

GAHC020000272022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/12/2022

ASI LONGLISE SANGTAM
DEF WOKHA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED THROUGH THE COMMISSIONER TO THE
GOVERNMENT OF NAGALAND. NAGALAND KOHIMA

2) THE SPECIAL SECRETARY, HOME
POLICE ESTABLISHMENT BRANCH, HOME DEPARTMENT,
NAGALAND KOHIMA

3) THE DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

4) THE DEPUTY INSPECTOR GENERAL
(HQR) PHQ, NAGALAND KOHIMA

Advocate for the Petitioner : WATI JAMIR
Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]**

23.11.2023

The present writ petition has been instituted by the writ petitioner under Article 226 of the Constitution of India challenging a letter dated 20.12.2021 issued by the respondent no. 4, that is, the Deputy Inspector General of Police [Head Quarter] Nagaland, Kohima. Apart from seeking setting aside and quashing of the impugned letter dated 20.12.2021, the petitioner has sought for a direction to consider his case for ad-hoc promotion from the post of Assistant Sub-Inspector [ASI] of Police to the post of Unarmed Branch Sub-Inspector [UBSI] of Police as, in the meantime, a number of Assistant Sub-Inspectors who were junior to the petitioner, have been promoted to the rank of UBSI.

2. The facts leading to the institution of the writ petition, can be narrated, in brief, as follows :-

2.1. The petitioner came to be appointed as an Assistant Sub-Inspector [ASI] against a sanctioned post vide an order dated 09.02.2003 passed by the respondent no. 3, that is, the Director General of Police, Nagaland. As per the said order of appointment, the vacancy against which the petitioner was appointed was at Ralan Police Station. On receiving the order of appointment, the petitioner immediately joined in the post of ASI of Police and he was posted at the DEF, Wokha. At the time of institution of the writ petition, the petitioner has been serving as such ASI.

2.2. According to the petitioner, the next promotional post from the post of ASI of Police is the post of Unarmed Branch Sub-Inspector ['UBSI', for short].

2.3. In the year 2012, a First Information Report [FIR] came to be lodged before the

Officer In-Charge, Diphupar Police Station and the said FIR had been registered as Diphupar Police Station Case no. 40/2012 for offences under Sections 25[1][a] of the Arms Act, 1959. The allegations in the FIR were *inter alia* to the effect that 3,700 live rounds of 7.62 mm ammunitions, 38 nos. of magazines of SLR, 1 magazine of .303 rifle, 7.62 empty cases – 100 nos., ammunitions container – 7 nos., Rifle box – 02 nos., etc, were seized from the house of one Enyimi Chakhesang @ Enyihi Chakhesang, a Havildar of Nagaland Police, when his house was raided and searched on 20.04.2012. In the course of investigation of Diphupar Police Case no. 40/2012, the petitioner was also arrested finding his complicity in the alleged offences. Apart from Enyimi Chakhesang @ Enyihi Chakhesang and the petitioner, involvement of a number of other police personnel were found in the criminal conspiracy in the course of investigation carried out in connection with Diphupar Police Case no. 40/2012.

2.4. Immediately after registration of Diphupar Police Case no. 40/2012, the petitioner was placed under suspension with immediate effect by an order dated 25.04.2012 passed by the respondent no. 3 in exercise of powers conferred by Sub-Rule [1] of Rule 6 of the Nagaland Services [Discipline and Appeal] Rules, 1967.

2.5. A disciplinary proceedings had been drawn up against the petitioner thereafter with the issuance of a Memorandum dated 19.11.2012. Proposing disciplinary proceedings against the petitioner under Rule 9[2] of the Nagaland Services [Discipline and Appeal] Rules, 1967, the Memorandum was served along with the Articles of Charges, a list of documents and a list of witnesses. On receipt of the Memorandum and the Article of Charges, the petitioner submitted his Written Statements-of-Defence to the said Memorandum and the Article of Charges before the respondent no. 3 through the Superintendent of Police, Wokha. By a letter dated 06.12.2012, the Superintendent of Police, Wokha forwarded the said Written Statements-of-Defence, submitted by the petitioner, to the respondent no. 3 for further necessary action. In the Written Statements-of-Defence, the petitioner had denied all the charges levelled against him by the Memorandum dated 19.11.2012. By an order dated 31.01.2013, the respondent no. 3 in exercise of powers conferred by Rule 10 of the Nagaland

Services [Discipline and Appeal] Rules, 1967, appointed an officer as an Enquiry Officer to enquire into the charges framed against the petitioner and also appointed an officer as Presenting Officer to present the case in support of the charges, before the Enquiry Officer. A brief in respect of the petitioner was presented by the Presenting Officer before the Enquiry Officer on 12.02.2015. The petitioner has stated that he had duly participated in the disciplinary proceedings.

2.6. In the interregnum, the respondent no. 3 in exercise of the powers conferred by Sub-Rule 5[c] of Rule 6 of the Nagaland Services [Discipline and Appeal] Rules, 1967, passed an order on 15.12.2014 revoking the order of suspension dated 25.04.2021 with immediate effect. In the said order, it was observed that the period of suspension would be finalized after the outcome of the criminal prosecution which had already been taken over by the National Investigation Agency [NIA]. The order dated 15.12.2014 has revealed that the case has been registered by the NIA for offences under Sections 120B/409/467/468/471/34, Indian Penal Code [IPC] r/w Section 25[1] [a] of the Arms Act, 1959.

2.7. It has been stated that an officer in the rank of ASI has to pass the Central Promotion Test [CPT] for consideration of his case for promotion to the post of Unarmed Branch Sub-Inspector [UBSI] of Police as the feeder post for UBSI is ASI. The petitioner received a call to appear in the CPT conducted for the ASIs of Police from 11.04.2018 to 12.04.2018 at 4th NAP Battalion. On receipt of the call, the petitioner appeared in the CPT. By an order dated 13.06.2018, the respondent no. 3 published a list of 58 nos. successful candidates who had passed in the CPT. The name of the petitioner figured at serial no. 42 of the said list of successful candidates, who passed in the CPT. The order dated 13.06.2018 further observed that the ASIs who were kept in the fit list shall be given promotion to the rank of UBSI against the vacancies or as and when vacancies arose, subject to clear Annual Performance Assessment Report [APAR] for the preceding 5 [five] years and as per seniority rank and on the basis of seniority-cum-merit. In continuation of the order dated 13.06.2018, a rectified and revised fit list of CPT of ASI for promotion to the rank of

UBSI, as per the seniority-cum-merit basis, came to be published by a corrigendum dated 04.12.2020. In the said rectified and revised list of CPT, the name of the petitioner figured at serial no. 35.

2.8. After taking over investigation of Diphupar Police Station Case no. 40/2012, the NIA sought prosecution sanction under Section 197, Code of Criminal Procedure [CrPC], 1973 from the respondent no. 3 to prosecute the petitioner. By an order dated 18.10.2014, prosecution sanction was accorded by the respondent no. 3 under the provisions of Section 197, CrPC to prosecute the petitioner by the NIA.

2.9. It is an admitted position, as has been stated in the additional affidavit of the State respondents, filed on 18.10.2023, and as submitted by the learned State Counsel, that the disciplinary proceedings initiated against the petitioner by the Memorandum dated 19.11.2012 has been completed in the meantime but the final decision in respect of the disciplinary proceedings has been kept in abeyance awaiting the outcome of the criminal prosecution initiated against the petitioner and others.

3. I have heard Mr. Wati Jamir, learned counsel for the petitioner and Ms. Livika, learned Government Advocate, Nagaland for all the respondents.

4. Mr. Jamir, learned counsel for the petitioner has submitted that in the rectified and revised fit list of CPT of ASIs, published by the Corrigendum dated 04.12.2020, the name of the petitioner has figured at Sl. no. 35. He has submitted that the respondent authorities have acted on the said rectified and revised fit list of CPT to promote a number of candidates to the post of UBSI during the intervening years. But the petitioner has not been given promotion to the post of UBSI. He has submitted that the candidates at serial nos. 36, 37, 39, 40 & 42 have already been promoted from the post of ASI to the post of UBSI by an order dated 01.09.2021 [Annexure-F to the writ petition]. It is his contention that the outcome of the disciplinary proceedings has been kept in abeyance, due to pendency of the criminal prosecution, which has been prosecuted by the NIA. It is his further contention that the conclusion of the said

criminal prosecution is not in sight in the near future. If the respondent authorities are permitted to take the stand that they would consider the case of the petitioner for promotion only after the conclusion of the criminal prosecution, then the petitioner would suffer immense prejudice and his career prospects would be seriously jeopardized, as it is evident from the manner the criminal prosecution arising out of NIA Case no. RC-01/2013, has progressed till date. He has submitted that according to his information, the trial of NIA Case no. RC-01/2013 [earlier registered as Diphupar Police Station Case no. 40/2012] as on date, is pending before the Court of learned Special Judge [NIA], Dimapur and the same is at the stage of evidence. Till date, only a few nos. of prosecution witnesses have been examined.

5. Ms. Livika, learned Government Advocate, Nagaland representing the State respondents has submitted that the charges against the petitioner and other accused persons who have been charge sheeted in NIA Case no. RC-01/2013, are serious. As the charges in the disciplinary proceedings are similar to the charges faced by the accused persons including the petitioners, in NIA Case no. RC-01/2013, the disciplinary authority deemed it appropriate to keep the final decision in the disciplinary proceedings drawn up against the petitioner in abeyance, awaiting the outcome of the criminal prosecution of NIA Case no. RC-01/2013. It has been submitted that the case of the petitioner was placed for consideration before the Departmental Promotion Committee [DPC] and the DPC after due consideration, had decided to adopt sealed cover procedure. The sealed cover procedure would be opened and decision regarding promotion would be taken depending upon the outcome of the criminal prosecution/disciplinary proceedings. It is further submitted by Ms. Livika that there cannot be any ad-hoc promotion of the petitioner, not to speak of any regular promotion, as the petitioner is facing criminal prosecution for serious charges.

6. In reply, Mr. Jamir, learned counsel for the petitioner has specifically referred to an Office Memorandum dated 14.09.1992 issued by the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel & Training, Government of India, to submit that if any departmental proceedings or criminal prosecution against any

employee is prolonged, the departmental authorities is bound to consider the case of such an employee for ad-hoc promotion. He has submitted that the principles and procedure laid down in the Office Memorandum dated 14.09.1992 of the Government of India has also been followed in the State of Nagaland.

7. I have given due consideration to the submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the Office Memorandum dated 14.09.1992 and the decisions cited at the Bar by the learned counsel for the parties.

8. The facts narrated above, are not in dispute and as such, recapitulation of the same is not necessary. The petitioner was placed under suspension on 25.04.2012 and was thereafter, re-instated in service on 15.12.2014. Since 15.12.2014, the petitioner has been serving in the post of ASI. The disciplinary proceedings have been initiated against the petitioner with the issuance of the Memorandum and the Articles of Charges on 18.11.2012. The crime case, Diphupar Police Station Case no. 40/2012 [later on registered as NIA Case no. RC-01/2013] was registered on 25.04.2012. The petitioner was arrested immediately thereafter in connection with Diphupar Police Station Case no. 40/2012 and later on, he was released on bail on 15.05.2012. Since then, the petitioner has been facing disciplinary proceedings for the last 11 years without any final outcome. The final decision on the disciplinary proceedings has been made dependent upon the outcome of the criminal prosecution, arising out of NIA Case no. RC-01/2013, which is presently at the stage of prosecution evidence pending before the Court of learned Special Judge [NIA], Dimapur.

9. On a query made to Ms. Livika, learned Government Advocate, Ms. Livika has submitted that the NIA has named a list of 97 nos. of prosecution witnesses in the charge-sheet and out of those 97 nos. of prosecution witnesses, about 50-60 nos. of prosecution witnesses appeared have been examined till date. Meaning thereby, a substantial number of prosecution witnesses are yet to be examined by the NIA in the

trial pending before the learned Special Judge [NIA], Dimapur. The matter regarding sealed cover procedure has been adjudicated by the Hon'ble Supreme Court of India in Union of India and others vs. K.V. Jankiraman and others, reported in [1991] 4 SCC 109. In K.V. Jankiraman [supra], it has been held to the effect that when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee then it can be said that the disciplinary proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. After the employee is imposed with penalty in the disciplinary proceedings or found to be guilty by the criminal court, the sealed cover is not to be acted upon and his case for promotion would be considered in usual manner in the next DPC. In K.V. Jankiraman [supra], two office memoranda - one Office Memorandum dated 30.01.1982 and another Office Memorandum dated 12.01.1988 of the Department of Personnel & Training, Government of India [GoI] on the subject of officers in whose cases 'the sealed cover procedure' had been followed against whom disciplinary proceedings/court proceedings were pending for a long time. Clause [iv] of Para 3 of the Memorandum dated 30.01.1982 had laid down about the procedure for ad-hoc appointment of the concerned officer when the disciplinary proceedings/court proceedings were not concluded even after the expiry of 2 [two] years from the date of the DPC which first considered him for promotion and whose findings were kept in the sealed cover, provided however, that the officer was not under suspension. The Hon'ble Supreme Court took notice that the Office Memorandum had urged that in making the ad-hoc promotion in such cases, the case should be placed before the DPC which would be held after the expiry of the said period of 2 [two] years and the ad-hoc promotion had to be made on the basis of the totality of the record of service, etc. The Office Memorandum dated 14.09.1992 was in continuation of the Office Memorandum dated 12.01.1988. The Office Memorandum dated 14.09.1992 had taken into consideration of the principles laid down in K.V. Jankiraman [supra]. Para 4 of the Office Memorandum dated 14.09.1992 is of relevance for the purpose of the present */is* and the same is quoted hereinbelow, for ready reference.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise the proceedings expeditiously should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects :-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal

prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

10. From the afore-quoted paragraphs of Office Memorandum dated 14.09.1992, it emerges that it is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise the proceedings expeditiously should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. A policy decision has been taken to the effect that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover, on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. It has been emphasized that such a review should be done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal persecution and the further measures to be taken to expedite their completion. Para 5 of the Office Memorandum has mentioned about the situation where the disciplinary proceedings/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which had kept its findings in respect of the Government servant in a sealed cover. The procedure for review for such situation has been outlined therein for the DPC to consider the desirability of the Government servant to give him ad-hoc promotion. It has also mentioned about consultation with the prosecuting agency and to take their views into account on the aspects mentioned therein.

11. In a case titled *Jaswant Singh vs. Union of India and others*, reported in 2011 [4] GLT 748, a Division of this Court considered the case of the appellant therein

against whom criminal prosecution was pending. The appellant therein instituted the writ proceedings for a direction to the respondent authorities to consider his case for promotion to the next higher grade in terms of the Officer Memorandum dated 14.09.1992. The criminal prosecution lodged against the appellant therein in the year 1999 did not attain finality for the next 11 years. Taking note of non-conclusion of the criminal prosecution and the matter of keeping the case of the appellant therein in a sealed cover for a prolonged period, the Division Bench in Jaswant Singh [supra] taking note of the procedure laid down in the Office Memorandum dated 14.09.1992, directed the respondent authorities therein to consider the case of the said appellant for ad-hoc promotion in terms of the said Office Memorandum dated 14.09.1992 and to complete the entire exercise as expeditiously as possible, preferably within a period of 3 [three] months from the date of passing of the order.

12. The procedure laid down in Office Memorandum dated 14.09.1992 regarding ad-hoc promotion has also been considered by the Hon'ble Supreme Court in Harsh Kumar Sharma, IFS vs. State of Punjab and another, reported in [2017] 4 SCC 366. In the case of the appellant therein, no review, after every 6 [six] months, after the convening of the first DPC way back in the year 2011, had been done. Criminal proceedings were pending against the said appellant. In paragraph 24 of Harsh Kumar Sharma [supra], the Hon'ble Supreme Court has observed as under :-

24. While it may be so, other contention of the appellant regarding review of his case has adequate merit. OM dated 14-9-1992 as well as other OMs impress the necessity of ensuring that the disciplinary case/criminal prosecution instituted against any government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a government servant in a sealed cover is limited to the barest minimum. It is further provided that the appointing authorities should review comprehensively the cases of government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover. Such review should be undertaken on the expiry

of 6 months from the date of convening the first DPC which had adjudged the suitability and kept the findings in sealed cover. This review is also to be done subsequently as well, after every six months. It is also mandated that the review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and further measures be taken to expedite the completion.

12.1. The appeal was disposed of with direction to the respondent authorities therein to consider the case of the appellant for ad-hoc promotion keeping in view the entire circumstances of the case within a period of 1 [one] month.

13. Reverting back to the facts of the case in hand, it is noticed that the disciplinary proceedings initiated against the petitioner on 19.11.2012 is pending since the last 11 years and the final decision on the disciplinary proceedings has been made dependent upon the outcome of the criminal prosecution being faced by the petitioner as an accused in NIA Case no. RC-01/2013. The crime case, Diphupar Police Station Case no. 40/2012, later on registered as NIA Case no. RC-01/2013, was also of the year 2012 and the criminal prosecution is also pending for about 11 years since 2012. Having regard to the fact that the trial of the case, arising out of the NIA Case no. RC-01/2013, and considering that quite a number of prosecution witnesses are yet to be examined, it can be said that the trial is likely to be concluded within a short period of time.

14. Having regard to the procedure laid down in the Office Memorandum dated 14.09.2019, more particularly, Para 4 & 5 thereof, and taking note of the observations made in the decisions in K.V. Jankiraman [supra]; Jaswant Singh [supra]; and Harsh Kumar Sharma [supra], this Court is of the considered view that the fate of the petitioner for regular promotion would definitely be dependent upon the final outcome of the disciplinary proceedings/criminal prosecution but the respondent authorities is obligated to consider the case of the petitioner for ad-hoc promotion as per the procedure laid down therein. The case of the petitioner is no different than the case of

the appellant in Jaswant Singh [supra] and Harsh Kumar Sharma [supra]. In such view of the matter, this Court is of the considered view that a similar direction is called for. Accordingly, this writ petition is disposed of with a direction to the respondent authorities to place the case of the petitioner before the DPC by convening a meeting of the DPC and the DPC shall, in turn, consider the case of the petitioner for ad-hoc promotion in terms of the Office Memorandum dated 14.09.1992 more particularly, Para 4 and Para 5 thereof and also the entire facts and circumstances obtaining in the case of the petitioner. It is further observed that the entire exercise shall be carried out as expeditiously as possible, preferably within a period of 3 [three] months from today. It is observed that the impugned order dated 20.12.2021 shall not be a bar for the respondent authorities to consider the case of the petitioner for ad-hoc promotion.

15. With the observations made and the directions given above, the writ petition is disposed of. There shall be no order as to cost.

JUDGE

Comparing Assistant