
(2015) 04 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6992/2010

State of Raj. and Others

APPELLANT

Vs

Ashok Kumar Trivedi

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 04 RAJ CK 0007

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : A.S. Khangaroot, Additional G.C., for the Appellant; Sonal Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—The petitioner-State in the instant writ application has challenged a legality and validity of the order dated 20th January, 2009, passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur, (hereinafter referred to as "the Tribunal", for short), and has prayed for the following relief(s):--

"i) The impugned order dated 20th January, 2009 (Annex. 2) passed by the learned Tribunal in Appeal No. 764/2007, titled as Ashok Kumar Trivedi v. State of Rajasthan and Ors., be quashed and set aside; and

ii) The Hon"ble Court may kindly passed such other order or a direction which it may deem fit, just and proper in the facts and circumstances of the present case, in favour of the petitioners.

iii) The costs also be awarded in favour of the petitioners."

2. Briefly, the skeletal material facts necessary for appreciation of the controversy are that the respondent-employee was inflicted with a penalty of censure in the year 1991. The Departmental Promotion Committee (DPC) while

considering the case of the respondent-employee, for promotion against the vacancies of year, 1996-1997, did not find him suitable and eligible for promotion owing to the penalty of censure. However, the respondent-employee was accorded promotion against the vacancies of year 1997-1998 in view of an order passed by the Tribunal in Appeal No. 1455/1997. On another appeal filed by the respondent-employee being appeal No. 964/2007, decided vide order dated 20th January, 2009, impugned herein. The Tribunal partly allowed the appeal holding that the respondent-employee was already deprived of promotion on account of penalty of censure, suffered by him, as against the vacancies of the year 1996-1997, and therefore, for the same penalty i.e. "censure", he could be deprived of grant of selection scale after completion of 18/27 years of service, in view of the order dated 25th January, 1992, for such an action would amount to double jeopardy.

3. Learned counsel for the State-petitioners reiterating the pleaded facts and grounds of the writ application, while assailing the legality and validity of the impugned order dated 20th January, 2009, asserted that the case of the petitioner was considered by the DPC convened for consideration of the cases for promotion against the vacancies of the year 1996-1997, and did not find the respondent-employee suitable and eligible for promotion on an assessment of the Annual Performance Appraisal Reports (APARs) and owing to the infliction of the penalties which also included the penalty of "censure" inflicted vide order dated 19th June, 1991. According to the learned counsel, the other penalties inflicted of stoppage of one annual grade increment without cumulative effect vide order dated 31st January, 1991 and 16th May, 1992, which were successfully challenged by the respondent-employee before the Court of Additional District Judge, have been subjected to further challenge and proceedings are said to be pending.

4. Further more, the issue is no more *res integra* in view of the reference answered by the Larger Bench of this Court in the case of *Suraj Mal Soni v. State of Rajasthan*; 1992 (2) WLC (Raj.) 1, observing thus:--

"While considering the case for promotion the minor penalty of stoppage of annual grade increments, or for that matter any other minor penalty, shall be considered by the DPC and if as a result of consideration as aforesaid a government servant is not found fit for promotion it cannot be said that a penalty has been imposed and the doctrine of double jeopardy will not be attracted." 5. The answer to the reference, as referred to and relied upon by the learned counsel for the petitioner-State, has no application to the facts of the present case at hand for the reason that the reference was answered because a Division Bench of this Court in the case of *Prem Chand Kasliwal V. State of Raj.* And others (1989) (2) RLR 844, took a view that a consideration of the minor penalty while considering the case for promotion and denying the promotion will amount to double jeopardy meaning thereby that if on the basis of minor penalty of stoppage of annual grade increments without cumulative effect, the promotion is

withheld; it will mean that the Government servant has been punished twice; firstly, by stoppage of annual grade increments without cumulative effect, and secondly, by withholding his promotion to the higher post.

6. Per contra, Ms. Sonal Singh, supporting the impugned order passed dated 20th January, 2009, strenuously argued that admittedly the respondent-employee was already deprived of promotion owing to the penalty as "censure", suffered by him in the year 1991 while his case was considered for promotion by the DPC against the vacancies of the year 1996-97. However, the petitioner was accorded promotion against the vacancies of the year 1997-98, in compliance of the order passed by the Tribunal on Appeal No. 1455/1997. Since the petitioner-State again deprived of the respondent-employee of grant of selection scale after completion of 18/27 years of service, for the same penalty of "censure" suffered by him, the respondent-employee instituted Appeal No. 964/2007, which has been adjudicated upon by the Tribunal holding that such an action would amount to double jeopardy. In support of her submissions reliance has been placed on the opinion of the Hon'ble Supreme Court in the case of Lt. Governor Delhi and others v. HC Narinder Singh; 2004 (13) SCC 342.

7. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

8. Indisputably, the petitioner was inflicted with the penalty of censure vide order dated 19th June, 1991. He was deprived of promotion while considering his case against the vacancies of the year 1996-97, owing to the penalty of censure. However, later on the respondent-employee was accorded promotion against the vacancies of the year 1997-98. In view of the admitted facts; the respondent-employee was again sought to be deprived of grant of selection scale in view of the order dated 21st January, 1992, on completion of 18/27 years of service, for the same penalty of censure, and this action of the petitioners has been held to be bad in the eye of law for it amounts to double jeopardy.

9. In the case of Lt. Governor, Delhi and others(supra), the Hon'ble Supreme Court while dealing with somewhat similar controversy, wherein the Head Constable Narinder Singh (respondent therein), was imposed with the penalty of reduction of pay by one stage without cumulative effect for dereliction of duty, as a consequence of disciplinary action; was served with a second show-cause notice proposing to remove his name from the promotion list. The action was successfully assailed by the respondent-employee therein, before the Central Administrative Tribunal. Dismissing the Appeal of the Delhi administration, the Hon'ble Supreme Court observed thus:

"4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause

notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule." 10. In the instant case at hand, it is not in dispute that the respondent-employee already suffered the denial of promotion, against the vacancies of the year 1996-97, owing to the penalty of censure inflicted upon him, and for the same penalty, the petitioner-State denied the grant of selection scale on completion of 18/27 years of service, which has been held to be bad in the eye of law for the respondent-employee could not have been punished twice over for the same penalty.

11. A glance of the admitted facts of the case at hand leaves no room for any doubt that the second action of the petitioner-State was based on the same cause action while the respondent-employee was deprived of grant of selection scale on completion of 18/27 years of service. Thus, the second penalty, based on same cause of action i.e. "censure", would definitely amount to double jeopardy. Therefore, the Tribunal did not commit any error in holding such an action to be bad in the eye of law and resulting into double jeopardy.

12. For the reasons and discussions hereinabove, the view of the Tribunal cannot be faulted. The matter calls for no interference in exercise of writ jurisdiction under Article 226 and 227 of the Constitution of India.

13. In the result, the writ petition is devoid of any substance and lacks in merit, and therefore, is hereby dismissed.

14. However, in the facts and circumstances of the case, there shall be no order as to costs.