

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 6970 OF 2004

M.C. SHASHIDHAR & ORS. Appellant (s)

VERSUS

H.M. NATESH & ORS. Respondent(s)

(With appln(s) for stay and with prayer for interim relief
and office report)

Date: 06/04/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. P.N. Mishra, Sr. Adv.
Mr. E.C. Vidya Sagar, Adv.
Mr. Brahmajeet Mishra, adv.
Mr. Yatish Mohan, Adv.

For Respondent(s) Mr. Sanjay Sharawat, Adv.

For R-2 Ms. Anitha Shenoy, Adv.

UPON hearing counsel the Court made the following
O R D E R

For the reasons mentioned in the signed order,
the impugned judgment and order of the Division Bench of
the High Court is set aside and the appeal is allowed.
No order as to the costs.

(Indu Satija)
Court Master

(Ajay Kr. Jain)
AR-cum-PS

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6970 OF 2004

M.C. Shashidhar & Ors. Appellants

Versus

H.M. Natesh & Ors. Respondents

O R D E R

Heard learned counsel for the parties.

2. This appeal by special leave is directed against the impugned judgment and order dated 26.02.2003 of the Division Bench of the High Court of Karnataka whereby the Writ Appeal No. 4821/1999 filed by the respondent No. 1 herein has been allowed and the respondent No. 2 Corporation herein has been directed to promote respondent No. 1 to the post of Assistant Director on regular basis with effect from the date on which the appellants herein were promoted to the said post with all consequential benefits, pecuniary and otherwise.

3. The facts in detail have been set out in the impugned judgment and order as also in the judgment dated 7.4.1999 of the learned Single Judge and hence we are not repeating the same here.

4. Respondent No. 1 herein filed a writ petition before the learned Single Judge in which he prayed for quashing the promotion of the appellants herein (respondents in the writ petition) and for a direction to promote respondent No. 1 herein (writ petitioner before the High Court) to the post of Assistant Director with effect from the date from which the appellants herein were promoted to the said post. The said writ petition was partly allowed by the learned Single Judge vide order dated 7.4.1999 with a direction to the respondent No. 2 corporation to consider the case of the writ petitioner for promotion to the post of Assistant Director against any existing vacancy or vacancy that may arise in future. Against the order dated 7.4.1999 of the learned Single Judge, the writ petitioner (respondent No. 1 herein) filed a writ appeal before the Division Bench of the High Court which has been allowed by the impugned judgment and order dated 26.02.2003. Aggrieved by the said order, the appellants have filed this appeal before us.

5. We have carefully perused the impugned judgment and order of the Division Bench and we are of the opinion that

the same cannot be sustained. No doubt respondent No. 1 herein has been promoted to the post of Assistant Director in 2002 but he wants promotion from 1989 when the appellants herein were promoted to the post of Assistant Director. It appears that respondent No. 1 was no doubt initially senior to the appellants in the cadre of Task Force Commanders. However, the appellants herein completed their probation earlier in 1988 whereas the probation of respondent No. 1 was extended because there was an adverse entry in his reports and disciplinary proceedings were conducted against him in which he was found guilty and punishment of stoppage of one increment was awarded.

6. It appears from the record that respondent No. 1 first filed a writ petition in the year 1993, i.e., after considerable delay. In the said writ petition, respondent No. 1 did not challenge the promotion of the appellants herein. However, the said writ petition was disposed of by the learned Single Judge by order dated 18.08.1997 with a direction to respondent No. 1-Corporation to finalize the seniority list and make a final seniority list within four months from the date of the order and make regular promotions to the higher cadre of Assistant Directors in accordance with final seniority list.

7. The second writ petition was filed in the year 1998 by respondent No. 1 herein which had ultimately been partly allowed by the learned Single Judge and the Division Bench of the High Court has allowed the writ appeal.

8. In our opinion the impugned judgment of the Division Bench of the High Court cannot be sustained. There was no question of any automatic promotion to respondent No. 1 because promotion was to be done on the basis of seniority-cum-merit. Since there was an adverse entry in the report of respondent No.1 in the year 1988-89 and he was found guilty in the disciplinary proceedings, this clearly shows that he was not found suitable for promotion at the

time when the appellants herein were promoted to the post of Assistant Director. Moreover, the second writ petition filed in the year 1998 by the writ petitioner (respondent No. 1 herein) was belated and liable to be dismissed on the ground of laches.

9. For the reasons mentioned above, the impugned judgment and order of the Division Bench of the High Court is set aside. The appeal is allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

.....J.
(A.K. PATNAIK)

NEW DELHI;
APRIL 06, 2010