
(2015) 05 JH CK 0019
In the Jharkhand High Court
Case No : WP(S) No. 6337 of 2014

Ram Shanker Roy

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 05 JH CK 0019

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Choudhary, for the Appellant; Rishi Pallav, JC to AAG, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The petitioner is aggrieved by a Notification No. 10188 dated 17.10.2014, Annexure 9, by which he has been demoted to the post of Under Secretary to which post he was promoted earlier by Notification No. 5583 dated 24.6.2013, Annexure 5. He consequently prays for restoration of his promotion with all other attendant monetary benefits etc. The petitioner has also made a prayer to grant him promotion w.e.f. 31.8.2009 on which date his juniors were promoted.

3. The brief facts to decide the controversy raised therein are being noticed herein-below:

The petitioner is a member of Jharkhand Administrative Service, who was promoted to the post of Junior Selection grade by Memo No. 807 dated 17.2.2004. The petitioner got implicated in a criminal case being Dhanbad P.S. Case No. 433/2006 under Section 376 IPC. Charge sheet against him has been submitted in the criminal case on 16.8.2008. The petitioner's case for promotion was considered in a DPC held on 27.8.2009 and it was kept in a sealed cover.

Petitioner made a representation after four years on 2nd May, 2013 just prior to the DPC held on 4.6.2013. The representation is at Annexure 3 to the writ petition. He made a request for grant of promotion based upon certain instances of employees under the State Government being granted promotion to the next higher post though in their case no charge had been framed by the competent Court of Law. The Departmental Promotion Committee had recommended their case for promotion and they were actually promoted also. In that representation he also cited judgment of the learned Central Administrative Tribunal and sought for promotion based upon those instances. It is also true that he referred to the judgment of the Hon'ble Supreme Court rendered in the case of Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 . Thereafter on the petitioner's representation the Departmental Promotion Committee recommended his case for promotion and he was actually promoted pursuant to the order dated 24.6.2013, Annexure 5 to the post of Deputy Secretary.

4. The respondents later on realized that such promotion could not have been granted as the petitioner was suffering a chargesheet in the criminal case and the same would have been in the teeth of the ratio laid down by the Apex Court in the case of K.V.Jankiraman (supra). Therefore, they issued a show cause upon the petitioner, Vide Annexure 7 dated 4.9.2013 making allegations that petitioner had resorted to misrepresentation, cheating and violation of service rules. The petitioner gave his reply vide Annexure 8 on 19.12.2013. The impugned notification has been issued thereafter on 17.10.2014, Annexure 9 demoting the petitioner to the post of Under Secretary.

5. The petitioner has assailed the order of demotion on the ground that the findings recorded therein that the petitioner had misrepresented and concealed the fact that the charge sheet has been submitted against him long back, are stigmatic in nature, though there is no such misrepresentation on his part. The representation Annexure-3 would not show that he had ever resorted to any misrepresentation. It is submitted that the impugned notification, therefore, is bad in law and punitive in nature and is not in conformity with the requirement under Article 311 of the Constitution of India. Learned counsel for the petitioner has also tried to make out a case that the petitioner should have been granted promotion earlier in 2007, as there was no charge sheet filed against him on completion of minimum period of Kalawadhi of three years from his earlier promotion in 2004.

6. The respondent-State has filed a counter affidavit. Mr. Jai Prakash, learned AAG fairly submits that from the contents of the show cause it definitely cannot be inferred that there was a misrepresentation to the effect that petitioner had stated that there was no charge sheet filed against him. Petitioner had tried to make out a case that in similar circumstances when the competent court of law had not framed charges against the concerned employee the respondent-

Department had considered and granted promotion to such employees. Therefore, the case of the petitioner should have been considered. However, learned AAG submits that the legal proposition, which is applicable to the facts of the petitioner's case, cannot be diluted on any count since on the date on which he was granted promotion in June, 2013, undisputedly, the petitioner was chargesheeted in a criminal case which dis-entitled him for any promotion and his case had been kept in sealed cover on the same ground in 2009 by DPC. Therefore, since the order ultimately does not suffer from any illegality as the petitioner is not entitled for regular promotion on those grounds, the impugned order need not be interfered with in exercise of writ jurisdiction of this Court.

7. Having considered the rival submissions of the parties in the aforesaid factual matrix of the case and the well settled legal position of law laid down by the Hon'ble Apex Court in the case of K.V. Jankiraman (supra) the first question, which requires to be answered is whether the petitioner is legally entitled to be promoted as a Deputy Secretary on the face of chargesheet already filed against him in the year 2008 in a criminal case pending before the competent court. The answer to the aforesaid question is straight No. The ratio laid down by the Apex Court in clear terms mandates that in a case of a departmental proceeding or in a criminal case the initiation of the proceeding commences from the date of filing of the charge sheet in both situations. In such circumstances, if an employee is otherwise found entitled to promotion, he cannot be granted promotion unless he is exonerated or discharged or acquitted in the criminal case. Till then the recommendation of promotion is to be kept in a sealed cover. The petitioner's case for promotion was considered in 2009 and was actually kept in a sealed cover for those reasons.

8. The other question, which requires to be answered is whether the respondents are right in alleging that the petitioner has committed misrepresentation or concealment of fact or has conducted in a manner which is un-becoming of a Government employee.

9. Not only from perusal of the contents of the representation of the petitioner but also from the fair submissions of the learned AAG appearing on behalf of the State, it can be safely concluded that the petitioner cannot be accused of misrepresenting before the respondents when he sought for consideration of his claim for promotion by citing instances of certain employees in whose case promotion was granted even after filing of charge sheet but on account of fact that no charge had been framed by the competent court of law. It was for the Departmental Promotion Committee or the competent authority, who has to grant promotion to accord complete application of mind to the relevant facts of the petitioner's case in the light of well settled principle of law laid down by the Apex Court in the case of K.V. Jankiraman (Supra). That aspect may have escaped the notice of DPC or the competent authority while granting promotion. Therefore, the show cause issued upon the petitioner would not reveal any misrepresentation, concealment and alleged misconduct. The finding recorded in

the impugned notification on that count can be termed as stigmatic, though they are not actually born out from the record or his representation.

10. In view of aforesaid conclusion, the show cause and the findings recorded in the impugned notification which alleges misrepresentation, cheating and concealment upon the petitioner and a conduct unbecoming of a Government employee shall not be held to operate against the petitioner. However, as has been found earlier petitioner was not legally entitled for promotion on the date when he was granted promotion as he was suffering a charge sheet in a criminal case as it would be in the teeth of the ratio laid down by the Hon''ble Apex Court in the K.V. Jankiraman (supra). The impugned notification recalling the earlier order of promotion and reverting the petitioner to the post of Under Secretary cannot be interfered with as it would amount to perpetuating an illegality, which cannot be allowed in exercise of power under Article 226 of the Constitution of India by this Court

11. Therefore, with the aforesaid observation, this writ petition stands disposed of without interfering with the substantive part of the impugned notification dated 17.10.2014 (Annexure 9) by which the petitioner has been reverted to the post of Under Secretary.

12. Both I.A. Nos. 284/2015 and 1202/2015 stand disposed of.