

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 229 of 2021

K. A. Mercy Shimray, aged about 50 years, W/o Ngamkholal Singson of New Lambulane, P.O. Imphal, P.S. Porompat, District-Imphal East, Manipur-795001.

..... Petitioner/s

- Versus -

1. The State of Manipur represented by the Additional Chief Secretary/Principal Secretary/Commissioner (Finance), Old Secretariat Building, Babupara, Government of Manipur-795001.
2. The Director, Treasuries & Accounts, Government of Manipur, D.C. Complex Lamphel, P.O. & P.S. Lamphel, Imphal West District, Manipur-795004.
3. S. Ibungochouba Singh (Senior Accountant) of Naoremthong Laishram Leikai, P.O. & P.S. Lamphel, District-Imphal West, Manipur.
4. Y. Sobita Devi (Senior Accountant) of Lamphel Sanakeithel, P.O. & P.S. Lamphel, District-Imphal West, Manipur.
5. I. Rashmani Devi (Senior Accountant) of Khongman Zone IV, P.O. Singjamei, P.S. Irilbung, District-Imphal East, Manipur.
6. Shri N. Pumsuanmung (Senior Accountant) of Churachandpur, P.O. & P.S. Churachandpur, District-Churachandpur, Manipur.

.....Respondent/s

With

WP(C) No. 65 of 2021

K. A. Mercy Shimray, aged about 50 years, W/o Ngamkholal Singson of New Lambulane, P.O. Imphal, P.S. Porompat, District-Imphal East, Manipur-795001.

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.....Respondent/s

B E F O R E HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner :: Mr. H. Kenajit. Adv.

For the respondents :: Mr. Shyam Sharma, G.A., Mr. Ch. Ngongo, Sr. Adv. assisted by Ms. S. Gangarani, Adv.

Date of Hearing :: 08.05.2024

Date of Judgment and Order :: 13.05.2024

JUDGMENT & ORDER (CAV)

[1] Heard Mr. H. Kenajit, learned counsel for the petitioner, Mr. Shyam Sharma, learned G.A. for the State respondent and Mr. Ch. Ngongo, learned senior counsel assisted by Ms. S. Gangarani, learned counsel for respondent No. 4.

[2] The brief fact of the case is that the petitioner was initially appointed as Junior Accountant Assistant (JAA) in the year 1997 and a DPC was held on 26.05.2009 for filling up the vacancies of Senior Accounts Assistant by promotion. Amongst the JAAs, the name of the petitioner was also recommended but the name of the petitioner was kept in sealed cover as a criminal case was pending against the petitioner. Vide order and corrigendum both dated 10.02.2016 issued by respondent No. 2, the sealed cover of the DPC held on 26.05.2009 in respect of the petitioner was opened as the FIR case against the petitioner and others was closed and on the recommendation of the said DPC, the petitioner was promoted to Senior Accounts Assistant on officiating basis wef 10.02.2016. By another order dated 10.02.2016 issued by the Director, Treasuries & Accounts, Manipur, the officiating promotion was made regular.

[3] In WP(C) No. 65 of 2021, the petitioner challenged the three impugned orders all dated 10.02.2016 [Annexures-A-4,5&6] and to effect her promotion wef 26.06.2009, the date other recommendees were promoted. During the pendency of the present writ petition and on the recommendation of the DPC held on 02.01.2021, four Senior Account Assistants were promoted to the post of Senior Accountant vide order dated 22.01.2021. Since the name of the petitioner was not considered, she challenged the subsequent promotion order dated 22.01.2021 for setting aside the same and to consider her name for promotion to the post of Senior Accountant. It is stated that a Senior Accounts Assistant is eligible for promotion to the post of Senior Accountant in completion of 8 years, if under graduate and 5 years, if graduate and as such, the petitioner is eligible for promotion to the next higher post i.e. Senior Accountant. It is also stated that the petitioner is entitled for promotion on regular basis as done in the case of similarly situated persons who faced the same DPC held on 26.06.2009.

[4] The writ petitioner has challenged mainly raising the ground that the impugned order dated 22.01.2021 issued by the respondent No. 2 is bad in the eyes of law and against the settled law and the said impugned order was based on the recommendation of the DPC held on 02.01.2021

and the case of the petitioner, who is within the zone of consideration for promotion to the post of Senior Accountant, was not considered. As such, the DPC proceeding held on 02.01.2021 is arbitrary, bias and illegal.

[5] The respondent No. 2 filed counter affidavit stating that as on 02.01.2021, the petitioner's educational qualification was HSLC passed and she had not completed 8 years of service as per the applicable RRs and hence, she was not considered for promotion in the DPC held on 02.01.2021. Vide promotion order dated 10.02.2016, the petitioner is promoted to the post of SAA on "officiating basis" has been superseded by order dated 10.02.2016 by inserting the word "on regular basis" and that Shri Lalmminglien (ST), who was initially promoted to the post of SAA on officiating basis in place of the petitioner, has been reverted to his original post of JAA w.e.f. 10.02.2016. It is prayed that the writ petitions may be rejected.

[6] Mr. H. Kenajit, learned counsel for the petitioner submits that once the criminal case is closed and the petitioner is exonerated, she ought to be given promotion from the date recommended by the DPC and others were promoted, ie, from 26.05.2009. Giving her promotion from 10.02.2016 prospectively is against the sealed cover procedure with respect to exoneration of the charged employee. Attention of this Court is drawn to the Office Memorandum dated 18.02.1994 issued by the General Administration Department prescribing the procedures to be adopted in sealed cover with respect to government servants against whom disciplinary and criminal proceedings are pending. The recommendation of such employees is kept in sealed cover during the pendency of the procedures and on conclusion, the sealed cover is to be opened. Para 6 & 7 are reproduced below for clarity.

"6. On the conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case the officer is completely exonerated, the due date of his promotion will be determined with reference to the findings of the Screening Committee kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such findings. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be

promoted notionally with reference to the date of promotion of his junior.

In case of complete exoneration, the officer will also be paid arrears of salaries and allowances. In other cases, the question of arrears will be decided by the State Government by taking into consideration all the facts and circumstances of the disciplinary/criminal proceedings, but where the Government denies arrears of salary or a part of it, the reasons for doing so shall also be recorded.

7. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next Screening Committee in the normal course and having regard to the penalty imposed on him.”

[7] Mr. H. Kenajit, learned counsel for the petitioner vehemently submits that the procedure adopted by the official respondents is totally contrary to those stipulated by the OM. It is pointed out that in the present case, the petitioner has been exonerated in the criminal case as the same has been closed and she was not awarded with any punishment. In the circumstances, she ought to be promoted on the same day on which her junior was promoted, ie, on 26.06.2009. However, in contrary, she was promoted on a later date, ie, on 10.02.2016 in complete violation of the stipulations made in the OM. Reliance is placed on a decision of the Hon'ble Supreme Court in the case of **Union of India v. K V Janakiraman: (1991) 4 SCC 109 @ Para 25 & 26** holding that when sealed cover is opened on complete exoneration of the government employee, notional promotion should be given from the date his juniors were promoted. It is submitted that in the present case, the petitioner was not given promotion from the date of promotion of his junior, ie, 26.06.2009, but from a later date, ie, from 10.02.2016 without any authority. It is also pointed out that if the petitioner were given promotion wef 26.06.2009, she would have been eligible for promotion to the post of Senior Accountant vide DPC proceeding held on 02.01.2021, having more than 8 years of regular service. It is prayed that the official respondents be directed to treat the promotion of the petitioner to the

post of Senior Accountant Assistant wef 26.06.2009 and to conduct a special DPC for considering her promotion to the post of Senior Accountant.

[8] Mr. Shyam Sharma, learned GA submits that since criminal case was pending against the petitioner, her recommendation by DPC was kept in sealed cover and after closure of the case, the sealed cover was opened and she was rightly granted promotion wef 10.02.2016. It is stated that retrospective promotion cannot be given to the petitioner. It is also pointed out that since the petitioner did not have qualifying service of 8 years, she was not considered in the DPC held on 02.01.2021 for promotion to the post of Senior Accountant. It is prayed that the writ petitions be dismissed.

[9] Mr. Ch. Ngongo, learned senior counsel appearing on behalf of the respondent No.4 submits that promoting the petitioner wef 26.06.2009 should not affect the seniority of the respondent No.4 as the petitioner is her junior in the initial appointment order. Setting aside of the promotion orders is not required at all.

[10] This Court has considered the materials on record, the submissions at bar and settled proposition of law in this regard.

[11] Generally, sealed cover procedure is resorted in promotion when the government employee is facing disciplinary or criminal cases. The recommendation of the DPC for such employee will be kept in sealed cover during the pendency of the proceeding and on conclusion of the same, the sealed cover will be opened. If the government employee is completely exonerated in the proceeding, he/she ought to be promoted on the same day his juniors have been promoted. If penalty is awarded to the employee, the recommendation of the DPC kept in sealed cover will not be acted and the employee will be considered for promotion in the next DPC. This rule is established by the Hon'ble Apex Court in the cases of **Union of India v. A N Mohana: (2007) 5 SCC 425**; **Delhi Jal Board v. Mahinder Singh: (2000) 7 SCC 210** and **State of MP v. I A Qureshi: (1998) 9 SCC 261**. Thus, the law is clear that once the employee is exonerated in the pending proceedings, he/she is entitled to promotion notionally from the date the

juniors have promoted. Admittedly, the petitioner has been exonerated in the pending criminal case and she ought to be given notional promotion.

[12] In the circumstances, this Court moulds the relief prayed for by the petitioner to the effect that her promotion to the post of Senior Accounts Assistant in pursuance to DPC dated 26.05.2009 be counted from 26.06.2009 and not from 10.02.2016 as mentioned in order dated 10.02.2016 and Corrigendum dated 10.02.2016 issued by the Director, Treasuries & Accounts, Manipur. It is clarified that her seniority is just above Shri Haokhothang Lenglen (ST). It is further clarified that there will be no change or modification in order dated 26.06.2009 with respect to merit list except for those mentioned above. Official respondents are directed to conduct a special DPC for considering the case of the petitioner for promotion to the post of Senior Accountant. This exercise shall be completed within a period of 3 (three) months from the date of receipt of a copy of this order.

[7] With these directions and observations, the writ petitions are disposed of. No cost. Send a copy of this order to the Director, Treasuries & Accounts, Manipur for information and doing the needful.

JUDGE

FR/NFR

Kh. Joshua Maring

JOHN TELEN
KOM

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