

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.37/2023 in
WA No.35/2023

Date of order: 21.09.2023

Dr. Dinesh Bhatia vs. Vice Chancellor, North Eastern
Hill University & anr

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellant : Mr. H. Buragohain, Adv with
Mr. S. Pandey, Adv
Mr. C. Agarwal, Adv

For the Respondents : Mr. S. Sen, Adv with
Ms. S. Shallam, Adv

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In view of the good grounds shown, the marginal delay of about five days in preferring the appeal is condoned and the appeal is taken up for immediate consideration.

2. The grievance of the appellant is that despite the appellant's fate as to promotion remaining sealed in an envelope and the appellant having been discharged from one of the two departmental proceedings instituted against him and no inquiry having been commenced into the

other, the appellant has been denied the promotion that he hopes remains closed in the sealed cover.

3. It is not in dispute that two sets of disciplinary proceedings were initiated against the appellant who is an associate professor in the Biomedical Engineering Department of the respondent university. In one of the cases, pertaining to illegal gratification, the departmental inquiry has exonerated the appellant. However, the appellant says that in the corresponding case where investigation has been conducted by the Central Bureau of Investigation, no favourable report qua the appellant has yet been filed.

4. In respect of the other set of proceedings, the appellant says that despite a period of more than 18 months having elapsed since the memorandum of charges were served on the appellant, no inquiry has yet been initiated.

5. The appellant says that there is a procedure under the University Grant Commission Rules and which is applicable to the respondent university where even during the pendency of the disciplinary proceedings, the sealed cover decision is reviewed and may be given

effect to on an ad hoc basis, subject to the ultimate outcome of the disciplinary proceedings.

6. On behalf of the respondent university, it is submitted that such aspect of the matter of there being a procedure for reviewing the decision in the sealed cover or giving ad hoc effect thereto, was not urged before the writ court. The university submits that all that the appellant asserted before the writ court was that since the appellant had been exonerated in the first set of proceedings and the allegations in the two sets of disciplinary actions pertained to periods after the appellant became due to be considered for promotion, the institution of either set of disciplinary proceedings could not have been taken into account for the purpose of reckoning whether the appellant ought to be promoted.

7. It has been rightly held in the judgment and order under appeal that even though the process for considering the desirability of promoting a candidate should commence upon the candidate or the set of candidates becoming eligible for promotion, and the consideration thereat is the performance over the previous period of time; it is also an accepted norm that if the promotion exercise is conducted later or before the time the promotion is granted any disciplinary proceedings

are commenced against a possible promotee, the promotion is withheld and the decision of the committee in such regard is kept sealed in an envelope.

8. Indeed, it would be opposed to public policy if an employee in any government organisation or any other organisation answering to the description of other authority within the meaning of Article 12 of the Constitution were to be promoted merely on the basis of the consideration of the relevant period without taking into account any notorious fact that may have occurred prior to the decision to promote being implemented. In such sense, the judgment and order of the writ court cannot be faulted.

9. However, since the appellant says that there is a procedure for the employer reviewing the position, particularly in the light of the appellant being exonerated in the first case and the inquiry in the second case not having commenced, it will be open to the appellant to make an appeal to the respondent university, by citing the appropriate provisions, whereupon the employer will consider the same in accordance with law and communicate a decision to the appellant within four weeks of the

receipt of the written request in such regard. In case the request in such regard is rejected, due reasons therefor should be indicated.

10. WA No.35 of 2023 is disposed of without interfering with the judgment and order under appeal and by granting liberty to the appellant as indicated above.

11. MC (WA) No.37 of 2023 is allowed.

12. There will be no order as to costs.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
21.09.2023
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