

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.1998 of 2010**

Shivan Ram Thakur S/o Late Shri K.R. Thakur, At Present Posted As Deputy Jailor Central Jail Raipur, R/o Jail Line, Distt. Raipur (Cg)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Principal Secretary, Department of Home (Jail), DKS Bhawan, Mantralaya, Raipur (CG)
2. Director General (Jail) Jail Head Quarter, Chhattisgarh Raipur (Cg)
3. Inspector General (Jail) Jail Head Quarter, Chhattisgarh Raipur (Cg)
3. Superintendent Of Jail, Central Jail, Raipur (Cg)

---- Respondent

For Petitioner	:	Shri Mateen Siddiqui, Advocate
For Respondent/State	:	Shri Satish Gupta, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/10/2015**

The petitioner is aggrieved on account of his non-promotion to the higher post of Jailor.

2. Quintessential facts for determination of issue involved in the petition are that the petitioner was appointed as Assistant Jailor on 01-01-1986 by way of selection through Public Service Commission in the services of the erstwhile State of Madhya Pradesh. Upon re-organization of the State of Madhya Pradesh under M.P. Re-organization Act, 2002, services of the petitioner were allocated to the State of Chhattisgarh and gradation list was issued showing seniority position of the petitioner as S.No.1. The Departmental Promotion Committee was constituted on 01-03-2007 to

consider the cases of eligible Assistant Jailor for promotion to the post of Deputy Jailor in the Jail Department of the State. The Departmental Promotion Committee found the petitioner fit for promotion upon consideration of his service records and accordingly recommendation was made in favour of the petitioner. However, before recommendation could be given effect to, on certain allegations of misconduct, the petitioner was placed under suspension vide order dated 24-11-2007. Though, suspension was later on revoked on 11-02-2008 and departmental enquiry was instituted against the petitioner on certain allegations of misconduct, in an order of penalty passed on 14-09-2009, penalty of withholding of one increment without cumulative effect for a period of one year was imposed on the petitioner. Order of penalty was not assailed and it attained finality. Thereafter, when Departmental Promotion Committee was again convened on 01-07-2010, recommendations in favour of the petitioner, kept in a sealed cover, because of institution of departmental enquiry, were opened. The Departmental Promotion Committee, taking into consideration that the misconduct was found proved and penalty of withholding of one increment for one year without cumulative effect was imposed, held the petitioner not fit for promotion. It is this action of the respondent, which is under challenge in this petition.

3. Learned counsel for the petitioner argued that once the petitioner was found fit for promotion and recommended by Departmental Promotion Committee, it ought to be brought to its logical conclusion by issuance of promotion order notwithstanding issuance of suspension order on allegations of misconduct. It is next contended that later on, the order of suspension was revoked on 11-02-2008. Therefore, only on the basis of institution of departmental enquiry, the recommendations of the Departmental Promotion Committee could not be kept in a sealed cover. Next contention of learned counsel for the petitioner is that though the misconduct was found proved in the departmental enquiry, as only minor penalty was imposed on the petitioner, withholding of promotion amounting to double jeopardy. Thus, for one misconduct,

the petitioner was punished twice. It is lastly contended that in any case, after 2010, the case of the petitioner was again required to be considered and if he found fit, the petitioner was entitled to be considered for promotion on the higher post of Jailor.

4. On the other hand, learned State counsel opposes the prayer and submits that mere consideration and petitioner found fit for promotion, he is not entitled to promotion. Before order of promotion could be issued, on allegations of misconduct, the petitioner was suspended, therefore, there was no question of rewarding by grant of promotion. Departmental enquiry against the petitioner ended in penalty. This aspect was taken into consideration by the Departmental Promotion Committee held in the year 2010, which upon due consideration, found the petitioner unfit for promotion.

5. The petitioner was considered for promotion and found fit in the Departmental Promotion Committee meeting which was held on 01-03-2007 which is not in dispute. However, before it could be given effect to, the petitioner was placed under suspension vide order dated 24-11-2007 on certain allegations of misconduct and departmental enquiry was instituted against the petitioner.

6. Promotion is rewarded for meritorious service. Even if recommendations have been made for promotion, if before order of promotion is issued, allegations of misconduct are leveled, leading to issuance of order of suspension, it would be anomalous that an employee is simultaneously rewarded with promotion. This would be against the public interest in public employment. It is also admitted that the departmental enquiry ended in an order of penalty against the petitioner. Vide order dated 14-09-2009, misconduct was found proved and penalty of withholding of one increment for a period of one year though without cumulative effect, was imposed on the petitioner. Therefore, the petitioner was found guilty of misconduct. This aspect was taken into consideration by the Departmental Promotion Committee by opening the sealed cover containing recommendations made by the Departmental Promotion

Committee which was convened on 09-05-2007. The Departmental Promotion Committee held that the petitioner was found guilty of misconduct, therefore, he cannot be rewarded with promotion.

6. In the considered opinion of this Court, the view taken by the Departmental Promotion Committee cannot be held to be either illegal or arbitrary or violative of any circular of the government. The petitioner failed to point out before this Court that the Departmental Promotion Committee contravened any of the applicable service Rules or government circular in the matter of consideration of cases for promotion where penalty is imposed. It would essentially be a matter of subjective satisfaction of the Departmental Promotion Committee as to whether in the light of the nature of misconduct found proved, quantum of punishment imposed coupled with the nature of duty assigned to the post, for which, promotion is being considered, it would be in public interest and in the interest of administration to grant promotion from the due date. The reason for non granting promotion is relevant and not extraneous. Therefore, this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India would not substitute its opinion in place of that of the Departmental Promotion Committee.

7. As far as petitioner's case, after year 2010 is concerned, there are no pleadings or documents on record filed by any of the parties as to what happened to the case of the petitioner thereafter. In the absence of there being any assertion that for the last five years, the petitioner has not been considered for promotion, no specific direction can be issued. It is, however, observed that the imposition of penalty on the petitioner having already taken into consideration resulting in denial of promotion, on the basis of recommendations of year 2007, case of the petitioner for grant of promotion is required to be considered, if not already considered, on the basis of his ACRs and other relevant material.

8. Learned counsel for the petitioner also assailed the action on the ground of

double jeopardy. In this regard, it has to be held that while imposition of penalty is direct outcome of proof of misconduct, denial of promotion is merely consequence of it and it is not a penalty by itself.

9. In view of aforesaid observations, the petition is finally disposed off.

Sd/-
Manindra Mohan Shrivastava
Judge