

GAHC040009592024

2024:GAU-AP:1155



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

Case No. : WP(C)/301/2024

Midiang Pertin
Son of Late Kaning Pertin, a permanent resident of Kojejanggo (Meka) PO and PS
Roing, Lower Dibang Valley District, Arunachal Pradesh

VERSUS

The State of AP and 2 Ors
represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar

2:The Secretary Personnel
Age: 0
Occupation :
Govt of Arunachal Pradesh
Itanagar

3:The Under Secretary (Personnel)
Age: 0
Occupation :
Govt of Arunachal Pradesh
Itanaga

Advocate for the Petitioner : Nikita Danggen, K Gao,Honi Tana Tara,K Chotton,Oken Duggong
Advocate for the Respondent : GA (AP),

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 18.12.2024

Date of Judgment : 18.12.2024

Judgment & Order(Oral)

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Heard Ms. Nikita Danggen, learned counsel appearing on behalf of the petitioner. Also heard Mr. R. H. Nabam, learned Addl. Advocate General, Arunachal Pradesh, assisted by Ms. Pubi Pangu, learned Government Advocate, appearing on behalf of all the respondents.

2. The petitioner, in the present proceeding, has prayed for a direction upon the respondent authorities for opening of the 'sealed cover' containing the findings of the Selection Committee in his case for promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade), and for effecting such promotion in his case, with effect from the date of promotion of his juniors.

3. As projected in the writ petition; the petitioner, herein, while being placed in the Arunachal Pradesh Civil Service (Selection Grade), came to be arrayed as an accused in Crime Branch P.S.(Vig.) Case No. 08/2005, registered under Sections 420/468/409 of the Indian Penal Code, 1860, *read with* Section 13(2) of the Prevention of Corruption, Act 1988. The police on conclusion of the investigation, had laid a charge sheet, dated 03.12.2008. The trial of the said case commenced before the Court of the learned Special Judge, North Lakhimpur. On conclusion of the said trial, the learned trial Court had vide judgment & order, dated 30.06.2022, acquitted the petitioner from

the offence so alleged against him, therein.

4. It is to be noted that basing on the allegations forming the basis of the criminal proceeding instituted against the petitioner, herein, no disciplinary proceeding came to be instituted against him. During the pendency of the said criminal proceeding; the case of the petitioner was considered for promotion from the cadre of the Arunachal Pradesh Civil Service(Senior Grade) of the service to that of the Arunachal Pradesh Civil Service(Selection Grade).

5. The case of the petitioner was, thereafter, considered by the Departmental Promotion Committee(DPC) for promotion to the said cadre of Arunachal Pradesh Civil Service (Selection Grade) of the service. However, on account of the pendency of the criminal proceeding against the petitioner; the findings of the selection committee in respect of the petitioner came to be kept under the 'sealed cover'. The petitioner on conclusion of the criminal proceeding so instituted against him and his acquittal therein, proceeded to submit representations before the respondent authorities, praying for opening of the 'sealed cover' pertaining to his promotion to both the cadres i.e. Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade).

6. The said representations having not been responded to by the respondent authorities; the petitioner, herein, had approached this Court by way of instituting the present proceeding, praying for reliefs as noticed hereinabove.

7. It is also to be noted that the petitioner, herein, had retired from his

service on attaining the age of superannuation, w.e.f. 31.12.2020.

8. Ms. Danggen, learned counsel for the petitioner, has reiterated the facts as noticed hereinabove and has submitted that on acquittal of the petitioner, herein, in the criminal proceeding so instituted against him; the petitioner was entitled to be granted his due promotion to both the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade) with effect from the date of promotion of his juniors to the said cadres.

9. Ms. Danggen, learned counsel, has further submitted that the promotion was not so effected in case of the petitioner only on account of the pendency of the criminal proceeding so instituted against him and he was not in any way responsible for the delay so occasioning in the promotions being so effected in his case.

10. Ms. Danggen, learned counsel, has also submitted that the petitioner, herein, on his such promotion; is required to be also extended with the consequential benefits of salary of the promotional post with effect from the date, his juniors were so promoted.

11. Per contra, Mr. Nabam, learned Addl. Advocate General, Arunachal Pradesh, appearing for the respondents, has submitted that the judgment passed by the Court of the learned Special Judge, North Lakhimpur, in Special(Vig.)(T) Case No. 01/2010; has already been assailed before this Court by way of preferring an appeal viz. CrI.Appeal No. 20(AP)2023 and the said appeal is presently pending disposal. The learned Addl. Advocate General,

Arunachal Pradesh, has further submitted that on account of the fact that the said appeal has been so instituted in the matter; it would not be permissible for the respondent authorities to open the 'sealed cover' in respect of the petitioner, herein.

12. Mr. Nabam, learned Addl. Advocate General, Arunachal Pradesh, has submitted that the Vigilance Department had not granted its clearance for opening of the 'sealed cover' in respect of the petitioner, herein, on account of the pendency of the said criminal appeal before this Court.

13. I have considered the submissions advanced by the learned counsels appearing for the parties and also duly perused the materials made available on record.

14. On considering the materials brought on record; this Court had vide order, dated 04.12.2024, required the learned Addl. Advocate General, Arunachal Pradesh, appearing for the State respondents, to produce before this Court, the 'sealed cover' in which the recommendations of the selection committee in respect of the petitioner, herein, for promotion to the posts, involved, have been so kept.

15. Mr. Nabam, learned Addl. Advocate General, Arunachal Pradesh, has, today, produced before this Court, the 'sealed cover' and it is found that the case of the petitioner was so considered by the selection committee for promotion both to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade).

16. The contentions as raised by the respondent authorities in the matter, is to the effect that the findings of the selection committee in respect of the petitioner, herein, for promotion to the cadres, involved; is not permissible to be opened, at this stage, in-as-much as the appeal, in question; against the acquittal of the petitioner, herein, is presently pending consideration before this Court in Crl.Appeal No. 20(AP)2023. Accordingly, the said contention of the respondent authorities, is required to be examined.

17. The Hon'ble Supreme Court in the case of **Union of India & ors. v. K. V. Jankiraman & ors.**, reported in **(1991) 4 SCC 109**; had laid down that the 'sealed cover' procedure as resorted to by the employer on the employee being under a cloud on account of a departmental proceeding instituted against him and/or on account of a criminal proceeding; would not be called upon to be so opened in the event, the employee concerned is imposed with a penalty in the departmental proceeding and/or is convicted in the criminal proceeding so instituted against him. The Hon'ble Supreme Court further proceeded to lay down that in the event, the employee concerned is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited even with a penalty of censure; the 'sealed cover' has to be opened and the benefits so flowing to the employee, has to be extended to him.

18. However, the Hon'ble Supreme Court proceeded to hold that as to whether the Officer concerned will be entitled to any arrear of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all facts and circumstances of the disciplinary proceeding/criminal proceeding. It further provided that where the authority

denies arrears of salary or a part of it; it would be required to record reasons for doing so.

19. The law laid down by the Hon'ble Supreme Court in the case of **K.V. Jankiraman**(supra), continues to hold the field as on date.

20. The 'sealed cover' procedure in respect of the petitioner, herein, having been so required to be resorted to only on account of the criminal proceeding so pending against him, the same having ended in an acquittal of the petitioner, herein; the petitioner must be held to be not blame-worthy. The material on the basis of which the promotion of the petitioner, herein, was denied, being the criminal prosecution initiated and existing against him and the same not subsisting after the judgment of the learned trial Court; the petitioner, herein, cannot be now denied his due benefits in the form of promotion in terms of the findings of the selection committee in his case, for promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade), now kept in 'sealed cover'.

21. This Court relying on the decision of the Hon'ble Supreme Court in the case of **K. V. Jankiraman** (supra); is of the considered view that filing of the appeal would not afford a ground to the respondent authorities to continue to keep the findings of the selection committee rendered in the case of the petitioner, herein, for promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade), under 'sealed cover'.

22. As to what would happen on conclusion of Crl. Appeal No. 20(AP)2023, presently pending disposal before this Court, is a matter that would be so required to be so considered by the respondent authorities in accordance with law upon disposal of the said criminal appeal. However, the pendency of the said criminal appeal, cannot be used as a ground for denying to the petitioner, his due promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade), in the event; the selection committee in its meetings so held, had found the petitioner, herein, fit for such promotion.

23. In view of the above conclusions reached by this Court; the following directions are being passed:

(i). The respondent authorities shall now open the 'sealed cover' wherein the recommendations of the selection committee in respect of the petitioner, herein, for promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade), have been kept and on such opening and perusal of the recommendations of the selection committee; it is found that the petitioner was found fit by the selection committee for promotion to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administrative Grade); the respondent authorities shall forthwith issue the orders promoting the petitioner to the said post with effect from the date, his juniors were so promoted basing on the recommendations of the same selection committees.

(ii). The petitioner, herein, having already superannuated from his service w.e.f. 31.12.2020; the respondent authorities shall by effecting

the promotion of the petitioner with effect from the date when his juniors were so promoted to the cadres of Arunachal Pradesh Civil Service (Selection Grade) and Arunachal Pradesh Civil Service (Administration Grade), fix the pay and allowances of the petitioner notionally till the date of his superannuation.

(iii). The respondent authorities basing on the revised pay of the petitioner, herein, now coming into effect, on account of the said notional fixation, now directed to be made by this Court hereinabove; revise the pension and pensionary benefits and release to him, the arrears thereof.

(iv). The said exercise be initiated and concluded by the respondent authorities within a period of 2(two) months from the date of receipt of a certified copy of this order.

(v). As regards the claim of the petitioner for being released the salary of the promotional cadres with effect from the date his juniors were so promoted; this Court in view of the directions by the Hon'ble Supreme Court in the case of **K. V. Jankirman**(supra); directs that the petitioner, herein, shall submit a representation before the respondent authorities within a period of 15(fifteen) days from the date of receipt of his orders of promotion in terms of the directions passed by this Court hereinabove, and therein; stake a claim for being extended with the benefit of the salary of the promotional posts with effect from the date his such promotion to the cadres, involved.

(vi). The respondent authorities on receipt of such representation, shall consider the same strictly on its merits and by taking into consideration all facts and circumstances of the criminal prosecution; proceed to take a decision

in the matter.

(vii). It is further provided that in the event, the respondent authorities denies to the petitioner, herein, the arrear of salary or a part thereof; it shall record cogent reasons for the purpose, in the order, so passed, and communicate the same to the petitioner.

(viii). The representation of the petitioner shall be so considered and disposed of by the respondent authorities within a period of 3(three) months from the date of receipt of the same.

24. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant