
(2012) 05 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 63733 of 2011

Dr. Pushya Mitra Singh Deo

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Citation : (2012) 7 ADJ 137 : (2012) 4 AWC 5100

Hon'ble Judges : Virendra Vikram Singh, J; Vineet Saran, J

Bench : Division Bench

Advocate : U.N. Sharma, Chandan Sharma and Sandeep Singh, for the Appellant; Tarun Varma, Govind Saran and S.C., for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner was appointed as an Assistant Security Commissioner, Railway Protection Force in the year 1985. In due course, he was promoted as Deputy Inspector of General (D.I.G.) w.e.f. 1.7.2005. On completion of five years service as D.I.G., which admittedly was completed on 1.7.2010, he was to be considered for promotion as Inspector General (I.G.). The Departmental Promotion Committee met on 18.11.2010 and on the said date the case of the petitioner was considered by the Committee and it was observed in paragraph 4.1 of the minutes of the Department Promotion Committee that as per instructions, Sealed Cover Procedure can be applied only if a charge-sheet is framed and that since there is no charge-sheet pending, the officer can be considered for promotion. However, the case of the petitioner was not cleared for promotion because an FIR had been lodged by the C.B.I. against the petitioner. Again the case of the petitioner was considered by the Department Promotion Committee, which met on 15.6.2011 in which the case of the petitioner was kept under "sealed cover" procedure on the ground that a C.B.I. case is pending against the petitioner.

2. Aggrieved by such action of the respondents, the petitioner has filed this writ petition with the prayer for a direction to the respondents to open the Sealed Cover forthwith and to act upon the recommendation of the Departmental

Promotion Committee dated 18.11.2010 and 15.6.2011 in respect of the promotion of the petitioner from the post of D.I.G. to I.G. It has further been prayed that the promotion of the petitioner should be given effect to on the post of I.G. with effect from the date on which his juniors had been promoted and he be given all the consequential benefits.

3. We heard Shri Umesh Narain Sharma, learned Senior Counsel assisted by Shri Chandan Sharma appearing for the petitioner as well as Shri Tarun Verma and Shri Govind Saran, learned counsel appearing for the respondents. Pleadings have been exchanged and with the consent of learned counsel for the parties this petition is being disposed of at the admission stage itself.

4. The submission of the learned counsel for the petitioner is that though some investigation by the C.B.I. was going on in the case of petitioner, but no charge-sheet had been submitted and merely because a case was registered by the C.B.I. against the petitioner, as per the provisions of the Railway Vigilance Manual his promotion could not be ignored. In support of his submission, learned counsel for the petitioner has also placed reliance on the decision of the Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , that Sealed Cover Procedure is to be resorted to only after the charge-memo/charge-sheet is issued and the pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure.

5. Shri Tarun Verma, learned counsel for the respondents does not dispute that no charge-sheet had been filed by the CBI in the case of the petitioner and only investigation/inquiry was going on, but it is contended that subsequent to the reports of the Departmental Promotional Committee, a charge-sheet has been sub-mitted against the petitioner and hence the question of granting promotion would not arise. He further submits that directions for opening the Sealed Cover and giving consequential benefits to the petitioners do not deserve to be granted in the facts and circumstances of this case.

6. Paragraph 702.1 of the Railway Vigilance Manual, which relates to promotion and is quoted below:

Promotion: While considering case of promotions, extant rules and instructions issued from time to time in the matter may be followed by the competent authority. It is however, clarified that promotions should not be withheld merely because a regular case has been registered by the Central Bureau of Investigation against a gazetted officer or the complainants against him/her are being looked into by the departmental agency. Promotions can be withheld only in the following circumstances.

- (i) Where the Railway Servant is under suspension;
- (ii) Where the Railway Servant is facing prosecution;
- (iii) Where Departmental proceedings have been initiated by issue of a charge-sheet;

(iv) Cases where CVC's advice for initiation of major/minor penalty has been received and the advice has been accepted by the D.A.

(Emphasis supplied)

7. From perusal of the above paragraph, it is clear that promotion of an officer could not be withheld merely because of registration of a case against him by the Central Bureau of Investigation. Para 702.1 of the Railway Vigilance Manual specifies the circumstances under which the promotion can be withheld.

8. In the present case though it true that a regular case has been registered by the C.B.I. against the petitioner, but none of the conditions specified in paragraph 702.1 herein above were attracted because of which the promotion of the petitioner could be withheld on the date when the meetings of the Departmental Promotion Committee were held.

9. In the case of Jankiraman (supra), the Apex Court, in paragraph 6, has held as under:

On the first question, viz., as to when for the purposes of the 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 the 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 are 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 allegations 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.

10. In the present case, the Departmental Promotion Committee in its minutes of the meeting held on 18.11.2010 had itself recorded that sealed cover procedure can be applied only if a charge-sheet is filed. Paragraph 4.1 of the D.P.C. is

quoted below:

As per instruction, Sealed Cover procedure can be applied only if charge-sheet is framed. Since there is no charge-sheet pending, the officer can be considered for promotion.

11. Despite the said observation of the D.P.C., the case of the petitioner was not considered in the said meeting because of the remark given at the bottom of the report requiring the C.B.I. to indicate the outcome of the case lodged against the petitioner. Thereafter, the case of the petitioner was again considered by the Departmental Promotion Committee held on 15.6.2011 and Sealed Cover procedure was adopted merely because of the pendency of a CBI case against him.

12. Admittedly, when his case was considered for promotion on the post of I.G., no charge-sheet had been filed against the petitioner. None of the conditions specified in paragraph 702.1 of the Railway Vigilance Manual were attracted for non clearance of the promotion of the petitioner. What happened subsequently, could not be relevant at the stage when the case of the petitioner was considered by the Departmental Promotion Committee on 18.11.2010 and 15.6.2011. Since there was no legal impediment in considering the case of the petitioner at the time when the meeting of the Departmental Promotion Committee was held, the case of the petitioner ought to have been considered and if he was found eligible, he ought to have been promoted as per the recommendation of the Departmental Promotion Committee.

13. In the aforesaid facts, we are of the opinion that direction deserves to be issued to the respondents to open the Sealed Cover and to act upon the recommendation made by the Departmental Promotion Committee. Accordingly, the writ petition stands allowed. The respondents are directed to open the Sealed Cover recommendation made by the Departmental Promotion Committee forthwith and to act upon the said recommendation and if the case of the petitioner has been recommended for promotion to the post of I.G., the same be given to him from the date when his juniors were promoted on the said post. The petitioner shall also be entitled to all consequential benefits.

No order as to costs.