in the year 2006 there was another Limited Departmental Competition for promotion under the same rule (Rule 72) and the petitioner had participated in that examination also. In that examination he was not selected. Only after that he made representation to the superior officer and when superior officer gave directions to treat the annual confidential reports as “very good” and benefit of that remark was not given, he came to this Court for aforesaid directions.

5) The respondent Nos.2 and 3 have filed reply affidavit. It is the contention of the respondents that as per the eligibility criteria for giving promotion as Assistant Sub Inspector, limited departmental examination of the Constables and Head Constables who have put in 10 years

of service on the date of the notification was held. It is contended that even if the best case possible is accepted the petitioner could not have got more than 65 marks. It is contended that as per the rules, respondent No.4 was required to be treated as senior to the petitioner as he had joined the service as Constable in the year 1989. It is contended that not only respondent No.4 but there were two other candidates who were Head Constables above the petitioner in the merit list prepared and due that circumstance the petitioner could not have got the promotion.

6) It is the case of the respondents that the annual confidential reports for the years 2003 and 2004 were "good" and for the process it was necessary to consider annual confidential reports of 5 years like the years 2000, 2001, 2002, 2003 and 2004. It is contended that as per the instructions issued by the Department with regard to annual confidential reports, the marks were given to the petitioner. The instructions are produced on record. It is as under :

"(v) Where one or more Confidential Reports have not been written for any reason during the relevant period, the Selection Committee should consider the Confidential Reports of the years preceding the period in question and if in any case even these are not available the Selection Committee should take the Confidential Reports of lower grade into account to complete the number of Confidential Report required to be considered. If this is also not possible all the available Confidential Reports should be taken into account."

7) It is contended that in view of the aforesaid instructions and the procedure which is followed, in any case the petitioner could not have got the promotion and only due to that circumstance he had participated in the process of 2006. It is contended that the annual confidential report for the year 2005 could not have been considered in the process of the year 2005 as the year for the report was not complete.

8) The submissions made and the record show that the petitioner participated in the process of 2006 and when he failed in that attempt also he took steps and created the dispute. Only two attempts were available to the persons like the petitioner of getting promotion by participating in such process. Thus for the reason that he participated in the second process and he came to this

Court late, also no relief can be granted in favour of the petitioner.

9) The submissions made by the learned counsel for the petitioner that he ought to have been treated senior to respondent No.4 as he was head constable and respondent No.4 was only Constable is also not acceptable. Employees who were entitled to appear for the examination were Constables and Head Constables and all the members of both these categories who had completed 10 years of service on the date of notification were entitled to participate in the process. They were all having similar chances, two chances, for getting higher post. Thus, it cannot be said that the petitioner ought to have been treated senior to respondent No.4. Further, even in that case he would not have got promotion as two Head Constables were above him and they kept mum. For that reason also no relief can be granted to the petitioner.

10) Learned counsel for the petitioner has placed reliance on some observations made by the Apex Court in the case reported as **(2008) 8 SCC 725 (Dev Dutt v.**

Union of India). In this case the Apex Court has laid down that it is necessary to communicate confidential reports to the employees and if the confidential reports are not communicated and due to that the employee loses the opportunity of getting promotion, direction can be given to give him hearing in respect of that confidential report and consider his case again. The submissions made and the record show that not only the petitioner but many persons were affected due to loss of the confidential reports of 3 years and further there were instructions of aforesaid nature which enable the Department to presume that the confidential report was of the lower grade to one which was prepared in the previous year. Admittedly, prior to the year 2000, the confidential report of the petitioner was not above "good" and during the consideration period, 5 years prior to the date of notification he had not got confidential report of higher grade. In view of these circumstances no benefit of the observations made by the Apex Court can be given to the petitioner and there are more circumstances as mentioned above. Learned counsel for the petitioner placed reliance on some observations of other case, reported as **1991 Supp (2)**

SCC 126 (R.K. Singh v. State of U.P.). In that case also entitlement of the employee of getting knowledge of adverse confidential report is discussed. On this point sufficient observations are made by this Court. For all the aforesaid reasons this Court holds that no relief can be granted in favour of the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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