
(2015) 01 RAJ CK 0055
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5194/2012

Duli Chand Gurjar

APPELLANT

Vs

The Nuclear Power Corporation of India Ltd.

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Citation : (2015) 01 RAJ CK 0055

Hon'ble Judges : Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Kuldeep Mathur, Counsel, for the Appellant; Sanjay Nahar, Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Nirmaljit Kaur, J.—The prayer in the present petition is to grant second Financial Upgradation under the Assured Career Progression (ACP) Scheme to the petitioner w.e.f. 26.09.2007 with all consequential benefits including the arrears of salary, fixation etc.

2. The petitioner was initially appointed on the post of Cashier in the Departmental Canteen of Nuclear Power Board w.e.f. 26.9.1983. The petitioner was subsequently absorbed w.e.f. 1.10.1991. The petitioner was entitled for grant of the first and second Financial Upgradation under the ACP Scheme after completion of 10 years and 24 years respectively. After introduction of the said Scheme, the respondent Organization allowed the first Financial Upgradation to the petitioner w.e.f. 25.9.1995 on his completion of 12 years regular service counted from 26.9.1983. The petitioner completed 24 years of the regular service on 26.9.2007 and thus, became eligible for grant of second Financial Upgradation under the ACP Scheme. The petitioner was denied the second Financial Upgradation under the said Scheme. Aggrieved, he filed a representation before the Department. No response was received by the petitioner but apprehended that the same has been upheld for the reason that the charge-sheet dated 10.10.2007 was served upon the petitioner under Rule

14(3) of the Industrial Employment Standing Orders (Central) Rules, 1946.

3. While praying for grant of second Financial Upgradation in spite of the charge-sheet, learned counsel for the petitioner submitted that the ACP Scheme was introduced to remove the problem of stagnation and hardship faced by the employees due to lack of promotional avenues. The said benefit cannot be postponed or denied to the petitioner due to disciplinary proceedings which have been initiated after the date the same became due to him. In the present case, admittedly, on 26.9.2007, the date on which the petitioner became entitled for second Financial Upgradation, no disciplinary enquiry was pending against him. A charge-sheet was served upon the petitioner on 10.10.2007.

4. Reliance is placed on the judgment rendered by Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., and in the case of The Union of India (UOI) and Others Vs. Anil Kumar Sarkar, as well as the judgment rendered by this Court in the case of Kailash Chand Sharma Vs. State of Rajasthan and Others, and in the case of Uma Shanker Kiradu Vs. State and Ors. (S.B. Civil Writ Petition No. 926/2011), decided on 11.1.2012.

5. Reply has been filed by the respondents. It is contended that as per the office memorandum dated 14.9.1992, at the time of consideration of the cases of Government servant for promotion, the details with respect to Government servants under suspension; against whom charge-sheet has been issued and disciplinary proceedings are pending; and Government Servants in respect of whom prosecution for criminal charge is pending, should be brought to the notice of the Departmental Promotion Committee and that in such cases, they shall not be promoted until they are completely exonerated of the charges; and in case, the same is received before the employees actually promoted, their case shall be deemed to have been placed in a sealed cover before the DPC. It is contended by learned counsel for the respondents that in the present case, on the date when the DPC was held, a charge-sheet had already been issued to the petitioner. Hence, he is not entitled for the second selection grade.

6. The facts are not in dispute. It is not disputed that the petitioner became eligible for the grant of second Financial Upgradation under the ACP Scheme after completion of 24 years of service i.e. on 26.9.2007. It is also not disputed that on the said date, no charge-sheet was issued to the petitioner.

7. The Apex Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., while dealing with the "sealed cover procedure" for the disciplinary proceedings as to when the same is said to have commenced has held in para 16 and 17 as under:-

"16. 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 chargesheet 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/chargesheet. 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 finalize 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. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p.196, para 39)

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) * * *

(3) * * *

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."''

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

8. Similarly, in the case of The Union of India (UOI) and Others Vs. Anil Kumar Sarkar, , the Hon"ble Supreme Court held that the pendency of the criminal investigation prior to the stage of a charge-sheet will not be sufficient to enable Authorities to adopt sealed cover procedure or withhold promotion.

9. In the present case, charge-sheet was issued for the first time on 10.10.2007 i.e. after having successfully completed 24 years of service making the petitioner eligible under the said Scheme.

10. As per the ACP Scheme and the office memorandum dated 14.9.1992, the same was subject to the condition mentioned in the said annexure. The same memorandum was the subject matter before the Hon''ble Supreme Court in the case of Anil Kumar Sarkar (supra). After taking the same into consideration, it was observed by the Hon''ble Court that the disciplinary proceedings commence only when a charge-sheet is issued. Para 15 of the said judgment reads as under:-

"15. In Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others, , this Court held as under:-

27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India Vs. K.V. Jankiraman, etc. etc., and UCO Bank and Another Vs. Rajinder Lal Capoor, We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued."

11. Thus, the only question that survives is as to whether the office memorandum dated 14.9.1992 shall come in the way of the grant of second Selection Grade as the charge-sheet had already been issued on the date when the DPC was held? The said issue is answered by the learned Single Judge of this Court in the case of Kailash Chand Sharma Vs. State of Rajasthan and Others, . In that case, the selection grade had been denied on account of the adverse remarks. However, the said adverse remarks were not of the period, for which, the petitioner therein was being considered for grant of the said selection scale. In para 6 of the said judgment, it was held thus:

"6. Coming now to question of grant of selection scales to petitioner on completion of 9, 18 and 27 years of service, I find that petitioner was initially appointed as Stock Assistant in the year 1964 and by the time the Government Circular dated 25.01.1992 was issued, he had already completed 27 years of service; in other words, all three selection scales became due to him on completion of 9, 18 and 27 years of service on 25.01.1992 itself, but for the above referred adverse remarks and penalty. The action of respondents in deferring all the three selection scales by five years cannot be held to be justified. In so far as first two selection scales i.e. on completion of 9 and 18 years of service are concerned, the period in which the same became due to the petitioner, none of the five adversities, referred to above, were falling in those two spells. The period of four adverse remarks in the APARs of petitioner come within the period of 1988-89, 1989-90, 1990-91 and 1991-92 and the penalty of stoppage of one grade increment was also awarded to him by order dated

09.03.1989. All such five adversities thus fall within the period of nine years starting from 18 to 27 years and therefore they could have effect only in delaying grant of third selection scale to petitioner in terms of the provisions contained in the Government Circular dated 25.01.1992, and not for grant of all three selection scales. The said Circular provides that grant of selection scales would be depending on satisfactory service of government servant concerned. But then that satisfactory service would be computed only for the period/span of 9 years for which the employer was not able to grant promotion to the employee and in order to remove the stagnation for such span of nine years, the employee has to be compensated by grant of selection scale." 12. Similarly, another Single Bench of this Court in the case of Uma Shanker Kiradu Vs. State and Ors. (S.B. Civil Writ Petition No. 926/2011), decided on 11.1.2012 held in no uncertain terms that the Departmental Promotion Committee can only be taken into consideration the material existing and available upto the last date of the vacancy year. Any adverse material that came into notice subsequently after the said date when the said vacancy arose cannot be taken into consideration while considering the person for promotion against the vacancy of the said year. It was held thus:-

"The Departmental Promotion Committee while considering candidature of the petitioner for promotion to the post of Principal would have considered the material existing and available, relating to the petitioner, up to 31.3.2002 that is the last day of the vacancy year-2001-2002. Any adverse material⁴ SBCWP No. 926/2011 Uma Shanker Kiradu Vs. State and Ors. that came into being subsequent to the date aforesaid, could not have been taken into consideration by the Departmental Promotion Committee while examining candidature of the petitioner for the purpose of promotion against the vacancies of the year 2001-2002. Whatever material that is taken into consideration by the Departmental Promotion Committee to keep the recommendation of the DPC in sealed cover came in existence subsequent to 31.3.2002, as such, that has been erroneously taken into consideration by the Departmental Promotion Committee that met on 07.3.2008. In such circumstances, placement of the recommendations of the Departmental Promotion Committee in sealed cover relating to the promotion of the petitioner to the post of Principal, Senior Secondary School from the post of Head Master, Secondary School is not in accordance with law." 13. Applying the same analogy in the facts of the present case, the petitioner became eligible for the grant of the second Financial Upgradation w.e.f. 26.9.2007 under the ACP Scheme. No charge-sheet was issued against him on the said date. The charge-sheet was issued subsequently. As per the aforesaid judgments, disciplinary proceedings are treated to commence after the issuance of charge-sheet. Under the said ACP Scheme, the employees are entitled to the upgradation after completion of 10 years and 24 years of regular service in lieu of such promotion. Although it is not an alternative of regular promotion but it is a method to meet hardship faced by employees due to lack of promotional avenues. There being no charge-sheet against the petitioner on the date he became eligible for the selection grade, any

subsequent charge-sheet cannot come in the way of the grant of selection grade for the said period.

14. In view of the above, the writ petition is allowed. The respondents are directed to grant the second Financial Upgradation under the ACP Scheme due to the petitioner after completion of 24 years of service i.e. on 26.9.2007 within a period of two months from the date of receipt of the copy of the order.