

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 514 OF 2021

Dr. Manash Dev Vrs. The State of Tripura & 2 Ors.

Present:

For the petitioner(s) : Mr. C.S. Sinha, Advocate.

For the respondent(s) : Mr. D. Bhattacharya, G.A.
Mr. S. Saha, Advocate.

HON'BLE MR.JUSTICE ARINDAM LODH

10.08.2023

Order

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned G.A. assisted by Mr. S. Saha, learned counsel appearing for the State-respondents.

By way of filing the present writ petition, the petitioner has sought for re-fixation of his seniority. His grievance is that his juniors were made senior to him due to some penalty imposed upon him.

Mr. Sinha, learned counsel appearing for the petitioner has submitted that the penalty imposed by the disciplinary authority and the appellate authority had been quashed by this court when it was challenged under Article 226 of the Constitution of India.

There is no denial that the penalty imposed upon the petitioner had been quashed by this court. However, Mr. Bhattacharya, learned G.A. appearing for the State-respondents has submitted that the petitioner was censured.

In view of the aforesaid submissions, I would like to refer the Office Memorandum dated 3rd November, 1995 issued by the Ministry of Personnel, Public Grievance & Pensions (Department of Personnel and Training), Government of India, which reads as under:

No.2001/2/92-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel and Training)

New Delhi, the 3rd Nov.,1995

OFFICE MEMORANDUM

Subject: Fixation of seniority in the case of delayed promotion due to penalty.

The undersigned is directed to refer to the instructions contained in DoP & ARO.M. No.21/5/70-Estt.(A) dated 15.5.71 (reiterated vide O.M. No.22011/2/78-Estt.(A) dated 16.02.1979) according to which a Govt. servant on whom a minor penalty of withholding of increment etc. has been imposed should be considered for promotion by the DPC which meets after the imposition of said penalty and if he is considered fit for promotion despite imposition of penalty, the promotion may be given effect to after the expiry of the penalty. References have been received from various Departments seeking clarification on the question of seniority of such officers on their promotion.

It is clarified that the officer who has been recommended for promotion by a DPC despite his penalty will be promoted only on the basis of the recommendation of the said DPC after the expiry of the penalty and his seniority would be fixed according to his original position.

Sd/-
(K.K.Jha)
Director (E)''

This court had passed a judgment and order dated 20.02.2020 in connection with Case No.WP(C) 860/2019 filed by this petitioner, wherein, it was observed that- *“In facts of the present case, therefore, as an exceptional case, the punishment of withholding of two increments with cumulative effect is set aside, instead the punishment of censure is substituted.”*

In view of the above direction and the Office Memorandum dated 3rd November, 1995, I direct the respondents to reconsider the prayer for fixation of seniority of the petitioner, if he is found fit and eligible otherwise to claim his seniority.

While determining his seniority position, the respondents shall also take into consideration that the persons who had been superseded and have not been impleaded in this writ petition.

With the aforesaid observations and directions, the instant writ petition stands disposed.

JUDGE

SANJAY GHOSH

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