

**(2002) 07 J&K CK 0008**

**In the Jammu And Kashmir High Court**

**Case No :** Service Writ Petition (SWP) No. 193 of 2002 And CMP No. 180 of 2002

Narinder Singh Jamwal

APPELLANT

Vs

Union of India and Others

RESPONDENT

---

**Date of Decision :** 11-07-2002

**Acts Referred:**

**Citation :** (2010) 4 JKJ 209

**Hon'ble Judges :** T.S. Doabia, J

**Bench :** Single Bench

---

**Judgement**

T.S. Doabia, Judge

1. It is not in dispute that the petitioner stands punished. An order to this effect was passed on 22.07.1997. Two punishments were imposed on

the petitioner. These are censure and penal recovery of Rs.1,000/- to be recovered in ten installments from the pay and allowances of the

delinquent official. This was because pecuniary loss was said to have been caused to the State.

2. As indicated above, this order was passed on 22.07.1997. The petitioner challenges this order on the plea that he could not be held guilty of

second charge. According to him, the inquiry officer had recorded a categorical finding that no evidence was led by the prosecution in this regard.

3. Mr. S.S. Nanda, learned Senior Central Government Standing Counsel appearing for the respondents submits that order dated 22.07.1997 has

attained finality. This cannot be challenged after inordinate delay.

4. So far as this argument raised by the learned counsel for Union of India is concerned, there is merit in this submission. Even though, no limitation

is prescribe for entertaining a writ petition, nevertheless whatever is the period

of limitation prescribed for filing of a civil suit can be taken as a reasonable guide in the matter of determining delay and laches. The order in question could have been challenged within a reasonable period.

Therefore, it would not apt for this court to exercise writ jurisdiction so far as the merit of the controversy qua imposing of punishment is concerned.

5. Faced with this situation, the learned counsel for the petitioner submits that even if no interference is made with the order of punishment, this order debarring his consideration for promotion to the higher post.

6. This be considered.

7. The petitioner was Supervisor Grade - II. He was to be promoted as Supervisor BS Grade -1, He stands promoted with effect from

01.01.1998. He submits that he should have been promoted with effect from the date, he became eligible i.e. 10.07.1995. For this, reliance is

being placed on a decision taken by the Department of Personnel, which is referred to in Annexure 'M'. The point of view put across by the staff

side of National Council, was taken note of. The decision taken on these points has also been elaborated. In this decision, it is stated that

imposition of penalty of censure on a Government servant, would not be itself stand against the claim of consideration of such person for

promotion. That is spelt out from a perusal of paragraphs 2 and 3 of annexure 'M'.

These paragraphs reads as under :-

2. As regards the first point, under the existing instructions, every person eligible for promotion and in the field of choice has to be considered for

promotion. Attention in this connection is also invited to Ministry of Home Affairs O.M. No. 01/09/58 RPS dated the 16th May, 1959 and No. 1

/04/55-RPS dated the 16th May, 1957. The fact of the imposition of the minor penalty of censure on a Government servant does not by itself

stand against the consideration of such person for promotion, as his fitness for the promotion has to be judged, in the case of promotion by

seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection on merit, on the basis of his merit

categorization which is against based upon the basis of his merit categorization which is again based upon an overall assessment of his service

record (vide para 2 of M.H.A.O.M. No. 01/03/68 Ests. (1) dated 18.03.1968). So far as the eligibility of a Government servant who has been awarded the penalty of censure, to appear at a departmental/promotional examination is concerned, the same principles, would apply, viz, that he cannot, merely because of the penalty of censure, be debarred from appearing at such an examination. In case, however the rules of such an examination lay down that only those eligible person be allowed to appear at the examination who are considered to be fit for the purpose, the fitness of an eligible candidate, who has been awarded the penalty of censure at the examination has to be considered on the basis of an overall assessment of his service record and not merely on the basis of the penalty of censure. (3). As regards the other two points mentioned in paragraph 1 above while it is not possible to lay down any hard and fast rules in this regard, and it is for the competent authority to take a decision in each case having regard to its facts and circumstances, it is considered necessary to reiterate the existing instructions on the subject. Recovery from the pay of Government servant of the whole or part of any pecuniary loss caused by him to Government by negligence or breach of orders, or withholding of increments of pay, are also minor penalties laid down in rule 11 of the CCS (CCA) rules. As in the case of promotion of a Government Servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of the loss caused by him to Government or if withholding his increment(s) does not stand in the way of his consideration for promotion though in latter case promotion is not given effect to during the currency of the penalty. While, therefore, the fact of the imposition of such a penalty does not by itself debar the Government servant concerned from being considered for promotion, it is also taken into account by the Departmental Promotion Committee, or the competent authority, as the case may be, in the overall assessment of his service record for judging his suitability or otherwise for promotion or his fitness for admission to a departmental/promotional examination (where fitness of the candidates is a condition precedent to such admission).

8. This is a case in which not only punishment"" of censure has been imposed, but recovery from pay has also been ordered. So far as recovery of pay is concerned, that has been dealt with in paragraph '3' of annexure 'M'. The policy decision in this regard is that imposition of such a penalty

i.e. recovery of pay by itself may not stand in the way, but this aspect of the matter can be taken into consideration in the matter of overall

assessment of the person concerned.

9. The petitioner has refereed in paragraphs 21 and 22 to Annexure 'M'. As to why that Annexure was not applicable, has not been indicated by

the respondents.

10. The real question which is required to be gone into is as to whether the petitioner has not been promoted merely on account of the fact that a

penalty of recovery from his pay has been ordered or some other factor has also been taken note of. If recovery from pay is the only factor, then

something can be said in favour if the petitioner. If in addition to this, the overall performance of the petitioner has been taken note of and recovery

of pay is one of the factors, then the petitioner may not have any valid cause to sustain this petition. This aspect of the matter is not clear from the

stand of respondents. Therefore, this petition is disposed of with a direction that the respondents would open the sealed cover. They would

examine its contents. If the promotion of the petitioner was withheld merely on the ground that punishment of recovery has been ordered, then the

factor in itself would not be good and sufficient to withhold the promotion. If in addition to this, the view expressed is that even on the basis of

overall performance he is not entitled to promotion, then the petitioner would have no valid claim.

11. This petition is, accordingly, disposed of with the following directions :-

i. That so far as the question of imposition of punishment is concerned, nothing is being said. This is because a belated challenge has been made;

ii. That with regard to non-promotion with effect from 10.07.1995 the respondents would examine the contents of the decision kept in sealed

cover and they would reexamine the whole issue in the light of Annexure 'M', i.e. the Government Instructions placed on the record and what is

said above.

12. The learned counsel for the Union of India submits that subsequent instructions have been placed on the file. It is submitted that once penalty

has been imposed the employer is not bound to promote the employee. There is no dispute with the broad proposition as put across by the learned

counsel for the petitioner. As a matter of fact, these instructions are based on the

decision of the Supreme Court in the case of Union of India Vs.

K.V. Jankiraman, etc. etc., . As indicated above, what is required to be considered is the impact of Annexure 'M'. That deals with the penalty of

censure and recovery, which has been placed on a different footings. This has, therefore, to be examined independently of the decision on which

reliance has been placed by the respondents. Let the issue be considered and a decision taken within a period of three months from the date, a

copy of this order is made available by the petitioner to the respondents and also to the learned counsel (Mr. S.S. Nanda, Senior Central

Government Standing Counsel), who has put in appearance on behalf of the respondents today. In case no decision is taken by the respondents in

the case of petitioner within the above stipulated period, then the petitioner would be entitled to all the consequential benefits.

13. Disposed of accordingly alongwith the connected CM.P.