

BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL,
BENCH AT RAIPUR (M.P.)

Original Application No. 758 / 1999.

1/99/99
17.9.99
S. Pandey

Sunderlal Siwana aged about 55 yrs.
S/o Uday Singh Siwana,
Naib Tahsildar (Nazul),
Kanker Distt. Kanker, M.P.

.. Applicant

Vs.

1. State of M.P. through
Principal Secretary,
Revenue Department,
Vallabh Bhawan, BHOPAL, M.P.
2. Commissioner, Bastar
Division Jagdalpur, M.P.
3. Collector, Bastar District
Jagdalpur, M.P.
4. Collector, Kanker,
District Kanker, M.P.

.. Non-applicants.

"APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985."



176

-1-

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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3020 of 2005

S.L.Siwana

---- Petitioner

Versus

State & Ors.

---- Respondent

For Petitioner	:	Shri Yogesh Kumar Chandra, Advocate
For Respondent-State	:	Shri Chandresh Shrivastava, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/10/2016

1. This petition has been filed by the petitioner in the year 1999 aggrieved by order dated 24.12.1998 (Annexure A-1) by which the petitioner's application for opening sealed cover for consideration of his promotion was rejected.
2. Though number of facts has been stated in the petition and reply, the relevant facts necessary for decision of the present case are that the petitioner, who was working as Nayab Tahsildar, was proceeded against by institution of departmental enquiry, by issuance of a charge sheet on 14.2.1998. This enquiry, unfortunately, continued for a very long time and sometimes in the year 1997, when it was found that records which were



177

-2-

earlier lost had to be reconstructed, a fresh notice in respect of the same charges was issued on 21st October, 1997. This enquiry culminated in order dated 29.7.1998 by which the petitioner was exonerated of the charges. However, before this enquiry could be brought to an end, another charge sheet was issued to the petitioner on 1.4.1998. In this departmental enquiry, the petitioner was found having committed misconduct resulting in issuance of order of penalty on 10.12.1998. By this order, penalty of withholding one increment without cumulative effect was imposed on the petitioner. A criminal case which was initiated against the petitioner in the year 1998 was also closed on account of his discharge from the charges vide order dated 20.4.2000 passed by the criminal Court. On the aforesaid facts, there is no dispute between the parties.

3. It appears that when the impugned order dated 24.12.1998 was passed, both the departmental enquiry had come to an end. Undisputed facts with regard to date of passing of final order in two departmental inquiries have remained undisputed by the respondents -State. Therefore, there was no justification for rejecting petitioner's application on 24.12.1998 on the ground of pendency of departmental enquiry.
4. Though the reasons which have been assigned in the impugned order not to open sealed cover is non-conclusion of proceedings which have been found to be factually incorrect by this Court, learned counsel for the State sought to support the decision of not opening sealed cover by submitting that in view of circular dated 2.5.1990 issued by the then State of Madhya Pradesh published in Madhya Pradesh/Chhattisgarh General Book Circular by Suvidha Law House Pvt. Ltd. (Page- 403) R.T. Panthare 13th Edition 2012, in any case as the petitioner was given minor penalty of withholding one increment though without cumulative effect, the petitioner was not entitled to be promoted even if he would have been found fit for



178

-3-

promotion under the recommendation which was kept in sealed cover because of the pendency of the departmental enquiry. He also placed reliance on the decision of the Supreme Court in the case of **State of M.P. & Anr. Vs. I.A. Qureshi** (1998) 9 SCC 261.

5. I have considered the rival submissions made by learned counsel for the parties and perused the records.
6. The issue with regard to right of a Govt. servant to be considered for promotion when he is facing departmental enquiry was considered by the Supreme Court in the case of **Union of India & Ors. Vs. K.V. Jankiraman & Ors.**(1991) 4 SCC 109. Striking balance between individual interest and public interest, the Supreme Court propounded as below:

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening



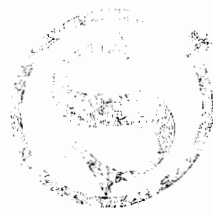
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-4-

period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first subparagraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears 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 the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

7. The aforesaid decision of the Supreme Court was rendered taking into



180

-5-

consideration the scheme laid down in the administrative instructions issued by the Central Govt.

8. In the present case, the petitioner being a Govt. servant of the State of Chhattisgarh (erstwhile State of Madhya Pradesh) would be governed by the circular of 1990 referred to above. That circular also unmistakably states that where an employee has suffered penalty and where it is not a case of complete exoneration, the employee cannot claim promotion on the basis of the recommendation which has been kept in the sealed cover. That issue came up for consideration before the Supreme Court in the case of **I.A. Qureshi** (supra). The contention advanced on the basis of circular dated 2.5.1990 referred to above were noted by the Supreme Court in para-4 of its decision as below:-

"4. Shri S.K. Agnihotri, the learned counsel appearing for the appellants, has submitted that the Tribunal was in error in directing opening of the sealed cover in the facts of this case. In this context, Shri Agnihotri has invited our attention to the circular dated 2-5-1990 which contains the guidelines in the matter of giving effect to the minor punishment of censure about the promotion of government servants. A translated version of the said circular has been filed on behalf of the appellants. Clauses (i) and (ii) of the said circular are reproduced hereunder:

"(i) Vide letter dated 31-1-1964, this has been directed that in the cases of those officers against whom either departmental enquiry is pending or who have been suspended on the recommendations of the DPC should be kept in the sealed cover and that should be opened only when the delinquent officer has been fully exonerated by the departmental enquiry otherwise it should not be opened. The meaning of this is very clear that if the delinquent employee



181

-6-

has been punished by the departmental enquiry then his case which has been kept in the sealed cover will not be opened and he will not be granted promotion on the basis of the recommendations of the DPC which is kept in the sealed cover. Hence once the punishment has been granted, the delinquent employee is not entitled for the promotion irrespective of the nature of the punishment.

(ii) In the letter dated 27-2-1975, this direction has been explained in more detail. In this letter, it has been explained that till that time the delinquent officer who has been punished by the departmental enquiry will not be considered or will not be considered eligible for promotion to the next post. Regarding those government employees who have been awarded minor punishment, it would not be proper to delete their names from the subsequent DPC on this ground that they have been punished. The cases of such government employees who have been awarded minor penalties should be kept before the subsequent DPC for promotion. It means that the minor penalty will not disentitle the delinquent officer from promotion on the basis of the recommendation of the subsequent DPC. If on the basis of the previous documents and valuation of the DPC, it is necessary to promote any officer who has been awarded with minor punishment then in that case it would be proper to promote the said officer with prospective effect and the promotion in any event should not be from retrospective effect. This also is being clarified that if the punishment of stoppage of increment or promotion has been awarded for a specific period then any promotion should be made after the expiry of such period of punishment. Hence in this way the employee against whom such orders have been passed should be promoted only after the period of



182

-7-

order has expired and not before that."

The Supreme Court thereafter went on to hold as under:

"5. From the aforesaid circular, it would be evident that the sealed cover containing the recommendations of the DPC has to be opened only in those cases where the delinquent officer has been fully exonerated by the departmental enquiry and in cases where the delinquent officer has been punished in the departmental proceedings, the sealed cover is not to be opened and the delinquent officer cannot be granted promotion on the basis of the recommendation of the DPC which is kept in the sealed cover."

The contention advanced on behalf of the employee was noted in para-6 and para -7 as below:

"6. Shri S.S. Khanduja, the learned counsel appearing for the respondent, has, however, placed reliance on the Note in the said circular which reads as follows:

"Note.--The nature of the departmental enquiry should be either to exonerate the delinquent officer on the basis of the facts of the case or to award some punishment; the departmental enquiry should never end in the form of only giving warning to the delinquent officer because this does not come within the purview of the punishment. If due to some reasons, it is necessary to give only warning to the delinquent officer then competent authority will have to give reasons as to why it is necessary to give only warning to the delinquent officer.

The contempt authority while considering the punishment of warning (which is not punishment as such) will consider the facts and circumstances under which the



183

-8-

warning has been given to the concerned officer and will state that whether this warning comes within the definition of punishment or not and then only will either grant the promotion or refuse the promotion."

7. The submission of Shri Khanduja is that "censure" is only a recorded warning and does not constitute punishment and, therefore, the directions contained in the circular in relation to imposition of minor penalty would not apply and the Tribunal was justified in giving the directions for opening of the sealed cover and for giving effect to the recommendations of the DPC."

After taking into consideration the provision contained in Circular dated 2.5.1990, contention of the parties, the Supreme Court then proceeded to hold as under:

8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2-5-1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can



only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings.

9. From the aforesaid decision of the Supreme Court, which is squarely applicable in the present case, the petitioner's case is one governed by circular issued by the State Govt. of Madhya Pradesh which the Supreme Court had an occasion to examine. In view of the aforesaid decision, it has to be held that even though reasons assigned in the impugned order that the departmental enquiry is pending, therefore, sealed cover could not be opened, is not correct, for reasons stated above, as laid down by the Supreme Court, the petitioner could not claim promotion on the basis of recommendation, if any, made in his favour by the DPC which was held during the period enquiry was pending against the petitioner, which ended up in imposition of penalty.
10. It is also however found that though the criminal case came to an end vide order dated 20.4.2000 passed by the criminal Court, the petitioner was discharged. There is no material on record to show that thereafter the petitioner was subjected to any other criminal proceedings. Therefore, the final picture which emerges is that after April, 2000, there was nothing against the petitioner and even the currency of penalty of withholding one increment without cumulative effect vide order dated 10.12.1998 had also come to an end. Obviously, from 2001, the petitioner became entitled to be considered for promotion to the next higher post of Tahsildar.
11. Before the Tribunal, return was filed by the respondents in the years 1999. This petition was filed before the Tribunal way back in the year 1999 and thereafter it was transferred to this Court and since then remained pending.
12. At this distance of time, I am not inclined to adjourn the matter only to collect information with regard to case of the petitioner. The petitioner has stated that he retired as Nayab Tahsildar only. Therefore, the petitioner's



185

-10-

department is directed to examine the case of the petitioner if he was not considered for promotion after 2001, till the date of retirement. In such an eventuality, the respondent shall hold a DPC to consider the case of the petitioner as in the year 2001 on the basis of the criteria of promotion and relevant ACRs and complete service records, to find out whether the petitioner was fit for promotion. Considering that this is an old matter, the entire exercise required to be concluded by the respondents and decision taken within a period of 6 months from the date of receipt of copy of this order.

13. The petition is accordingly finally disposed off with the observation and direction as above.

Sd/-

Manindra Mohan Shrivastava
Jude

Praveen