

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21964 of 2013

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Anil Kumar S/O Late Badri Narayan Prasad Resident Of Flat No.303 Monika Apartment, Khajpura Bailey Road, P.S. Rajiv Nagar, District - Patna

... .. Petitioner/s

Versus

1. The Union Of India Through, The Secretary Ministry Of Civil Aviation Govt. Of India, New Delhi
2. The Chairman, Airport Authority Of India, Rajiv Gandhi Bhawan, Safdarjung, Airport, New Delhi
3. The Executive Director (Hr), Airport Authority Of India, Rajiv Gandhi Bhawan, Safdarjung, Airport, New Delhi
4. The Airport Director, Airport Authority Of India Jai Prakash Narayan International Airport, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 22043 of 2013

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AJAY KUMAR VERMA S/O SRI NAND KISHORE PRASAD RESIDENT OF FLAT NO. 201, SHREEYA APARTMENT, ARA GARDEN BAILEY ROAD, P.S.- RUPASPUR, DISTRICT- PATNA

... .. Petitioner/s

Versus

1. The Union Of India Through The Secretary Ministry Of Civil Aviation Govt. Of India, New Delhi
2. The Chairman, Airport Authority Of India, Rajiv Gandhi Bhawan, Safdarjung, Airport, New Delhi
3. The Executive Director (Hr), Airport Authority Of India, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi
4. The Airport Director, Air Port Authority Of India, Jai Prakash Narayan International Airport, Patna

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 21964 of 2013)

For the Petitioner/s : Mr. Sanjay Kumar Mishra

For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

For the Respondents

No. 2 to 4 : Dr. Pankaj, Advocate

(In Civil Writ Jurisdiction Case No. 22043 of 2013)

For the Petitioner/s : Mr. Sanjay Kumar Mishra

For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

For the Respondents

No. 2 to 4 : Dr. Pankaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT



Date : 23-01-2018

These writ petitions under Article 226 of the Constitution of India has been filed to consider the promotion of petitioners to the grade of Assistant Manager (Technical) under the Career Progression Scheme and thereafter regular promotion with all consequential benefits as granted to similarly situated persons as per seniority list of 2002.

Briefly stated fact of the case is that both petitioners were appointed as Technical Assistant in the year 1988 and petitioner of C.W.J.C. No. 21964 of 2013 gave his joining at Jammu whereas petitioner of C.W.J.C. No. 22043 of 2013 had joined at Palam Air Post, New Delhi. Petitioner of C.W.J.C. No. 21964 of 2013 was transferred from Jammu to Varanasi in the year 1991 and thereafter, in the year 1997 from Varanasi to Patna and in the year 2002 from Patna to Varanasi and thereafter he had again been transferred to Patna in the year 2007 and petitioner of C.W.J.C. No. 22043 of 2013 was transferred from Delhi to Varanasi in the year 1990, from Varanasi to Lucknow in the



year 1992, from Locknow to Patna in the year 1997. Petitioners of C.W.J.C. Nos. 22043/2013 and C.W.J.C. No. 21964/2013 were posted at Patna Airport during the period from 1997 to 2001 and 1997 to 2002 respectively and as per instruction petitioner of C.W.J.C. No. 21964 of 2013 proceeded on tour for attending training on Meltron Tape Recorder at RTC Chennai commencing from 12.04.1999 to 23.04.1999 whereas petitioner of C.W.J.C No. 22043 of 2013 proceeded in attending tour commencing from 16.08.1999 to 26.08.1999. After completion of aforesaid training petitioners were relieved on 23.04.1999 and 26.08.1999 and while they were posted in Patna in the year 2002, a list of regular promotion in grade of Assistant Manager (Technical) was published. But the names of the petitioners did not figure in the said list and juniors to petitioners were promoted in the list dated 04.07.2002. The petitioners submitted their representation to know the reasons for their non-inclusion in the list of promotion on the post of Assistant Manager (Technical). Memorandums were served to the petitioners of C.W.J.C. No.21964/2013



and C.WJ.C. No. 22043/2013 with respect to excess amount of Rs. 8,400/- and Rs.5720/- respectively, claimed as hotel bill by the petitioners, during the training programme in Chennai in the year 1999. Petitioners suo motu voluntarily refunded the alleged amount, as per direction of the authorities.

Petitioners submitted their final T.A. bills dated 02.06.1999 preferring and claiming the amount for staying at Hotel Mount Heera, 287, MKN Road, Alandur, Chennai-16, bill no. 1490 dated 23.04.1999 and bill No. 363 of dated 26.08.1999 for Rs. 20,160/- and Rs.17,820/-, showing tariff @ Rs. 1400/- and Rs. 1350 per day and after adjusting the T.A. advance the balance bills amount of Rs. 3674/- and Rs. 3549/- were paid to them on 11.06.1999 and 10.09.1999 respectively. That being doubtful the Airports Authority of India conducted an internal vigilance investigation regarding the T.A. bills and it was revealed that the T.A. bills submitted were exaggerated and manipulated and petitioners had claimed excess amount of Rs. 8,400/- and Rs. 5720/- by submitting inflated bills and



also caused loss to the employer.

It has further been submitted that respondents took a decision and granted amnesty to the employees and they were directed to refund the excess amount voluntarily and petitioners also refunded the excess amount. Thereafter, the respondents initiated disciplinary proceeding and issued chargesheets dated 19.03.2004 by which petitioners were informed about the action taken against them under Regulation 31 of AAI Employees (Conduct, Discipline and Appeal) Regulations 2003 and they were asked to submit their representations within a period of fifteen days and petitioners submitted reply on 15.04.2004 and after due consideration of their replies the disciplinary authority imposed the punishment vide order dated 21.06.2004 , which is as follows :-

“ The next increment of Shri Anil Kumar, Assistant Manager (Com-Tech) be withheld for a period of one year without cumulative effect .”

It has further been stated by the respondents that a list of regular promotion in grade Assistant Manager



(Technical) was published on 04.07.2002 but name of the petitioners were not included in the promotion order as per Regulation 26(1)(c) to the Airport Authority of India (Conduct, Discipline and Appeal) Regulations 2003. A case, as per the Vigilance Department, was contemplated against the petitioner.

The respondents have filed a supplementary counter affidavit stating therein that petitioners have been granted regular promotion to the grade of Assistant Manager (Technical) with effect from 01/01/2006. However, no notional promotion could be granted because of Government of India's circular dated 15.12.2004 and the same was communicated to the petitioners. They have further stated that in their counter affidavit that after recommendation of Departmental Promotion Committee, petitioners have been promoted to the grade of Manager on regular basis from the date of taking over the charge. Petitioners have relied upon a judgment passed by Madhya Pradesh High Court in which similarly placed employees whose promotion were also denied for the same reason as



that of petitioners and was decided in their favour considering the judgment of the Apex Court as well as Regulation of the Department. It has been submitted that petitioners case is also similarly placed and , as such, petitioners may be granted similar relief.

Learned counsel for the petitioner has relied upon the order dated 28.02.2013 passed by High Court of Madhya Pradesh : Bench at Indore in Writ Petition No 5918 of 2006 and relevant paragraphs are extracted below :-

“ In the present case, the petitioner is an employee serving under the Airport Authority of India and at present he is holding the post of Asstt. Manager Electronics. The petitioner has claimed retrospective promotion to the post of Asstt. Manager Electronics as his case was not considered in 2002 under the Career Progression Scheme. The only reason assigned in the return is that Vigilance clearance was not received in respect of the petitioner at the time the Departmental Promotion Committee met. The Government of India in exercise of powers conferred under sub-Section (1) r/w clause (b) of sub-clause (ii) of Section 42 of the Airports Authority of India Act, 1954 has made Regulations known as Airports Authority of India Employees (Conduct & Discipline of Appeal) Regulations 2003 and the Regulations of 2003 governs with the service conditions of the petitioner.

Regulations 26 of the Regulations reads as under:

26. Promotion of employees against whom disciplinary/Court Proceedings are pending or whose conduct is under investigation- The following procedure is to be followed. (1) At the time of consideration of the cases of Employees for promotion, details of employees in the consideration zone for promotion falling under the following categories will be specifically brought to the notice of the Departmental Promotion Committee : (a) Whether the employee is under



suspension; (b) whether employee in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and (c) Whether an employee in respect of whom prosecution for a criminal charge is pending.

(2) The Departmental Promotion Committee shall assess the suitability of the employee coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into criminal prosecution pending.

Keeping in view the judgment delivered by the Apex Court in the case of Union of India vs. K.V. Jankiraman (supra), as no charge sheet was issued to the employee in question and also keeping view the regulations framed by the Government of India as the employee was not under suspension and no disciplinary proceedings were pending against him, the respondents could not have ignored his claim for consideration for promotion to the next higher post. This Court is of the considered opinion that the respondents have not followed the prescribed procedure as prescribed under Regulation 26 of the Regulations of 2003 in the case of the petitioner and, therefore, keeping in view the peculiar facts and circumstances of the case, the writ petition deserves to be allowed. It is accordingly allowed. Respondents are directed to hold a review Departmental Promotion Committee to consider the case of the petitioner for the post of Asstt. Manager Electronics under the Career Progression Scheme and Asstt. Manager Electronics on regular basis. The exercise of holding Departmental Promotion Committee be concluded within a period of 90 days from the date of receipt of certified copy of this order.

This court has also considered the prayer of the petitioner for grant of difference of salary in case he is found fit for promotion to the next higher post. In the peculiar facts and circumstances of the case and specially in the light of the fact that the petitioner has been subsequently promoted to the post of Asstt. Manager, no case for granting backwages is made out. However, in case the petitioner is found fit by the Departmental Promotion Committee, he shall be entitled for notional fixation of salary and all other benefits except backwages. With the aforesaid, the writ petition stands allowed. No order as to costs."

Learned counsel has also placed reliance on a decision rendered by the Apex Court in the case of Union of India and others v. Anil Kumar Sarkar reported in (2013) 4



Supreme Court Cases 161 and paras-16 and 17 are
extracted below :-

“ 16. It is not in dispute that an identical issue was considered by this Court in Union of India v. K.V. Jankiraman¹. The common questions involved in all those matters were: (SCC p. 114, para 8)

“8. ... (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 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.

17. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows: (K.V. Jankiraman case¹, SCC p. 118, para 16)

“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 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: (K.V. Jankiraman case¹, SCC p. 119)

“17. ... Conclusion 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: (K.V. Jankiraman case¹, SCC p. 124, para 32)

“32. ... 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 his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated 30-4-1986. 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.”

(emphasis supplied)

After considering the submissions of the parties, this Court is of the opinion that at the time of publication of list of promotion, in 2002 no proceeding was pending against the petitioners. As such, there was no reason for denial of promotion to the petitioners in 2002. Petitioners are entitled to be promoted on the post of Assistant



Manager (Technical) in the list of promotion dated 04.07.2002 and are entitled to all the consequential benefits from the said date including seniority and other benefits except the back wages for the period from 04.07.2002 to 01.02.2006 when they were actually promoted.

These writ petitions stand allowed.

(S. Kumar, J)

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Transmission Date	

