
(2012) 05 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6724 of 2012

Union of India and Another	Vs	APPELLANT
C.K. More, IDES, Jammu Cant and Another		RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Citation : (2013) 1 SCT 277

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar, J

Bench : Division Bench

Advocate : Anmol Rattan Sidhu, with Mr. Kunal Dawar, for the Appellant; Raj Kumar Sharma, Advocate for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The Union of India and another have filed the instant writ petition challenging the order dated 16.01.2012 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as "the Tribunal"), whereby the Original Application (O.A. No. 720-JK of 2011) filed by respondent No. 1 was allowed and the action of the petitioners in not promoting him to the Higher Administrative Grade was held to be illegal, and petitioners were directed to promote respondent No. 1 with effect from the date others, recommended by the Departmental Promotion Committee, were promoted. We have heard the learned counsel for the petitioners as well as learned counsel for the caveator/respondent No. 1 and gone through the impugned order.

2. In the present case, respondent No. 1 was working in Senior Administrative Grade in the Indian Defence Estates[Services. On 12.8.2010, the meeting of Departmental Promotion Committee was held to consider the case of promotion of the eligible officers to the next higher rank, i.e., Higher Administrative Grade. The names of five officers, including respondent No. 1, were recommended by the Departmental Promotion Committee for promotion to the Higher Administrative Grade. The said recommendation was accepted by the Ministry of

Defence in the month of September, 2010 and papers were forwarded to the Appointments Committee of the Cabinet for grant of approval. The said Committee of the Cabinet approved the recommendations of the Departmental Promotion Committee on 7.10.2010 (Annexure A-3). As per the recommendations of the Departmental Promotion Committee, three persons senior to respondent No. 1 were promoted. But in spite of availability of another post, the promotion of respondent No. 1 was kept in abeyance. Later on, respondent No. 1 got information that his promotion was withheld on the ground that on 13.5.2011 a charge-sheet was issued to him.

3. Respondent No. 1 challenged the action of the petitioners by filing the aforesaid Original Application, which was allowed by the learned Tribunal while holding that in the facts and circumstances of the case and in view of the law laid down by the Hon"ble Apex Court in Union of India Vs. K.V. Jankiraman, etc. etc., , the petitioners were not justified to keep the promotion of respondent No. 1 in abeyance as on the date when the Departmental Promotion Committee recommended the promotion case of respondent No. 1 along with others and the Appointments.

4. Committee of the Cabinet approved the recommendations of the Departmental Promotion Committee on 7.10.2010, no charge-sheet was pending or issued against him. Even on that date, neither any charge-sheet was contemplated against respondent No. 1 nor he was placed under suspension, therefore, withholding the promotion of respondent No. 1 by the petitioners was held to be totally arbitrary and without any justification.

5. While assailing the order of the Tribunal, learned counsel for the petitioners argued that in view of Clause 7 of the Office Memorandum dated 14.9.1992, which provides that a Government servant, who is recommended for promotion by the Departmental Promotion Committee, but in whose case any of the circumstances mentioned in Clause 2 of the said Office Memorandum, viz., he is under suspension; in whose case any charge-sheet has been issued and the disciplinary proceedings are pending; and in respect of whom prosecution for a criminal charge is pending, arise after the recommendations of the Departmental Promotion Committee, but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the Departmental Promotion Committee, and he shall not be promoted until he is completely exonerated of the charges against him. Learned counsel further argued that Clause 7 of the Office Memorandum dated 31.7.1991 issued by the Government of India has been interpreted in a similar situation in favour of the Department by a Division Bench of the Delhi High Court in R.R. Sahay Vs. Union of India (UOI) and Others . Thus, the learned Tribunal has not properly appreciated the arguments raised by the counsel, and has illegally directed to promote the respondent.

6. We have appreciated this contention of the learned counsel in light of the admitted facts in the present case and in view of the law laid down by the Hon"ble Supreme Court in K.V. Jankiraman's case (supra) we do not find any

force in the same.

7. It is undisputed position that on 12.8.2010 when the Departmental Promotion Committee recommended the name of respondent No. 1 along with others for promotion and when the said recommendations were accepted by the Department which forwarded the same for approval before the Appointments Committee of the Cabinet and when the said recommendations were approved by the Appointments Committee of the Cabinet on 7.10.2010, respondent no. 1 was neither under suspension nor any charge-sheet was issued or disciplinary proceedings were pending nor any prosecution for a criminal charge was pending against him. Further, when the recommendations of the Departmental Promotion Committee were implemented qua other recommended persons, there was no justification for not implementing the said recommendations qua respondent No. 1, particularly when the promotional post was available. It is only after more than seven months of the approval of the recommendations, a chargesheet was issued to respondent No. 1 on 13.5.2011. Therefore, in our view, in the facts and circumstances of the case, the principles laid down in K.V. Jankiraman's case (supra) are clearly applicable and the petitioners were not justified to withhold the promotion of respondent No. 1 on the ground that later on a charge-sheet came to be issued to respondent No. 1 on 13.5.2011.

8. Learned counsel for the petitioners, while referring to the Division Bench decision of the Delhi High Court in R.R. Sahay's case (supra), argued that the decision of K.V. Jankiraman's case (supra) cannot be applied mechanically in all cases and in view of the allegations of serious nature in the subsequent charge-sheet, the petitioners were fully justified in withholding the promotion of respondent No. 1 and applying the procedure of the sealed cover.

9. We have gone through the said judgment, which is distinguishable on facts. In that case the Departmental Promotion Committee recommended the Government servant for promotion and the same was also approved by the Appointments Committee of the Cabinet, but before the post on which he was to be promoted fell due, departmental proceedings were contemplated against him. In that situation, it was considered whether a Government servant can be denied promotion for a stated misdemeanour allegedly committed after the Departmental Promotion Committee has met and given its recommendations finding the Government Servant fit for promotion, which recommendations are accepted by the Competent Authority, but before a vacancy is available for promotion, the Government Servant comes under a cloud. In the present case the Departmental Promotion Committee recommended the name of respondent No. 1 which was approved by the Appointments Committee of the Cabinet. According to the said recommendations, when the other persons were promoted, the vacancies were available, but in spite of that fact and also the fact that no charge-sheet was pending or issued against respondent No. 1, he was not promoted on the basis of the subsequent inquiry. Undisputedly, the said charge-sheet was pertaining to the period much prior to the date of recommendations of

the Departmental Promotion Committee. In our view, the learned Tribunal has rightly held that under the guise of Clause 7 of the Office Memorandum dated 14.9.1992, the petitioners cannot withhold the promotion of respondent No. 1, particularly when no charge-sheet was pending against respondent No. 1 nor he was placed under suspension at the time when his case was recommended by the Departmental Promotion Committee. Immediately, after the recommendation by the Departmental Promotion Committee, if a Government servant has committed serious misconduct or has been charge-sheeted, the said circumstance may be taken into consideration by invoking the said Clause, but when the subsequent chargesheet is based upon the facts prior to the date of recommendation by the Departmental Promotion Committee and everything was within the knowledge of the Department that no disciplinary proceedings were pending or charge-sheet was issued against the Government Servant, then by issuing the charge-sheet subsequently for misconduct with an intention to withhold his promotion, cannot be justified. If the said material had been before the Departmental Promotion Committee, the case of respondent No. 1 for promotion to the Higher Administrative Grade could not have been recommended for approval before the Appointments Committee of the Cabinet. Thus, we do not find any illegality in the impugned order passed by the learned Tribunal.

Dismissed.