

(1979) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 43 of 1979

Rup Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 09-08-1979

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1979) ShimLC 348

Hon'ble Judges : T.U. Mehta, C.J.;H.S. Thakur, J

Bench : Division Bench

Advocate : Kedar Ishwar, for the Appellant; A.G., H.P., for the Respondent

Judgement

T.U. Mehta, C.J.—The Petitioner was promoted as Deputy Ranger in the Forest Department on 1-4-1975 and on the same date Respondents Nos. 3 and 4 were also promoted as Deputy Rangers. It is an admitted position that in the seniority list of the Deputy Rangers the Petitioner is senior to Respondents Nos. 3 and 4. He was senior to them even in the lower category of Forestors.

2. On 17-2-1979 Deputy Rangers were considered for promotion to the post of Rangers. This promotion was to be made, on account of the executive instructions found at Annexure E, on the basis of seniority subject to the rejection of the unfit. During the course of this promotion the case of the Petitioner was considered but rejected on the ground that a departmental enquiry was pending against him and that an adverse entry in the confidential record of the Petitioner for the year 1974-75 which was made in the month of June, 1975 was existing unaltered.

3. The case of the Petitioner is that he had filed an appeal against this adverse entry, but that appeal was not decided till the writ petition was filed. The Petitioner has further contended that the departmental enquiry started against him in the month of June, 1974 and though about five years have passed, the same still remains undecided. The Petitioner has further alleged that according to

his belief the Enquiry Officer has made report in his favour in this departmental enquiry as early as in the year 1977 and no final action on that report has yet been taken.

4. The Petitioner has further shown that a substantial portion of the adverse remarks passed in the confidential record is based on the charges levelled against him in the departmental enquiry. According to the Petitioner, since the departmental enquiry was not concluded against him on the date on which the promotion of Respondents Nos. 3 and 4 was made to the post of Rangers disregarding his claim of seniority, his non-selection as a Ranger amounts to punishment, and in support of this, the Petitioner has relied upon the decision given by a single Judge of Andhra Pradesh High Court in *B. George v. I.G.P., Andhra Pradesh* (1973) 2 SLR 131.

5. Respondents Nos. 3 and 4 have been served, but they have not preferred to appear. Respondents Nos. 1 and 2 who are respectively the State of Himachal Pradesh and the Chief Conservator of Forests, have filed their reply and the rejoinder to this reply is also received in the record of this case. We have also heard the learned Advocates of the parties.

6. It is clear from the reply filed by the Respondents Nos. 1 and 2 that the appeal, which was preferred by the Petitioner against the adverse entry in his confidential report, has since been decided against him. However, according to the Petitioner even this decision has not been conveyed to him till now.

7. From the above facts it is clear that when promotion of Respondents Nos. 3 and 4 to the post of Ranger were made on 17-2-1979 the Petitioner was entitled to be considered as he was admittedly senior to Respondents Nos. 3 and 4. The contention of the Respondents Nos. 1 and 2, however, is that though the Petitioner was senior to Respondents Nos. 3 and 4 he was not promoted because he was found unfit on account of the existence of the adverse entry in his confidential report for the year 1974-75 and also on account of the fact that a departmental enquiry was pending against him regarding some serious charges. Under the circumstances, it is first necessary to consider whether in cases wherein a departmental enquiry regarding some serious charges is pending against a Government servant and his appeal against adverse remarks is also pending, promotion of such an officer should follow as a natural corollary, and whether if promotion is not given to such an officer on the ground that departmental enquiry was pending against him regarding serious charges, that would amount to punishment or not. It must be conceded that a learned single Judge of Andhra Pradesh High Court has in the above referred case of *B. George I.G. Police* taken a view that if promotion is not given solely on the ground that departmental enquiry is pending against the concerned Government servant that would amount to punishment. This would be evident from the following observations found in the judgment:

The short question for consideration is whether the Respondents are justified in

law in deferring the consideration of the case of the Petitioner for promotion to the post of Circle Inspector of Police on the sole ground that a case before the Disciplinary Proceedings Tribunal is pending against him. No provision of statute or any rule has been brought to my notice under which the Government can postpone or defer the consideration of the Government servant's case for promotion on the sole ground that the charges were pending enquiry. As observed by the judgment of this Court in W.P. No. 496 of 1970 M. Ram Singh v. The Government of Andhra Pradesh and Anr. the deferring of the promotion amounts to imposition of punishment even before the charges are established in the enquiry and that the failure to consider the case of such Government servants for promotion would amount to denial of the right under Article 16 of the Constitution. In the counter filed it has not been disclosed as to at what stage the enquiry stands. It is represented by the learned Counsel for the Petitioner that the enquiry is still at the preliminary stage. In the circumstances of the case, I do not think the action of the Respondents in not considering the case of the Petitioner for promotion to the post of Circle Inspector of Police can be justified in law. The writ petition is allowed and the Respondents are directed to consider the case of the Petitioner for promotion to the post of Circle Inspector of Police and appropriate orders.

With great respect to the learned Judge, we find ourselves unable to take the view taken by him in the above referred observations. Of course, if there are specific rules on this point then the matter should be decided with reference to these rules. But we are told that there are no rules for deciding whether a person, against whom a departmental enquiry on serious charges is pending, should necessarily be given promotion. Therefore, we have to decide this question on the general principles of administration propriety and public interest. We find that if a person against whom very serious charges are levelled, and if the charges are such which may result in a major punishment, it would not be in public interest or in interest of administration to give him promotion simply because the enquiry in question is not completed. This may, in some cases, result in serious hardship to the Government servant concerned if the Department goes on prolonging the enquiry without proper justification because no Government department can justify its action in prolonging such enquiries indefinitely on one hand, and in refusing promotions and other advantages of the service to the Government servant concerned on the other hand for an indefinite period. The right remedy in such cases would be for the department to expedite the enquiry, and if as a result of this enquiry the Government servant is exonerated without any blemish, to consider the case of the Government servant concerned in light of such exoneration from the back date on which the promotions to higher posts were considered. In a fit case if the department goes on prolonging the departmental enquiry without sufficient reasons, the Government servant concerned can approach this Court for obtaining suitable directions in a writ petition. Apart from the exercise of writ jurisdiction by this Court in such cases, it is the duty of the departments concerned to keep

themselves alive to the necessity of disposing of such departmental enquiries in the shortest possible period.

8. Speaking on the facts of this case we do find that the departmental enquiry against the Petitioner has been unduly delayed. On perusal of the case, we find that the enquiry officer has given his report as early as 26th August, 1977. We don't find any justifying reasons for the delay which has been caused thereafter in finalising the whole enquiry. We also find that a substantial portion of the adverse remarks is based on practically the same allegations which have been levelled against the Petitioner in the departmental enquiry. The Petitioner preferred appeal against these adverse remarks promptly, but the Department has been slovenly in disposing of that appeal also. It is found that that appeal has been disposed of by the Department only after this writ petition was filed. This is obviously an unfortunate situation. In the record of the case at Annexure H, there are executive instructions issued on behalf of the Government by the Joint Secretary (Personnel) on 24th September, 1974, fixing a time schedule for purpose of the passing adverse remarks, obtaining objections thereto, as also for disposing of appeals preferred against these remarks. These instructions have, been issued principally with the object that the departmental promotion committees can have a full and complete picture about the service record of a particular Government servant at the time of proposing promotions. It, however, appears, that the Department to which the Petitioner belongs has treated these instructions as if they are of no value. This situation is also highly deplorable, and we hereby draw the attention of the Government that if the executive instructions such as those found at Annexure H are to be honoured only in their defiance, it would be better not to issue any such instructions.

9. The position now is that though the authorities concerned have disposed of the appeal preferred by the Petitioner against the adverse remarks, the departmental enquiry is still pending even though the Enquiry Officer has submitted his report as early as the month of August, 1977. We, therefore, direct the Respondents Nos. 1 and 2 to complete all the remaining proceedings of this departmental enquiry latest on or before 15th of September this year. Considering the fact that the case of the Petitioner was rejected for promotion to the post of Ranger on 17-2-1979 before this departmental enquiry was completed, it is further directed that if as a result of the departmental enquiry the Petitioner is found to be innocent and is exonerated of all the charges levelled against him without blemish, the Department shall consider his case along with the subsequent confidential remarks recorded in his confidential record upto 17-2-1979 for the purpose of deciding whether on 17-2-79 he could have been promoted to the post of Ranger. If the Department finds that on this material he could have been promoted on the basis of seniority subject to the rejection of the unfit as on 17-2-79, the Petitioner shall be given promotion as Ranger as from 17-2-1979 and seniority of the Petitioner as well as Respondents Nos. 3 and 4 shall be adjusted accordingly. However, If the Petitioner is found guilty, even then the Department shall consider his case for promotion to the

post of Ranger as from 17-2-1979 in light of that decision, and also in light of the subsequent confidential reports earned by him upto 17-2-79.

10. The learned Advocate of the Petitioner stated that if at this stage the Department is going to decide the departmental enquiry, it is very likely that the authorities concerned, feeling offended by this writ petition, might take a vindictive action. On our part, we cannot presume that the authorities would be vindictive. The only thing which we can do is to express a hope that the Department will give a fair deal to the Petitioner evaluation properly the merits of the case.

11. The rule is accordingly made absolute, without any order as to costs.