

(2010) 12 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 716 of 2001 (S/B)

Mahendra Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 UK CK 0003

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Mr. M.C. Pandey, learned Counsel for the Petitioner and Ms. Menka Tripathi, learned Counsel for the Respondents.

2. By a chargesheet dated 1st June, 1999 disciplinary proceeding was initiated against the Petitioner. The said proceeding was concluded by an order dated 8th August, 2000 whereby minor punishment of censure was awarded against the Petitioner. Sometimes after 1st June, 1999 but before 3rd November, 1999, the Departmental Promotion Committee considered the case of promotion of persons as that of the Petitioner. However, the case of promotion of Petitioner was not considered since at that time a disciplinary proceeding was pending against Petitioner. The Departmental Promotion Committee recommended promotion, amongst others, of two persons, who were junior to Petitioner. Accepting the recommendation of Departmental Promotion Committee, those two persons junior to the Petitioner were promoted. Petitioner, accordingly, approached this Court and filed the present writ petition in 2001 challenging those two promotions as well as the conclusion of the disciplinary proceeding. It is the case of the Petitioner that there was no just reason to punish the Petitioner and in any event punishment had been accorded without affording appropriate opportunity to the Petitioner to defend his case. One of the charges in the chargesheet was that, the Petitioner purchased a property at Dehradun but did not take prior permission of the Government to make the said purchase. In the reply to the

charge sheet, it was stated that the Petitioner obtained post facto permission of the Government to purchase the said property. The other charge was that Petitioner obtained loans from friends and relatives but did not furnish intimation in relation thereto to the employer. In that regard, Petitioner contended that he disclosed the same in his income tax return. One of the charges against the Petitioner was that while obtaining loans from Provident Fund Account, he made untrue representation. In his reply Petitioner stated that he took loan and used the same for some other purpose, than the purpose indicated while obtaining the loan. The last charge was that Petitioner had not informed the employer that his wife is employed in a private firm. In his reply Petitioner stated that since the firm in which his wife was employed had nothing to do with the Petitioner or his employer, Petitioner did not think it necessary to inform his employer as regards appointment of his wife in the said firm. A look at the reply given to the chargesheet would make it amply clear that the Petitioner accepted each of those charges. On the basis of such acceptance alone, Petitioner could be punished. In such circumstances, denial of giving opportunity to the Petitioner to defend the charges, takes back seat. It is not the contention in the writ petition that the charges as framed did not constitute misconduct for which a disciplinary proceeding could be initiated. It is not the contention of the Petitioner that according to the Rules, governing the service conditions of the Petitioner, there was no requirement to obtain permission of the employer to acquire an immovable property. It is also not the contention that the Rules did not require the Petitioner to inform the employer as regards loans and advances taken by Petitioner from friends and relatives. It has not been stated that misrepresentation made while obtaining advance from Provident Fund Account was not a breach of the conditions of service. It is also not the contention of the Petitioner that there was no requirement to inform his employer as regards employment status of his wife. In those circumstances, there is no scope of interference with the order passed while concluding the disciplinary proceeding. Inasmuch as, as on 3rd November, 1999 a chargesheet issued in a disciplinary proceeding was pending consideration, the Departmental Promotion Committee should be deemed to have considered the case of promotion of the Petitioner in sealed cover and, inasmuch as, the disciplinary proceeding resulted in a punishment order, the same disentitled opening of the sealed cover forever. The case of the Petitioner has been considered in 2003 for promotion during the pendency of the writ petition and he has been promoted. It is not the contention that in between 3rd November, 1999 and the date of DPC recommending promotion of the Petitioner cases of other juniors to the Petitioner have been considered. That being the situation, there is nothing further to be done in the writ petition. The same is, accordingly, dismissed without any order as to costs.