

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3363 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

R N KALATHIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3363 of 1988
MR MR ANAND for Petitioner No. 1
MR DIPAK C RAVAL for Petitioner No. 1
MR ND GOHIL A.G.P. for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

ORAL JUDGEMENT

1.0. The petitioner by way of this petition has challenged the impugned order dated 25th May, 1988 at annexure-A to the petition, whereby his case for

promotion to the post of Deputy Executive Engineer was not considered.

2.0. The short facts of the case as they emerge from the record of the petition are that the petitioner was initially appointed in the cadre of Supervisor w.e.f. 2nd June, 1965. It is the case of the petitioner that his appointment was subject to the regular selection by the Gujarat Panchayat Selection Board. It is the say of the petitioner that later on he was selected by the Board and confirmed on the said post. It is further the say of the petitioner that persons who were recruited after him, were promoted to the post of Deputy Executive Engineer. The petitioner submitted that in the year 1981, when his promotion was due, he was given adverse remarks in his Confidential Report. The petitioner further submitted that as per the Government policy for the purpose of promotion, record of last three years are taken into consideration and if record of last three years is not good, then record of last five years are seen. The petitioner further submitted though since last seven years no adverse remarks have been passed against him, the respondents have not considered his case for promotion and juniors to him were promoted. Hence, this petition.

3.0. I have heard the learned advocate for the respective parties and have perused the relevant record. It appears that pursuant to the notice, the respondents have filed their reply and in the reply it has been contended that since adverse remarks were found against the petitioner in the Annual Confidential Report of the year 1979-80, he could not be considered for deemed date from the year 1981. It is further contended that the name of the petitioner was included in the select list of the year 1987, but the same was not considered by the Departmental Promotion Committee and with the concurrence of the G.P.S.C. the petitioner was ordered to be promoted w.e.f. 2nd February, 1989.

3.0. From the record, it appears that the respondent has considered only the record of the year 1979-80. As against that the case of the petitioner is that in the last seven years the petitioner has not received any adverse remark. Therefore, it is clear that even if any adverse remark is there, then it was not communicated to the petitioner.

4.0. It is evident that if juniors to the petitioner were promoted on 25th May, 1988, the petitioner ought to have been promoted alongwith his juniors.

5.0. In the result, the petition is partly allowed. Under the circumstances, it is directed that the respondents shall consider the case of the petitioner as if he was promoted alongwith his juniors and after considering such promotion, all consequential benefits shall be paid to the petitioner. The respondents shall complete the said exercise within a period of four months from the date of receipt of the order of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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