
(2019) 12 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 1529 Of 2019

Manoj Thakur

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 26-12-2019

Acts Referred:

Citation : (2019) 12 SHI CK 0100

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : B.C. Negi, Nitin Thakur, Ashok Sharma, Vakas Rathore, J.S. Guleria, R.R. Rahi, Amandeep Sharma

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. The petitioner joined the services of the respondent-Bank as a driver on 17.07.1999 and thereafter was promoted as a recovery Supervisor on 01.10.2010. The Bank in the year 2017 opened four new branches and it is in anticipation of the new branches that the petitioner was given adhoc promotion to the post of Assistant Manager. The adhoc promotion was extended from time to time and when the petitioner was not being promoted on regular basis, he filed CWP No. 654 of 2018 before this Court. On 17.05.2019, the Bank issued a show cause to the petitioner, which was received by him on 23.05.2019, with the allegation that he had issued bank loan to one Chet Ram in which discrepancies were found.

2. On 24.05.2019, the writ petition filed by the petitioner was disposed of with the direction to respondent No.1 to hold DPC for considering the promotion of all eligible persons. However, on 27.05.2019, respondent No.3 issued a letter to the petitioner regarding non extension of his adhoc promotion after 08.05.2019 on the pretext that an FIR had been lodged against him in Police Station, Janjheli, on the complaint of Chet Ram, a loanee of Thunag Branch. Reply to the show

cause notice was filed by the petitioner, however, respondent No.3 vide order dated 25.06.2019 promoted the juniors of the petitioner to the post of Assistant Managers, whereas, the case of the petitioner was kept in a sealed cover.

3. Aggrieved thereby, the petitioner has filed the instant writ petition for grant of the following relief:

"That the respondent bank be directed to hold review DPC and promote the petitioner from due date with all consequential benefits; or/and."

4. Respondent No.3 contested the writ petition by filing reply wherein the only reason given for keeping the result of the promotion of the petitioner in a sealed cover is that an FIR was lodged against the petitioner and, therefore, his case was squarely under Clause 16.32, (2) (i) of the Handbook on Personnel Matters, Volume I.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. It is trite law that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in the criminal prosecution is issued to the employee 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. If the allegations are serious and the authorities are keen in investigating them then ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further if the charges 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. But in no event can the promotion 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 been issued to the employee.

7. This, however, is not the fact situation obtaining in the instant case as only FIR had been lodged and no charges had been framed on the date the sealed cover procedure was resorted to by the respondents.

8. The law with regard to resorting to sealed cover procedure is more than settled and reference can conveniently be made to the celebrated decision of Hon'ble three Judges' Bench of Hon'ble Supreme Court in Union of India, etc. etc. vs. Jankiraman, etc. etc. AIR 1991 SC 2010, wherein it was held as follows:-

"6. 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 would 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. 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:

"(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;"

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.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

9. Apart from the above, even Clause 16.32 (2) (i) of the Handbook on Personnel Matters, Volume I, which has been relied upon by both the parties clearly envisages that the sealed cover procedure is to be adopted only when a government servant in respect of whom prosecution for a criminal case is pending. Here, it shall be apposite to reproduce Clause 16.32 of the Handbook on Personnel Matters, Volume I, which reads as under:

"16.32 Consideration of cases where disciplinary/court proceedings etc. are pending.

(1) Procedure applicable upto 2-12-1992 Instructions existed as to how the cases of the Govt. servants under suspension or against whom vigilance cases/departmental proceedings or criminal proceedings are pending should be considered by the Departmental Promotion Committee and these instructions also provided for preparing "sealed cover" in respect of such Government servants. Instructions were also there as to what action is to be taken with regard to the sealed cover, after the conclusion of the vigilance case/departmental or criminal proceedings or reinstatement in case of suspension. After the H.P. became a State, the Govt. issued instructions, covering the above aspects as also the consideration of adhoc appointments of such Govt. servants who continue to be under suspension or against whom disciplinary/criminal proceedings remain pending for a long period. The communications of the H.P. Govt. Deptt. of Personnel issued in this behalf after 25- 1-1971 are as under:-

(i) O.M. No. PER(AP-II) A(3)-9/76 dated 27-7-1978 (para 4)- Annexure -16.7

(ii) O.M. No. Per (AP-II) A(3)-1/79-III dated 1-9-1983-Annexure 16.19

(iii) O.M. No. Per (AP-II) A(3)-1/79-III dated 26-11-1991-Annexure 16.31.

The instructions contained in the above communications are self contained and need be kept in view while considering review of old cases etc. These instructions are given in the Annexures as indicated above.

(2) Procedure applicable from 3-12-1992 and in vogue now The procedure and guidelines to be followed in the matter of promotion of Govt. servants against whom disciplinary proceedings/court proceedings are pending or whose conduct is under investigation have been reviewed carefully by the Govt. of India, Ministry of Personnel, PG and Pensions, Deptt. of Personnel and Training. The Govt. of India also took note of the judgment dated 27-8-1991 of the Supreme Court in Union of India Vs. K.V. Jankiraman etc. (A.I.R. 1991 S.C. 2010). As a result of the review and in supersession of all earlier instructions, the Govt. of India issued revised instructions in this behalf on 14-9-1992, which have been adopted in H.P. for application to employees/officers of H.P. on 3-12-1992. These instructions are as under:-

(i) Cases of Government servants to whom Sealed Cover Procedure will be applicable.

At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories for whom sealed cover procedure is to be adopted should be specifically brought to the notice of the Departmental Promotion Committee:-

(a) Government servants under suspension

(b) Government servants in respect of whom a charge-sheet has been issued and disciplinary proceedings are pending; and

(c) Government servants in respect of whom prosecution for a criminal charge is pending."

10. For the reasons stated above, we find merit in this writ petition and accordingly the same is allowed and respondents are directed to promote the petitioner from the date when his juniors were promoted vide order dated 25.06.2019 with all consequential benefits including monetary and non-monetary like seniority etc. within a period of two months from today, failing which the respondents shall be liable to pay arrears at the rate of 9% per annum. All pending applications stand disposed of.