
(2011) 08 SHI CK 0075
In the High Court Of Himachal Pradesh
Case No : CWP No. 1017 of 2009

Gautam Singh Chetha

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Constitution of India, 1950 — Article 14, 16, 20(2)

Citation : (2011) 08 SHI CK 0075

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Departmental proceedings were initiated against Respondent No. 4 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on 29.6.1992. The penalty of withholding of three increments with cumulative effect was imposed upon Respondent No. 4 on 19.2.1994. It will be pertinent to mention that in the Departmental Promotion Committee held for promotion to the post of Kanungos on 20.3.1993, Petitioner was considered alongwith Respondent No. 4. However, due to pendency of departmental proceedings against Respondent No. 4, sealed cover procedure was adopted. In the Departmental Promotion Committee meeting held on 6.4.1994, the case of Respondent No. 4 was not considered due to pendency of penalty. In the subsequent Departmental Promotion Committee, held on 18.6.1996 his name was again not recommended for promotion due to currency of penalty. He was promoted on the basis of recommendations made by the Departmental Promotion Committee on 10.2.1997 to the post of Kanungo. In the seniority list of Kanungos as it stood on 1.1.1994, Petitioner was assigned Sr. No. 27 and the name of Respondent No. 4 did not figure in this list. In the tentative seniority list, dated 12.1.1999 (Annexure P-7) as on 31.12.1998 the Petitioner was assigned Sr. No. 16 and the name of Respondent No. 4 figured at Sr. No. 22. Respondent No. 2 has sent communication to the Deputy Commissioner, Kinnaur on 9.8.2007

whereby he was requested to reflect the name of Respondent No. 4 in the final seniority list of Kanungos above the names who were junior to him in the panel drawn by the Departmental Promotion Committee in its meeting dated 6.4.1995. This letter was issued on the basis of para 13 of Swamy's Compilation on Seniority and Promotion. Thereafter seniority list of Kanungos was issued on 22.11.2007 vide Annexure P-9. In this list, Petitioner was assigned Sr. No. 9 and Respondent No. 4 was assigned Sr. No. 11. Respondent No. 4 made a representation on 30.6.2008 vide Annexure P-10 seeking modification of order dated 9.8.2007. His representation was forwarded by Respondent No. 2 to Respondent No. 3 on 22.7.2008. Thereafter on the basis of notings made vide N-93 to N-97, the case of Respondent No. 4 was recommended. Consequently, tentative seniority list was issued vide Annexure P-13 on 9.12.2008 whereby Respondent No. 4 was ranked senior to the Petitioner. Thereafter final seniority list was issued on 24.1.2009 wherein the Petitioner was assigned Sr. No. 12 and Respondent No. 4 has been assigned Sr. No. 9 above the Petitioner.

2. Mr. Dilip Sharma, learned Counsel for the Petitioner has strenuously argued that the ranking of Petitioner below Respondent No. 4 in the tentative and final seniority list, Annexures P-13 and P-14 is illegal, arbitrary, discriminatory, thus violative of Articles 14 and 16 of the Constitution of India. He has also assailed the issuance of orders dated 9.8.2007, Annexure P-8 and Annexure P-11, dated 22.7.2008. In other words, his submission is that the seniority assigned to the Petitioner before 9.8.2007 be restored.

3. Mr. Vikas Rathore, learned Deputy Advocate General has supported the issuance of seniority lists Annexures P-13 and P-14. Mr. P.P. Chauhan, learned Counsel representing Respondent No. 4 has strenuously argued that the seniority assigned to his client is in conformity with law. He has also argued that there is No. illegality in the notings prepared by Respondent No. 4, i.e. N-93 to N-97.

4. I have heard learned Counsel for the parties and gone through the pleadings carefully.

5. What emerges from the facts enumerated hereinabove is that the departmental proceedings were initiated against Respondent No. 4 on 29.6.1992. He has been imposed major penalty of withholding of three increments with cumulative effect on 19.2.1994. Due to initiation of departmental proceedings against Respondent No. 4, his case was kept in sealed cover by the Departmental Promotion Committee held on 20.3.1993. The Petitioner stood promoted on the basis of recommendations made by the Departmental Promotion Committee vide order dated 26.3.1993. Since Respondent No. 4 has been imposed major penalty, his case was not recommended as per reply filed by Respondents No. 1 to 3 due to pendency of departmental proceedings and currency of imposition of penalty between 1994 to 1997. The period of penalty was operational with effect from 1.1.1995 to 1.1.1997. His case was considered by the Departmental Promotion Committee after the period of penalty was over in its meeting held on 10.2.1997. The Court is of the considered view that Respondents No. 2 and 3

have wrongly relied upon para 13 of Swamy's Compilation on Seniority and Promotion. Respondent No. 4 has been considered for promotion by the Departmental Promotion Committee only on 10.2.1997. He could not be considered for promotion when the departmental proceedings were initiated against him and during the currency of imposition of penalty. A person, on whom a major penalty has been imposed, cannot be rewarded by giving him promotion from an anterior date, as in this case. Respondents No. 1 to 3 have not only assigned seniority to Respondent No. 4 above Shri Hari Singh, but have also made him senior to the Petitioner as per tentative seniority list issued on 9.12.2008 and final seniority list issued on 24.1.2009. In these seniority lists Petitioner ranked at Sr. No. 12 and Respondent No. 4 ranked at Sr. No. 9. Respondent No. 2 has committed illegality by issuing order dated 9.8.2007. The Respondent No. 2 has further committed illegality by forwarding the representation of Respondent No. 4 dated 30.6.2008 whereby he has sought modification of order dated 9.8.2007, vide letter dated 22.7.2008. It is admitted by the Respondent-State in its reply that Respondent No. 4 has himself dealt with his representation and has made notings from N-93 to N-97. For this, the explanation given by the Respondent-State in its reply is that since Sadar Kanungo was on tour, he (Respondent No. 4) being the senior-most prepared the notings. However, in the reply filed by Respondent No. 4, he has stated that the notings were made after the discussions were made with the senior officers. The matter was not of such a grave importance that it could not wait the returning of the Sadar Kanungo from tour. Respondent No. 4 has committed serious misconduct by preparing the notings and getting his case recommended by twisting the facts. In his notings he has stated that he was to be ranked senior to Dilbag Singh on the basis of letter dated 9.8.2007. It is factually incorrect. In order dated 9.8.2007, Annexure P-8, name of Dilgag Singh is not at all mentioned. It was a fit case in which the departmental proceedings ought to have been initiated against Respondent No. 4 for dealing with his own case and, that too, by twisting the facts in his notings, which were contrary to record. In the instant case, after the imposition of penalty upon the Respondent No. 4, his appeal was rejected by the appellate authority on 19.2.1994. Thereafter the order of penalty was upheld by the Financial Commissioner-cum-Secretary on 5.6.1996.

6. Mr. Dilip Sharma, learned Counsel for the Petitioner has argued that the copy of tentative seniority list, dated 9.12.2008 was never supplied to his client. Mr. Vikas Rathore, learned Deputy Advocate General has submitted that the seniority list was circulated to all the concerned parties and he has referred to para 18 of the reply. However, there is No. tangible evidence placed on record that the Petitioner knew about the issuance of tentative seniority list on 9.12.2008. The Petitioner has been prevented from making effective representation against the alteration of tentative seniority list which has resulted in ranking Respondent No. 4 above the Petitioner in the final seniority list issued on 24.1.2009.

7. A bare perusal of Annexure P-11, dated 22.7.2008 also does not talk of giving seniority to Respondent No. 4 above Shri Dilbag Singh, but only says that the

case of Respondent No. 4 be considered as per letter dated 9.8.2007.

8. A person, against whom disciplinary proceedings are initiated and has been found guilty and major penalty is imposed upon him, cannot be rewarded by giving him promotion or seniority from back date. Their lordships of Hon''ble Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., have held as under (paras 28, 46, 47 and 48):

The Tribunal has also struck down the following portion in the second subparagraph after Clause (iii) of paragraph 3 which reads as follows: "If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon" and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions. It may be pointed out that the said subparagraph directs that "the officer"s case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary/court proceedings". The Tribunal has given the direction in question on the ground that such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. According to the Tribunal, "it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Article 20(2) of the Constitution". The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the review DPC should consider the findings in the sealed cover as also the penalty imposed. It is not clear to us as to why the Tribunal wants the review DPC to consider the penalty imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover when a penalty is imposed amounts to double jeopardy. However, as we read the findings of the Tribunal, it appears that the Tribunal in No. case wants the promotion of the officer to be deferred once the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.

The peculiar facts in this case are that at the relevant time the Respondent-employee was working as Superintending, Engineer since July 1986. When earlier he was working as Garrison Engineer in Bikaner Division, there was a fire in the Stores in April 1984 and there were also deficiencies in the Stores held by the Store-keeper during the period between 1982 and 1985. Hence, disciplinary proceedings were commenced in February 1988 and the Respondent was served with a charge-sheet on February 22, 1988. By an order of August 19, 1988 a

penalty of withholding of increment for one year was imposed on the Respondent as a result of the said disciplinary proceedings.

On June 3, 1988, the DPC met for considering the promotion to the Selection Grade. Pursuant to this meeting, by an order of July 28, 1988 some juniors were given the Selection Grade with retrospective effect from July 30, 1986. The Respondent-employee's name was kept in a sealed cover and was, therefore, not included in the list of the promotee officers.

The Tribunal has found fault with the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986, the DPC should not have excluded the Respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the Respondent his promotion to the Selection Grade as that amounted to double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the Respondent's case for promotion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records up to 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If No. disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunal's finding is accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be No. order as to costs.

9. The Government of India, Department of Per. & Trg., has issued directions vide O.M. No. 22011/2/99-Estt. (A), dated the 21st November, 2002, pertaining to

promotion/ confirmation of officers under suspension or against whom disciplinary/criminal cases are pending. Instruction No. (17) issued in Chapter 3, "Suspension - General Orders" in Swamy's Compilation of CCS (CCA) Rules, 1965 reads thus:

(17) Promotion/Confirmation of officers under suspension or against whom disciplinary/criminal cases are pending. - The procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment, dated 27-8-1991 of the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., As a result of the review and in supersession of all the earlier instructions on the subject, the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paragraphs of their guidelines. The relevant portion is reproduced herein below:

3.1. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

These instructions have not been looked into by Respondents No. 2 and 3 at the time of issuance of Annexures P-8 and P-11 dated 9.8.2007 and 22.7.2008.

10. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures P-8, P-11 and P-14 dated 9.8.2007, 22.7.2008 and 24.1.2009, respectively are quashed and set aside. The pending application(s), if any, also stands disposed of. The Petitioner is also held entitled to costs quantified at ` 10,000/-.