

GAHC010081032024



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

Case No. : WP(C)/2354/2024

GO- 2148X SRI VINAY KUMAR SINGH
S/O- LATE HARIHAR BAHADUR SINGH, SUPERINTENDING ENGINEER
(CIVIL) AND PRESENTLY POSTED AT HQ ADGBR (EAST), JALUKBARI,
LANKESWAR, GUWAHATI, ASSAM, PIN- 781014.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE DEFENCE SECRETARY, MINISTRY OF DEFENCE,
101-A, SOUTH BLOCK, NEW DELHI-110001.

2:JOINT SECRETARY (BORDER ROADS)
MINISTRY OF DEFENCE (EARLIER DESIGNATED AS SECRETARY (BRDB)
ROOM NO. 418
B-WING
4TH FLOOR
SENA BHAWAN
NEW DELHI-110010.

3:DIRECTOR GENERAL
BORDER ROADS ORGANIZATION
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI-110010.

4:ADDITIONAL DIRECTOR GENERAL (EAST)
BORDER ROADS ORGANIZATION HQ ADGBR (EAST)
JALUKBARI
LANKESWAR
GUWAHATI
ASSAM
PIN- 781014.

5:UNION PUBLIC SERVICE COMMISSION (UPSC)
REPRESENTED BY ITS SECRETARY
DHOLPUR HOUSE
SHAHJAHAN ROAD
NEW DELHI-110069

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri D. Bora, Advocate.
Advocate for the respondents : Shri S. K. Medhi, C.G.C.
Dr. A. Todi, Advocate UPSC.

Date of hearing : **12.08.2024**

Date of Judgment : **12.08.2024**

JUDGMENT & ORDER

The grievance of the petitioner raised in this petition filed under Article 226 of the Constitution of India is with regard to his promotion.

2. As per the facts projected, the petitioner was serving as a Superintending Engineer (Civil) in the Border Roads Organization (hereinafter BRO). He was deputed to the NHIDCL and in that period there were certain allegations of illegal gratification and the petitioner was repatriated to the BRO. On 01.11.2022, he was placed under suspension. On 20.12.2022, a Departmental Promotion Committee Meeting was held in which the case of the petitioner was considered and was kept in sealed cover. In the *inter se* seniority list, certain incumbents, who were below the petitioner, were given the benefit of promotion on 17.02.2023. However, no such promotion was given to the petitioner. On 03.02.2023, a review meeting was held on the aspect of suspension of the petitioner wherein it was decided to extend the suspension. On 10.03.2023, the memo of charges was submitted to the petitioner and the disciplinary

proceeding was initiated. The petitioner had filed WP(C)/1074/2023 against the order of suspension. This Court vide an order dated 18.10.2023 had however set aside the order of suspension. The department had preferred WA/448/2023 which was however dismissed on 18.12.2023. The petitioner was thereafter reinstated on 25.01.2024.

3. As indicated above, the grievance of the petitioner is not giving him the benefit of promotion as the sealed cover proceedings are yet to be opened.

4. I have heard Shri D. Bora, learned counsel for the petitioner. I have also heard Shri S. K. Medhi, learned C.G.C. and Dr. A. Todi, learned counsel for the UPSC.

5. Shri D. Bora, the learned counsel for the petitioner has submitted that the order of suspension being interfered with, there is no occasion to have the proceedings of his consideration in a sealed cover. It is submitted that admittedly the incumbents against Serial Nos. 5 and 6 in the *inter se* seniority list were given the promotion on 17.02.2023 and in the said *inter se* seniority list, the petitioner was placed against Serial No. 4. He accordingly submits that from the said date on which his juniors were promoted, i.e. 17.02.2023, the petitioner should be given the promotion.

6. The learned counsel for the petitioner has submitted that the aspect of "sealed cover" has been settled by the Hon'ble Supreme Court in the case of ***Union of India Vs K. V. Jankiraman*** reported in ***AIR 1991 SC 2010***. He also submits that in the case of ***Union of India Vs Anil Kumar Sarkar*** reported in **(2013) 4 SCC 161**, the principles laid down in ***Jankiraman*** (supra) has been reiterated.

7. The learned counsel has also submitted that the defense which appears from the affidavit-in-opposition filed by the respondents is based on an Office

Memorandum dated 14.09.1992, more particularly Clause 7 thereof. It is submitted that the said office memorandum would not come into the way for considering the case of the petitioner in view of the judgment passed by the Hon'ble Supreme Court in the case of **Anil Kumar Sarkar** (supra). He has further submitted that in the disciplinary proceeding, the enquiry report is submitted and as per information gathered, none of the allegations have been found to be proved. He accordingly submits that due interference may be made by directing opening of the sealed cover and considering the case of promotion of the petitioner from 17.02.2023 when his juniors were promoted.

8. *Per contra*, Shri S. K. Medhi, the learned CGC has submitted that the petition itself may not be maintainable as the same prayers were made in the earlier writ petition WPC/1074/2023. He submits that even in that case, there was a prayer for directing promotion of the petitioner. The learned CGC has otherwise argued that on 10.03.2023, the memo of charges were submitted and on 25.06.2024, the enquiry report has been given. He submits that the Office Memorandum dated 14.09.1992 is applicable in this case and the conditions laid down in the said Office Memorandum would not justify a prayer for opening the sealed cover when admittedly the disciplinary proceeding is pending.

9. The rival contentions have been duly considered and the materials placed before this Court have been carefully perused.

10. The Government of India had issued an Office Memorandum dated 14.09.1992 on the subject of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation. The said Office Memorandum was issued in view of the judgment dated 27.08.1991 of the Hon'ble Supreme Court passed in the case of **Jankiraman** (supra). In paragraph 2 of the said Office Memorandum, it has

been stated that at the time of consideration of the cases of Government servants for promotion, the Departmental Promotion Committee is to be informed of three conditions, namely,

1. Whether the Government servant is under suspension?
2. Whether there is a charge sheet in respect of the said incumbent and the disciplinary proceeding is pending?
3. Whether the government servant is facing a prosecution for a criminal charge which is pending?

11. Paragraph 7 of the said Office Memorandum makes it clear that such a Government servant who is recommended for promotion by the Departmental Promotion Committee, his case will be placed in a sealed cover and would not be promoted until he is completely exonerated of the charges against him.

12. In the instant case, it is not in dispute that the petitioner was placed under suspension on 01.11.2022 and in the ensuing meeting of the DPC on 20.12.2022, the case of the petitioner was considered and was kept in a sealed cover. It is also not in dispute that on 17.02.2023, two incumbents who were placed below the petitioner in the *inter se* seniority list were given the benefit of promotion. The suspension of the petitioner was extended vide order dated 03.02.2023 which was the subject matter of challenge in WP(C)/1074/2023.

13. In the meantime, the memorandum of charges were submitted on 10.03.2023 and the disciplinary proceeding had commenced.

14. The order of suspension was however, set aside by this Court vide judgment dated 18.10.2023 in the aforesaid WP(C)/1074/2023 which was also affirmed by the Hon'ble Division Bench on 18.12.2023 in WA/448/2023.

Consequently, the petitioner was reinstated on 25.01.2024. It is therefore required to be seen as to whether the aforesaid developments would obviate the impediments laid down in paragraph 2 of the Office Memorandum dated 14.09.1992. Admittedly, the said Office Memorandum is not the subject matter of challenge and in any case the same was issued in terms of the principles laid down by the Hon'ble Supreme Court in the case of **Jankiraman** (supra).

15. The mainstay of the petitioner is based on the decision of **Anil Kumar Sarkar** (supra). A reading of the aforesaid decision would show that as on the relevant date i.e., 21.04.2003, admittedly, the incumbent in that case was not under suspension and there was no departmental proceeding pending. Under those circumstances, the Hon'ble Supreme Court had directed consideration of the case of the incumbent for promotion by negating the submission made on behalf of the Union that it is only after completion of the disciplinary proceeding that such promotion can be considered. The Hon'ble Supreme Court made it clear that on the date of consideration, the incumbent should not be under suspension or no proceeding should be pending or no criminal case should be pending. Such observations are in light of the principles laid down in paragraph 2 of the Office Memorandum dated 14.09.1992.

16. In the instant case, the promotion to the incumbents who were below the petitioner was done on 17.02.2023. On the said date, the petitioner was under suspension which was affected from 01.11.2022. The suspension was also extended on 03.02.2023 which, however was interfered by this Court vide judgment dated 18.10.2023.

17. The interference of the order of extension was only on the procedural aspect that the law requires mandatory review of an order of suspension within 90 days if the disciplinary proceeding is not initiated by submission of the memo

of charges. The reinstatement of the petitioner was on 25.01.2024 and admittedly on 10.03.2023, the memorandum of charges was already issued and the records also reveal that the enquiry is completed and the enquiry report is submitted. The same is evident from the communication dated 25.06.2024 which has been annexed to the affidavit-in-opposition.

18. Under those circumstances, this Court is of the considered opinion that the judgment passed by the Hon'ble Supreme Court in ***Anil Kumar Sarkar*** (supra) are on facts which are wholly different from the facts of the present case. This Court is of the opinion that the mandate of the Office Memorandum laid down in paragraph 7 would be applicable and the promotion is not to be made unless the petitioner is completely exonerated of the charges levelled against him.

19. Under the facts and circumstances aforesaid and the discussions made above, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

20. It is however made clear that in the event the petitioner is found to be exonerated in the disciplinary proceeding, his promotion is to be considered and be effective from the date when his juniors were given such promotion. The disciplinary proceeding is also directed to be completed expeditiously and preferably within a period of 2 (two) further months in which the petitioner is directed to render full cooperation.

JUDGE

Comparing Assistant