
(2007) 10 AHC CK 0120
In the Allahabad High Court

Sri Ram Lakhan

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 26-10-2007

Acts Referred:

Citation : (2008) 6 AWC 6360

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the parties and perused the record. The petitioner is aggrieved by the order dated 4.9.1998 whereby he has been reverted to the post of Assistant Store Keeper on the ground that he was wrongly promoted as Store Keeper despite a departmental enquiry pending against him. The facts in brief, giving rise to the present case, are that the petitioner was appointed on the post of Cleaner in U.P. State Road Transport Corporation (hereinafter referred to as "UPSRTC") on 29.4.1979 and was posted at Pratapgarh Depot. He was promoted to the post of Assistant Store Keeper in the year 1992. Departmental enquiry was initiated against him and by order dated 3.1.1995, he was placed under suspension. A charge-sheet was issued to him on 25.4.1995 and while departmental enquiry was going on, vide order dated 27.5.1995 he was reinstated subject to final decision in the pending departmental enquiry. It appears that in 1996, matter of promotion of Assistant Store Keepers to the post of Store Keeper was considered by Departmental Promotion Committee wherein the name of the petitioner was also considered and he was recommended for promotion. By order dated 20.6.1996, the petitioner was promoted to the post of Store Keeper in the pay scale of Rs. 1200-2040. Subsequently, the respondents, noticing that despite pendency of departmental enquiry and intimation to this effect having been given by the Regional Manager, Allahabad, due to clerical error in the broadsheet submitted to the Departmental Promotion Committee, it was mentioned that no enquiry was

pending against the petitioner and. consequently, he was promoted to the post of Store Keeper, though during pendency of enquiry, his matter was liable to be kept in sealed cover and he could not have been promoted till the enquiry is finalized. Consequently. a show cause notice was issued to the petitioner on 20.7.1996 as to why he should not be reverted to the post of Assistant Store Keeper, but it is said that the petitioner did not submit any reply and. thereafter, the impugned order was passed on 4.9.1998 reverting him to the post of Assistant store Keeper.

2. Learned Counsel for the petitioner submitted that once he has been promoted to the post of Store Keeper on substantive basis, the order of reversion is wholly illegal and contrary to law. Further, relying on V. Kameshwari (Smt) Vs. Union of India (UOI) and Others, Delhi Jal Board Vs. Mahinder Singh, Ganga Sadhu Singh v. Union of India and Ors. 1992 (1) UPLBEC 360 and Chandra Bhushan Sharma v. State of U.P. and Anr. 2007 (1) UPLBEC 14 it is contended that the promotion order once having been passed and given effect to, could not have been nullified and the petitioner could not have been reverred without holding a departmental enquiry and, therefore, the impugned order is patently illegal. The respondents have filed counter affidavit stating that initially the petitioner was engaged as Muzdoor on daily wage basis vide appointment letter dated 29.10.1979 with effect from 1st September 1979 and was regularized by order dated 26.10.1984. Thereafter, he was promoted to the post of Assistant Store Keeper vide order dated 17.9.1990 and to the post of Store Keeper by order dated 30.7.1996. However, it is said that departmental enquiry was already initiated against the petitioner on 3.1.1995 by placing him under suspension and. thereafter, charge sheet was also issued but the said facts were not noted by the concerned clerk in the register placed before the Departmental Promotion Committee when the matter for promotion of the petitioner to the post of Store Keeper was considered in 1996 and instead, n was mentioned that no enquiry was pending on account whereof the petitioner was considered by Selection Committee and after being selected, he was promoted to the post of Store Keeper, though under the provisions, he could not have been promoted during pendency of Departmental Enquiry and his matter was liable to be placed in a sealed cover subject to final decision in the enquiry. The aforesaid mistake subsequently came to the notice of the authorities concerned and accordingly a show cause notice was issued, which was not replied by the petitioner and, thereafter, the reversion order dated 4.9.1998 was passed which is absolutely correct and in accordance with law. By way of an amendment application, which was allowed by this Court on 29.9.2005, the petitioner has brought on record the fact that the departmental enquiry culminated in a punishment order dated 25.8.2000 whereby one increment of the petitioner was stopped for a period of one year without cumulative effect and with respect to arrears of salary during the pendency of suspension, separate notice was directed to be issued. Learned Counsel for the respondents has also placed a copy of the circular dated 5.1.1988 issued by the Managing Director UPSRTC laying down promotion policy which, amongst other,

also provides that if against an employee, a charge sheet is pending for enquiry, his matter shall be placed in a sealed cover and shall abide by the the result of the departmental enquiry. It is contended by the learned Counsel for the respondents that the promotion of the petitioner was contrary to the circular dated 5.1.1988, which clearly provides that during pendency of departmental enquiry, promotion shall not be granted and instead the matter has to be kept in a sealed cover, which would abide by the outcome of the enquiry, but in the present case, due to error of the concerned clerk, the Departmental Promotion Committee was not apprised of the correct factual position and a mistake of fact and law had occurred as a result whereof, the petitioner was promoted to the post of Store Keeper. Since, promotion of the petitioner was contrary to the circular dated 5.1.1988 containing policy for promotion, the same would not confer any right upon him to continue on promotional post and, therefore, the respondents were entitled to rectify the said error, hence, the impugned order cannot be faulted legally or factually in any circumstance.

3. After hearing learned Counsels for the parties and after perusing the record as also various authorities placed at the bar, in my view, the writ petition lacks merit and is liable to be dismissed. Learned Counsel for the petitioner has not disputed that as per the provisions applicable for promotion in UPSRTC. the matter of an employee has to be kept in a sealed cover, if a charge sheet is pending for enquiry. That being so, can it be said that if due to some clerical error or by wrong mention of fact, an employee has got certain advantage, he is entitled to retain the same and the employer cannot rectify the error. The answer would certainly be in negative and against the employee. The reason being that normally when the conduct and integrity of an employee is under cloud and enquiry has been initiated against him to find out the correctness of the charges, such an employee cannot be rewarded by promoting him on a higher post, but, simultaneously, since no final decision has been taken against him, he also cannot be denied right of consideration for promotion if during pendency of enquiry, occasion for consideration for promotion arises. In such circumstances, to keep the interest of both the parties intact, method of sealed cover procedure is adopted, namely, the employee is considered by Departmental Promotion Committee for promotion, but the result is kept in sealed cover and not acted upon till enquiry is finalized. If the employee is exonerated and is not found guilty, sealed cover envelope is opened and if he has been recommended for promotion by the Promotion Committee, the same is given effect from due date i.e. when it was due but could not be effected due to pendency of enquiry, but where as a result of enquiry, he is found guilty and some punishment is imposed, the result of Departmental Committee is not acted upon and instead the employee would thereafter be considered for promotion in future as and when the occasion is arises. This aspect of the matter is no more *res integra* having already been considered and decided in a number of cases and it would be useful to have a glance over some of such authorities dealing with such matter, which are also binding on this Court.

4. In *Union of India Vs. K.V. Jankiraman, etc. etc.*, the Apex Court while considering Office Memorandum dated 30.1.1982 providing for adoption of sealed cover procedure held that an employee has no right of promotion, but has a right only to be considered for promotion. Where an officer's conduct is under cloud, the procedure for sealed cover can be adopted in his case. It was held that the recommendation of the Selection Committee kept in sealed cover would be subject to final decision in the enquiry, Where an employee is ultimately penalized in the departmental enquiry, he cannot claim that he should be rewarded by promotion, though he has been penalized in an enquiry only for the reason that the penalty order has been passed subsequent to the date of meeting of Departmental Promotion Committee, though his conduct was already under cloud for acts or omissions for the period prior to the date when Departmental Promotion Committee considered his case. The Hon'ble Supreme Court, to be more precise, on this aspect of the matter held as under:

An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a Promotion Committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a latter date because of the pendency of the proceedings, although it is for conduct prior to the date of authority considered the promotion.

The above view has been followed in *Delhi Development Authority Vs. H.C. Khurana*, *Union of India Vs. Kewal Kumar*, *State of M.P. Vs. J.S. Bansal and Another*, *Union of India and Others Vs. Dr. (Smt) Sudha Salhan*, and *Bank of India and Another Vs. Degala Suryanarayana*,

5. In the present case, the petitioner was already facing departmental enquiry when Departmental Promotion Committee considered his case for promotion. This Court is inclined to accept the stand of the respondents that mistake was committed by mentioning in the register that "no enquiry pending" and for that purpose, appropriate action has already been taken against the concerned person. As per the provisions meant for promotion contained in the circular dated

5.1.1988 no person against whom charge sheet has been issued could have been promoted and instead his matter is required to be kept in a sealed cover, which is liable to be opened on conclusion of the enquiry and the matter has to be reconsidered by the selection committee in the light of the result of the enquiry. The relevant part of the circular dated 5.1.1988 is reproduced as under:

izksUufr ds le; ;fn fdlh deZpkjh ds fo:) vkjksi i= yfEcr gS rks pquko ds le; lfevr dk fu.kZ; fyQkQs esa cUn dj fn;k tk; rFkk vuq"kklukRed dk;Zokgh lekIr gksus ds i"pkr ;g fyQkQk p;u lfevr ds lEeq[k [kksyk tk;sxk ftlesa p;u lfevr iqu% fu.kZ; ysxh A vkjksi i= yfEcr gksus ls rkRi;Z ;g gS fd p;u frfFk ls iwoZ vkjksi i= l{ke vf/ kdkjh }kjk gLrk{kj dj fn;k x;k gS A

That being so, the petitioner having been promoted due to an apparent error committed by some officials of the respondents, he cannot take advantage thereof and retain benefit which has been conferred upon him due to the mistake of the office. The facts are not in dispute that he was facing departmental enquiry and could not have been promoted in view of circular dated 5.1.1988. instead his matter was liable to be kept in a sealed cover, liven after conclusion of the enquiry, the incumbent has no right to get promotion automatic by opening the sealed cover and on the contrary, the circular dated 5.1.1988 provides that it shall be reconsidered by the selection committee along with the result of the enquiry. In the matter of sealed cover, since specific provision has been made, which governs the conditions of service of the petitioner, and, there is no challenge to the validity of the said provision, this Court has no option but to reject the contention of the petitioner that once he has been promoted, ho cannot be reverted by cancelling the promotic order on the ground that it was wrongly passed. If an error has bee committed by the employer by taking an action contrary to the conditions c service applicable to the employees which are binding on the parties, it is always open to the employer to rectify the same.

6. Considering the authorities cited by the petitioner, I do not find that an of them apply to the facts of the present case or helps the petitioner in an manner. In Delhi Jal Board (supra), the incumbent whose matter was kept sealed cover was exonerated in the pending enquiry, but thereafter another enquiry started which was in point of time after the date, when the DPC me and kept its result in sealed cover. The Apex Court in these circumstances that subsequent proceeding which commenced after the date of the meeting o DPC would not be applicable to continue sealed cover procedure against the petitioner in respect to the recommendation of DPC which is earlier in point o time to the subsequent enquiry. The above facts are evident from para-5 of the judgment and the relevant part of the judgment is reproduced as under:

The scaled cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date 01 which the charges are framed. If the disciplinary inquiry ended in his favour, it is us if the officer had not been

subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.

In *Smt. V. Kameshwari* (supra), the issue was totally different and therefore, the said decision has no application to the facts and issue involved in the present case. Learned Counsel referring to para-11 of the judgment, however, submitted that there the Apex Court did not permit reversion of the employee after several years and, therefore, the petitioner in the present case should be given the same treatment. I am afraid no such order can be passed in the present case at least for two reasons. Firstly, there is no ratio laid down by the Apex Court in the above case that after a particular period, even if the promotion of employee is illegal or contrary to rules, the same cannot be cancelled or recalled. Secondly, from perusal of para-11 of the judgment, it is evident that the Apex Court has passed aforesaid direction in the facts and circumstances and in interest of justice in the said case. The power of Apex Court to pass such order derives from Article 142 of the Constitution, which is not available to this Court. Once, this Court found that the order, which is impugned is neither illegal nor otherwise vitiated in law, there is no reason or occasion for this Court yet to interfere and quash the same in order to confer a benefit upon an employee, who has been given such benefit contrary to the rules or conditions of service. In *Chandra Bhushan Sharma* (supra) again it is evident that the sealed cover procedure was adopted but in the enquiry the employee was exonerated, yet his promotion was withheld, but when he filed the writ petition, the department expressed its willingness before the Court to grant promotion to the employee concerned though a second charge sheet subsequently was issued and in these circumstances, this Court directed the department to promote him. The reason applicable in *Jal Board's Case* (supra) would apply to *Chandra Bhushan Sharma* (supra) also, hence, the same would also not help the petitioner in any manner. In *Ganga Sadhu Singh* (supra), again the controversy was totally different and, therefore, the said judgment is not applicable.

7. In the present case, it is not the case of the petitioner that the respondents have passed impugned order in utter violation of principles of natural justice inasmuch as show cause notice was issued and only thereafter, the impugned order was passed. Therefore, I do not find any reason to interfere in this writ petition, particularly, when as a result of departmental enquiry, the petitioner has been punished.

8. However, in view of the circular dated 5.1.1988, the respondents would have now to place recommendation of DPC before the selection committee for reconsidering the matter in the light of the result of the departmental enquiry and, therefore, it would be appropriate to direct the respondents to follow the said procedure and reconsider the case of the petitioner as above expeditiously, but not beyond three months from the date a certified copy of this order is produced before the competent authority. In case, there is any further recommendation by DPC in favour of the petitioner, the same shall be acted upon without any further delay. With the aforesaid directions, the writ petition is dismissed.