

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 56 OF 2016

Shivan Ram Thakur, S/o Late K.R. Thakur, aged about 55 years, at present posted as Deputy Jailor, Central Jail, Raipur, R/o Jail Line, Raipur, District Raipur (C.G.)

... Appellant

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director General (Jail), Jail Headquarter, Chhattisgarh, Raipur (C.G.)
3. Inspector General (Jail), Jail Headquarter, Chhattisgarh, Raipur (C.G.)
4. Superintendent of Jail, Central Jail Raipur, District Raipur (C.G.)

... Respondents

For Appellant	: Mr. Mateen Siddiqui, Advocate.
For Respondent-State	: Mr. U.N.S. Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

10/02/2016

1. The present appeal arises from order dated 15.10.2015 in Writ Petition (S) No. 1998 of 2010. The Learned Single Judge held that the recommendation of the Departmental Promotion Committee (DPC) in favour of the Appellant on 9.5.2007 could not be given effect to in view of subsequent suspension on 24.11.2007 and minor punishment withholding one increment without cumulative effect on 14.9.2009.
2. The DPC then opened the sealed cover on 1.7.2010 and declared him ineligible for promotion due to the order of punishment. In absence of any further developments placed before the Court, the Learned Single Judge directed consideration as of after 2010.

3. Learned Counsel for the Appellant has made a very short and crisp submission that on the date when the DPC considered his case and recommended him, there were no proceedings pending against the Appellant much less any show cause notice or an order of suspension. The recommendation was required to be implemented immediately. It is not the case of the Respondents that there was no vacancy or any other impediment in giving effect to the recommendation of the DPC. The Respondents themselves allowed six months to pass without any further developments till his suspension. The suspension on 24.11.2007 could not be given retrospective effect to invalidate the recommendation of the DPC dated 9.5.2007.

4. Learned Counsel for the State is not in a position to demonstrate that the Appellant was ineligible to be considered for promotion for any reason on 9.5.2007 or that the recommendation of the DPC was incapable of being implemented and/or being given effect to for any other reason.

5. Having considered the submissions on behalf of the parties, the appeal raises a pure simple question of law with regard to the eligibility to be considered for promotion and the materials on basis of which the recommendation can be denied or refused to be implemented. The ineligibility or disentitlement of the benefit of the recommendation by the DPC has to be reckoned as on the date when the recommendation was being made. If a government servant is ineligible to be considered, there are no vacancies, proceedings are pending necessitating sealed cover procedure, are some of the factors when no mandamus can be issued. The consideration otherwise has to be exclusive on basis of facts and materials as may exist on the date when the DPC meets. It is apparent that the Appellant was not ineligible in any manner on

9.5.2007 and the vacancy was also available for promotion. The Respondents kept the matter pending for six months. They cannot be allowed to give retrospective effect to the suspension dated 24.11.2007 and the punishment dated 14.9.2009 by reading it back to 9.5.2007 to deny the benefit of the recommendation on the later date. The right to be considered for promotion is a fundamental right and denial can be only for relevant, germane and cogent reasons and not arbitrarily.

6. The appeal has to be allowed. The authorities are directed to act in accordance with the recommendation of the DPC dated 9.5.2007 within a maximum period of three months along with all consequential benefits from the date of receipt and/or production of a certified copy of this order.

7. The appeal is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge