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C.F. 1007

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

IN THE MATTER OF

W.P. S No. 4042/2013

Single Bench

PETITIONER

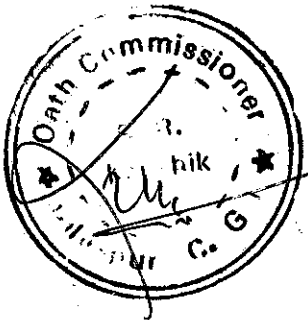
AbhayNath Thakur
Superintending Engineer
Age 59 years
S/o Late HarendraNath Thakur
R/o B 4(5) Sector-I
Udya Society
Tatibandh Raipur
District Raipur
Chhattisgarh

R No. W.P.(S) 4042/13
Presented by Shri. P. S. Sanyal
Dated. 29/4/13

VERSUS

RESPONDENT

State of Chhattisgarh through
Secretary,
Public Heath Engineering
Department
Mantralaya
Mahanadi Bhawan
Capitol Complex
Naya Raipur
District Raipur
Chhattisgarh



**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE
WRIT/ORDER OR DIRECTION AS DEEMED FIT**

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition (S) No. 4042 of 2013

PETITIONER

Abhay Nath Thakur

VERSUS

RESPONDENT

State of Chhattisgarh

Shri Pradeep Saxena counsel for the petitioner.
Shri N. Naha Roy PL for the State.

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

ORDER
(20.03.2015)

On 27.11.2012 the Departmental Promotion Committee (for short "DPC") for promotion on two posts of Chief Engineer (for short "CE") from that of Superintending Engineer (for short "SE") was convened by the respondent and it recommended name of the petitioner and one H.S. Dhingra for promotion to the post of CE vide Annexure P-2. In the said list the petitioner was placed at serial No. 1. As despite the recommendations of DPC no formal order was issued by the respondent in relation to the petitioner promoting him to the post of CE for about three months, he filed WPS No. 665/2013 before this Court which came to be disposed of on 19.3.2013 directing the respondent to take a decision for implementation of the recommendation of the DPC. When nothing was done by the respondent despite directions of this

Court, the petitioner gave a legal notice to the respondent for initiating contempt proceedings and it is only after receiving the said notice order dated 23.5.2013 (Annexure P-10) has been served on the petitioner informing him that as after the recommendations of DPC and before issuing formal promotion order, a departmental enquiry was instituted against the petitioner, his case has been kept in a sealed cover and further action thereon would be taken in due course of time. It is this action of the respondent which is under challenge in this petition.

2. Counsel for the petitioner submits that on the date of DPC no departmental enquiry was in contemplation nor any charge sheet was served on the petitioner and therefore the moment his case was recommended by the DPC the respondent was under obligation to issue promotion order in favour of the petitioner and any subsequent act cannot come in the way of issuing the promotion order. He further submits that once the petitioner was found fit by the DPC for promotion, the respondent should have immediately issued the promotion order. According to the counsel for the petitioner, H.S. Dhingra who was at S.No.2 in the recommendation of the DPC has already been promoted to the post of CE whereas the petitioner has wrongly been denied promotion and therefore he is entitled to be promoted as CE from the date on which H.S. Dhingra was promoted on the said post.

3. On the other hand, opposing the submissions made on behalf of the petitioner, it has been argued on behalf of the respondent that though the petitioner was found fit for promotion by the DPC held on 27.11.2012, before issuance of formal promotion order implementing the recommendations of the DPC, on 29.5.2013 the petitioner was subjected to charge sheet and therefore his promotion has rightly been withheld and sealed cover procedure has been adopted.

4. Heard counsel for the parties and perused the documents on record.

5. The only question of law involved in the case for determination is whether after being found fit by the DPC held on 27.11.2012 for promotion to the post of CE from that of SE, the petitioner can be denied promotion on the basis of subsequent development like filing of charge sheet against him on 29.5.2013? Law in respect of issuance of promotion order to the incumbent in case of pendency of preliminary enquiry or filing of charge sheet is very clear and it has been summarized by the Apex Court in the case of **Union of India and others v. Anil Kumar** reported in **2013 AIR SCW 2232**, which reads as under:

'13. It is not in dispute that an identical issue was considered by this Court in **Union of India and Others vs. K.V.Jankiraman and Others**, (1991) 4 SCC 109 : (AIR 1991 SC 2010 : 1991 AIR SCW



2276). The common questions involved in all those matters were: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? and (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? Among the three questions, we are concerned about question No.1. As per the rules applicable, the "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental 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. The pendency of preliminary

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investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant- authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

In para 17, this Court further held:

17...The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are

pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee..."

After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that "the Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits...We see no reason to interfere with this order. The appeal, therefore, stands dismissed." The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant-Union of India is liable to be rejected.

14. In *Coal India Limited & Ors. vs. Saroj Kumar Mishra*, AIR 2007 SC 1706 : (2007 AIR SCW 2662), this Court, in para 22, has held that a departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.

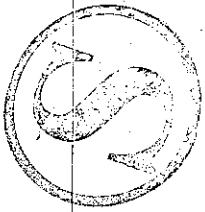
15. In *Chairman-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others*, (2011) 5 SCC 142 : 2011 AIR SCW 3240), this Court held as under:

"27. There can be no quarrel with the settled legal

proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman, (1991) 4 SCC 109: (AIR 1991 SC 2010 : 1991 AIR SCW 2276) and UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694 : AIR 2007 SC 2129 : 2007 AIR SCW 3656))"

We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued.'

6. From the aforesaid decision of the Apex Court it is clear that the disciplinary proceedings commence only when the charge sheet is issued along with memo of charges. Such is not the position here because the petitioner was charge sheeted much after holding the DPC. Further, it is not in dispute that in the present case the petitioner was at S.No.1 in the recommendation of DPC convened on 27.11.2012 in which he was found fit for promotion on the post of CE. Along with the petitioner, one H.S. Dhingra was also there in the recommendation of the DPC but despite he being at S.No. 2 has been given promotion ignoring the petitioner despite being at S.No.1. Charge sheet, in this case was admittedly issued against the petitioner much after the DPC and once no departmental enquiry was pending against the petitioner on the date of DPC, question of denying him promotion on the post of CE does not arise. On the basis of documents it is apparent that though the petitioner was found fit for promotion to the post of CE, without assigning any reason he has been denied



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the same and thus deprived him of his legitimate right.

7. Sealed cover procedure can only be adopted if any departmental enquiry is already pending on the date of DPC and not otherwise. Action of the respondent in denying promotion to the petitioner in the circumstances existing herein, is not only bad but condemnable too.

8. In view of above, the action of the respondents denying promotion to the petitioner is not in accordance with law. It is held that the respondent has wrongly denied promotion to the petitioner on the post of CE for which he is legally entitled from the date on which H.S. Dhingra was promoted. Petitioner would also be entitled for all the consequential benefits in addition to cost of Rs. 5,000/-.

9. Petition allowed.

Sd/-
Pritinker Diwaker
Judge

MP