
(2004) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 259 of 2002

Union of India (UOI) and DG, BSF

APPELLANT

Vs

D.S. Sandhu

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Citation : (2004) 2 JKJ 174

Hon'ble Judges : S.N. Jha, C.J.;Sudesh Kumar Gupta, J

Bench : Division Bench

Advocate : S.S. Nanda, CGSC, for the Appellant; M.K. Bhardwaj and Ajay Abrol, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, C.J.—This letters patent appeal by the Union of India is directed against order dated 16.08.2001 passed by the learned Single

Judge in SWP No. 2479 of 1999, allowing the writ petition of the respondent-writ petitioner.

2. The respondent filed the writ petition seeking in effect and substance a direction to promote him on the post of Deputy Commandant from a

date prior to the date of promotion of Ajay Ram Pal who was arrayed as respondent-3 in the writ petition. The grievance of the respondent was

that he was denied promotion on the said post by reason of displeasure communicated to him on 12.6.1998 with respect to incident of 1993-94.

According to the respondent, with respect to the allegations of embezzlement of public money, allegedly made in 1994, a staff court of inquiry was

held in 1994. This was followed by three additional enquiries. None of the enquiries revealed any material or justifiable cause to initiate any

proceedings. However, displeasure was communicated to him on 12.6.1998. As a result of the communication of displeasure, the Departmental

Promotion Committee (DPC), which met on 10/11 August, 1998, did not consider his case for the promotion to the post of Deputy Commandant.

The case of the appellant-Union of India is that the displeasure is not a punishment and as per the rules a show cause notice was given to the

respondent. The show cause was considered but found to be unsatisfactory, and displeasure was communicated, and, therefore, the respondent

cannot make any grievance of the same.

3. The case was heard at length. In the course of hearing, learned counsel for the appellant produced copy of the circular dated 28th June, 1989

relating to the award of displeasure of the officers and the consequences thereof. It will be useful to quote the circular, so far as relevant, as under

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.....

2. Displeasure is not punishment. It is generally awarded in cases where, there is evidence of delinquency or irregularity, but it is not considered

worthwhile to institute formal disciplinary proceedings.

3.(i).....

(ii) The confidential report of the officer for the period during which the displeasure has been awarded should have a record of the fact of award of

such displeasure.

(iii) If the displeasure has been recorded in the CR for a period prior to the normal period of consideration of CRs by the DPC, it should be

ignored.

(iv) If the displeasure falls within the period of consideration of CRs by the DPC, the facts and circumstances of the case leading to the award of

displeasure should be placed before the DPC. The DPC should apply its mind to these facts and circumstances and take a view whether there has

been any element of dishonesty, pecuniary gain, abuse of power or authority, or moral turpitude. If, any of these elements is present, then, taking a

serious view of the matter, the DPC should not consider the officer for promotion for a period of one or two years from the date of award of the

displeasure, as it may consider appropriate.....

4. Learned counsel for the respondent submitted that award of displeasure may disentitle the person to be considered for promotion for a period of one or two years. But where the incident leading to the displeasure had taken place long time back and the authorities take their own time to conclude the matter and communicate the displeasure to the concerned delinquent officer, the opinion so reached cannot be said to be in accordance with norms. Further, if the facts constituting and leading to displeasure appertain to a period prior to the period of consideration of the CRs by the DPC, it should be ignored. We, find substance in the contentions of the learned counsel for the respondent.

As indicated above, with respect to some alleged incident of 1993-94, the authorities decided to hold staff court of inquiry which was in the nature of fact finding inquiry. Such inquiry could reveal facts to initiate a regular inquiry/proceeding. Apparently, the Courts of Inquiry-as many as three or four, did not justify the initiation of any proceeding. Still, had the displeasure been communicated in 1993-94, or soon thereafter, the effect of such displeasure would have come to an end prior to the consideration of the respondent's case on 10/11.8.1998. In our opinion, non-consideration of the case of the delinquent in such circumstances, cannot be said to be appropriate exercise of discretion. We do not want to go into the question as to whether the delay in the communication of displeasure was deliberate or bonafide. Be that as it may, where the authority chooses its own time to reach the conclusion for awarding displeasure, the possibility of the delinquent losing his right of consideration and chances of promotion cannot be ruled out, it is admitted case of the parties that non-consideration of the respondent's case by the DPC on 10/11.8.1998 was on account of the displeasure communicated on 12.6.1998. Though he was allowed promotion in the next year i.e. in 1999, had his case has been considered by the DPC in 1998, he would have had a chance of promotion from the due date. In the circumstances of the case, we are of the view in the ends of justice, that the concerned authorities do re-consider the case of the respondent for promotion from due date ignoring the award of displeasure. We, thus, do not find any merit in the impugned order passed by the learned Single Judge allowing the respondent's writ petition. Appeal is accordingly dismissed.