
(2014) 05 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2855 of 2013

Makkhan Lal Aggarwal

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (2014) 05 P&H CK 0183

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Anurag Goyal, Advocate for the Appellant; Amit Kumar, D.A.G.,
Haryana, Advocate for the Respondent

Judgement

Daya Chaudhary, J.—The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the action of the respondents in denying promotion to him on the post of Secretary, Municipal Council only on the ground of pendency of disciplinary proceedings, which have resulted into order of warning and also that in between, juniors to him have been ordered to be promoted vide order dated 29.09.2008. A prayer has also been made for issuance of a writ in the nature of mandamus directing respondents to promote the petitioner to the post of Secretary, Municipal Council along with all consequential benefits.

2. Briefly, the facts of the case are that the petitioner was initially appointed as Secretary by way of direct recruitment at Nagina, District Mewat. However, vide order dated 04.07.2001, he was posted with current duty charge as Secretary, Municipal Council, Palwal. The petitioner was charge sheeted under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (here-in-after referred to as "the Rules, 1987") vide order dated 14.05.2007. The petitioner submitted reply but the same was not found to be satisfactory and hence, the inquiry was ordered to be conducted. However, on the basis of Inquiry report, a

warning for negligence on his part was ordered vide order dated 23.02.2011. During pendency of the proceedings, other employees, namely T.R. Sharma, B.R. Dhiman, Dayanand Shangwan, Inderjit Singh, Lachhman Dass and Jai Singh were promoted as Secretary on 29.09.2008. However, in the order of promotion of B.R. Dhiman, it was specifically mentioned that on final decision of disciplinary proceedings against the petitioner and on finding him innocent in the inquiry, said B.R. Dhiman will not claim seniority over him. The petitioner, being at serial No. 1 in the seniority list, made representation dated 08.04.2011 claiming his promotion from the date of promotion of his juniors but he was not promoted.

3. Learned counsel for the petitioner has raised various arguments in support of his contentions that the petitioner is entitled for promotion from the date his juniors have been promoted. There was only minor penalty and for that, he cannot be penalized. He further submits that the subsequent charge sheet had no bearing on the case of promotion of the petitioner. He also submits that the disciplinary proceedings, in pursuance of second charge sheet, cannot be a ground to deny promotion of the petitioner from the date of promotion of his juniors. He also submits that juniors to the petitioner were promoted in the year 2008 and at the time of promotion of his juniors, the earlier minor penalty cannot be considered a ground to deny his promotion when the promotion to the post of Secretary was on the basis of seniority-cum-merit. It is also the argument of learned counsel for the petitioner that the disciplinary proceedings culminated into final decision and only a minor penalty was imposed, not a major penalty. All juniors to the petitioner have already been promoted and the petitioner is also entitled for promotion from the date his immediate junior namely B.R. Dhiman was promoted.

4. Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court as well as the judgments of this Court in cases Sai Chalchitra Vs. Commissioner, Meerut Mandal and Others, , Punjab Gramin Bank and another vs. Vipin Kumar Puri 2012(3) RSJ 464, H.C. Chhatwal vs. State of Punjab 1995(4) SCT 439, Des Raj vs. Food Corporation of India through its Chairman, New Delhi 1996(3) SCT 451 and Nirmal Singh vs. Food Corporation of India 2000(4) SCT 1009, in support of his contentions.

5. Written statement on behalf of the respondents has been filed, which is already on record.

6. Learned counsel for the respondents submits that the petitioner was not considered for promotion on 29.09.2008 because of pendency of charge sheet against him under Rules, 1987. He was given warning and thereafter, another charge sheet was issued to him vide order dated 05.08.2011, which is still pending. Learned counsel also submits that FIR No. 11 dated 05.06.2013 under Sections 7/13 of the Prevention of Corruption Act, 1988 was also registered against the petitioner at Police Station, State Vigilance Bureau, Gurgaon as he was caught red handed for accepting illegal gratification while discharging his official duties. He is also under suspension w.e.f. 05.06.2013. Learned counsel

for the respondents also submits that the case of the petitioner for promotion to the post of Secretary w.e.f. 29.09.2008 is under consideration of the Government and one post of Secretary in Municipal Council has been kept vacant.

7. Heard the arguments of learned counsel for the parties and have also perused the documents on the file.

8. Admittedly, the petitioner was charge sheeted under Rule 7 of the Rules, 1987 but on the basis of Inquiry report, only minor penalty of warning was imposed upon him. It is also an admitted fact that at the time of promotion of B.R. Dhiman, a condition was imposed that he will not claim any seniority over the petitioner, in case, he is promoted on conclusion of disciplinary proceedings pending against him. The promotion to the post of Secretary has been denied only on the ground that second charge sheet is pending, whereas, at the time of promotion of his juniors, no charge sheet was pending and only a minor penalty was imposed upon the petitioner. The petitioner was not considered for promotion because of pendency of charge sheet dated 14.05.2007, whereas, junior to the petitioner was promoted w.e.f. 29.09.2008.

9. Now, the question for consideration before this Court is as to whether the subsequent FIR can be a ground to deny promotion, whereas, there was no subsequent charge sheet against the petitioner at the time of promotion of his junior.

10. In an identical issue, the petitioner was not promoted because of subsequent charge sheet. The petition filed by one Vipin Kumar Puri was allowed by learned Single Bench and thereafter, the Letters Patent Appeal was filed by the Punjab Gramin Bank and another to challenge the said order. The Division Bench in Punjab Gramin Bank and another's case (supra) held that the case for promotion cannot be kept in limbo and a direction was rightly issued to consider the case of the employee for promotion with effect from the date his juniors were promoted.

11. Similar view has been taken in Des Raj's case (supra), wherein, it was held as under:-

6. We are not in agreement with the stand taken by the respondents in view of the settled position of law laid down in various authorities and in this regard we would like to refer to O.P. Latka Vs. The State Bank of Patiala and Others, -an authority of this Court-in which it was clearly laid down that when disciplinary proceedings had not started against the employee on the dates when the written test and the interview for promotion were carried out and the promotional process was going on, any subsequent charge-sheet does not give any right to the management to put the result regarding the promotion of the employee in the sealed cover. Admittedly, there was no charge-sheet or any penal action as on 30.12.1987 which is the material date for our determination. In these circumstances the respondents were not justified in withholding the promotion of the petitioner, when the promotion order was passed vide Annexure P1. At the most as on 30.12.1987 the Department was contemplating some inquiry. Such

contemplation may or may not become effective. The matter was again considered in another authority of the Hon"ble Supreme Court reported as *New Bank of India v. N.P. Shegal and another*, 1991(2) SCT 270 (SC) : 1991(1) RSJ 789, their Lordship of the Apex Court were pleased to hold that when the disciplinary proceedings were contemplated or under consideration against an employee, it does not constitute a good ground for not considering the employee concerned for promotion, if he is in the zone of consideration. The case in hand is on better footing than the one, just relied upon by us. In the present case, the order of promotion of the petitioner, making him Assistant Grade-I (Depot) was passed. This order could not be withheld or withdrawn under the garb of a contemplated inquiry. Such like matters again came into consideration of the Apex Court and our attention has been invited to the case reported as *The State of Madhya Pradesh Vs. Bani Singh and another*, and it was the view of the Hon"ble Supreme Court that a promotion of an employee could not be withheld merely on the ground of pendency of disciplinary proceedings which had not even reached at the stage of framing of charge after prima facie case is established. The ratio of this authority is applicable to the facts of the case in hand. In this context we also rely on *Union of India v. K.V. Jankiraman* (supra), wherein it was held that sealed cover proceedings can be resorted to only after issuance of charge-memo/charge-sheet to an employee. Even the pendency of a preliminary investigation prior to that stage is not sufficient to enable the authorities to adopt this procedure. Shri Hemant Kumar, learned counsel appearing on behalf of the respondents, made an attempt, but in vain, by drawing our attention to the instructions (R3). In our considered view these instructions cannot supersede the laws of the land and any instructions contrary to the established law have to be ignored.

12. Same view has also been taken by Division Bench of this Court in *Nirmal Singh's* case (supra) as well as *SAI Chalchitra's* case (supra).

13. It is a settled position of law that the record of a particular officer for the purpose of promotion has to be considered only upto the date of consideration. In case, any inquiry is pending on that date, a sealed covered method can be resorted to or the promotion can be kept in abeyance till the departmental enquiry is over. The promotion cannot be withheld on the ground that subsequently after the date of consideration of promotion, some other enquiry is pending, which has not reached to its final conclusion. In case, it is done then an officer may not get promotion at all. If an officer is found guilty in the subsequent enquiry, he can be awarded punishment in the promoted rank. This view has been held in the judgment of Hon"ble the Apex Court in case *Bank of India and Another Vs. Degala Suryanarayana*, as under:-

14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/

criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over [see Union of India Vs. K.V. Jankiraman, etc. etc., . As on 1.1.1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986.

14. The petitioner, in this case, has been awarded minor penalty as only a warning for negligence of duty on his part was ordered. The case of the petitioner cannot be withheld only on the ground that subsequent proceedings have been initiated against him, whereas, it has no bearing on the case of promotion of the petitioner. In view of K.V. Jankiraman's case (supra), the petitioner has a right for consideration and in case, the proceedings are pending against him, then it can be kept in sealed cover.

15. Moreover, learned counsel for the respondents has brought to the notice of this Court on the basis of written statement that the case of the petitioner is under consideration before the respondents.

16. In view of the submissions made by learned counsel for the parties and also the law position as discussed above, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner for promotion to the post of Secretary from the date i.e. 29.09.2008, his junior B.R. Dhiman has been promoted and also keeping in view the judgments as mentioned above, within a period of two months from the date of receipt of a certified copy of this order.

17. In case, the petitioner is found suitable by the Promotion Committee as per rules of promotion applicable, the respondents will pass appropriate orders. However, this is subject to the decision of the Departmental Promotion Committee.