

(2012) 12 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2519 of 2012

Nanak Chand

APPELLANT

Vs

Distt. and Sessions Judge, Delhi and Another

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0048

Hon'ble Judges : Sanjiv Khanna, J;S.P. Garg, J

Bench : Division Bench

Advocate : Prag Chawla and Mr. Azmat H. Amanullah, for the Appellant; Latika Chaudhury, Advocate for Ms. Avnish Ahlawat, Advocate for respondent No. 1 and Mr. Mayank Mikhail Mukherjee, Advocate for Mr. Viraj R. Datar, Advocate, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner was appointed as a Lower Division Clerk in the Office of the District and Sessions Judge on 3rd March, 1964 and he retired from service on 31st March, 2005. During his service, the petitioner faced three departmental proceedings which were initiated on or before 1975. In one of the departmental proceedings, he was dismissed from service on 23rd October, 1975. In view of the dismissal order, the two other departmental proceedings were kept in abeyance and no final order was passed.

2. The petitioner challenged his dismissal from service before the Central Administrative Tribunal and succeeded vide decision dated 14th January, 1987.

3. He was reinstated and promoted as Upper Division Clerk with effect from 6th June, 1980. He was upgraded to the scale of Assistant with effect from 11th November, 1986 and continued in the said scale upto 31st October, 1990. Thereafter, he was granted upgraded Senior Assistant's scale with effect from 1st November, 1990. After about 12 years and 9 months from the date of reinstatement in 1987, in 1999 the petitioner was served with a memo under Rule 15A of the CCS(CCA) Rules, 1965 enclosing therewith inquiry report dated 5th April, 1975 pertaining to the second departmental proceedings. The

petitioner protested and contested, but penalty of dismissal from service was directed vide order dated 22nd September, 2003. This order was challenged in a departmental appeal, with success. The appeal was allowed by order dated 31st August, 2007. The appellate order records that the petitioner was reinstated in the year 1987 and it was wrong and incorrect for the department to sleep over the other departmental proceedings for 12 years and 9 months. The departmental inquiry initiated should have been concluded within a reasonable period.

4. The District and Sessions Judge, Delhi thereupon passed an order under Fundament Rule 54-A(3) directing that the petitioner be paid full pay and allowances for the period between the date of dismissal, i.e., 22nd September, 2003 till the date of superannuation, i.e., 31st March, 2005. The period was directed to be treated as period spent on duty for all purposes, i.e., leave, pay etc. The aforesaid order records that the third departmental proceeding was pending and grant of retirement benefits shall be taken after conclusion of the inquiry in the third departmental proceedings.

5. It took about another 17 months for the third departmental enquiry to be concluded and vide order dated 27th January, 2009, punishment of censure was imposed. The order itself refers to the charge which relates to the conduct of the petitioner in the year 1974, when he was working as an Ahlmad.

6. As the aforesaid punishment of censure was imposed vide order dated 27th January, 2009, the Departmental Promotion Committee's recommendation/conclusions for promotion to the post of Superintendent for the years 2001, 2002 and 2003 which were kept in sealed covers, have not been opened. The respondents had resorted to sealed cover procedure in the said years as the second and third departmental proceedings were pending.

7. The grievance of the petitioner is that due to the failure to open the sealed covers, he has been denied an opportunity of promotion to the post of Superintendent. The respondents have pointed out that there are no statutory service rules for promotion to the said post, but selection is normally made on the basis of seniority-cum-fitness.

8. The stand taken by the respondents is that sealed covers are not required to be opened as the petitioner has suffered punishment of censure in the third departmental proceedings vide order dated 27th January, 2009. The respondents rely upon paragraph 17.6.2 of Swamy's Manual on Establishment and Administration under Chapter 54 of the CCS(CCA) Rules, 1965.

9. The respondents may be technically right, but the facts of the present case are very peculiar in nature. Admittedly, the departmental proceeding in which the petitioner has been indicted and punishment of censure had been imposed pertains to the year 1974 but punishment was imposed only on 27th January, 2009. There is a long delay of around 35 years. The petitioner had rejoined the office of the District Judge and had worked from 1987 onwards. The respondents

took more than 12 years and 9 months to reinitiate the two departmental proceedings after rejoining. It was in these circumstances that the departmental appeal, preferred by the petitioner against the order of dismissal in the second departmental proceeding was allowed. The order of dismissal was quashed with the direction that the petitioner should be reinstated in service. In normal course, even if the petitioner had suffered the penalty of censure, the effect thereof would have lasted for six months and not beyond. Thus, in case the departmental proceedings had been initiated within reasonable time after the petitioner rejoined service in 1987 and an order of censure was passed, he would have suffered the effect thereof for a period of 6 months only. In view of the aforesaid position, we without interfering with the order of censure, deem it appropriate to ask the respondents to open the sealed cover and consider the petitioner for notional promotion to the post of Superintendent. We clarify that the petitioner will not be entitled to back wages and in case it is found that the petitioner is entitled to promotion, he will be only granted higher pension with effect from the date the writ petition was filed. The writ petition is accordingly disposed of. No costs.