

(2002) 02 PAT CK 0104
In the Patna High Court
Case No : C.W.J.C. No. 16121 of 2001

Chandra Shekhar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0104

Judgement

R.N. Prasad, J.—The petitioner is member of Bihar Administrative Service. At the relevant time he was posted at Sonbersa on the post of Block Development Officer. In the year 1982 and subsequently he was posted at Kharagpur. In 1991 Vigilance P.S. Case N o. 48/92 was instituted while he was posted at Sonbersa. Kharagpur P.S. Case No. 17/91 was instituted while he was posted at Kharagpur. In the said case as yet no charge-sheet has been submitted. He filed a writ petition bearing C.W.J.C. No. 11032/2000 claiming promotion to junior and senior selection grade. The said writ petition was disposed of on 23-11 -2000 directing the respondent-Secretary, Personnel and Administrative Reforms Department to pass appropriate order on the representation in accordance with law as early as possible. The said representation has been disposed of vide order contained in letter dated 3-10-2001, Annexure-6, whereby his claim for promotion has been kept pending and one post has been kept reserved but promotion was not granted as claimed by him.

2. A counter-affidavit has been filed on behalf of respondents wherein stand has been taken that two criminal cases are pending against the petitioner. However, in the counter-affidavit averment made in the writ petition that no charge-sheet has been submitted in the aforesaid two cases, has not been denied. However, supported the impugned order, Annexure-5.

3. Learned Counsel for the petitioner pointed out that denying promotion to the petitioner is illegal in view of the Government circular dated 24-9-1998, Annexure -2 and also the decision of Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., . Whereas, learned Counsel for the respondents

reiterated his stand that two criminal cases are pending against the petitioner.

4. On consideration of submission made by learned Counsel for the parties and the material available on the record, it is manifest that two criminal cases, as indicated above, were instituted in the year 1991 and 1992. In those cases as yet no charge-sheet has been submitted. The aforesaid fact has not been denied in the counter-affidavit has been stated that matter is pending for consideration for sanction of prosecution. Thus admittedly no charge-sheet has been submitted as yet. Circular of the Government, Annexure-2, indicates that in case prima-facie case against the employee is not disposed of within a period of two years, such employee shall be allowed ad hoc promotion with the condition that if the employee is exonerated from the charge the same shall be confirmed or in case charge is found to be established the ad hoc promotion shall be accordingly modified.

5. In the case of Union of India and Ors. (supra) the Apex Court has held that for the purposes of sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned Counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they were initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegation are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

6. Therefore, it is evident from the circular of the Government as well as law laid down by the Supreme Court that in the case of a person against whom criminal case is filed and no charge-sheet is submitted, there is no bar in granting ad hoc promotion to him rather it says that such person can be granted ad hoc promotion but such ad hoc promotion shall be subject to final result in the

criminal case/proceeding. Therefore, in such a situation the writ petition is disposed of directing the respondent concerned to consider the case of the petitioner in the light of circular, the Supreme Court judgment and also observation and directions as indicated above in this order and dispose of the same by a reasoned order in accordance with law preferably within a period of three months.