

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1557 of 2017

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Bidhan Chand Singh, son of Shyam Bihari Singh, Resident of C/o Parsuram Singh,
Deepa Niwas, Near Holy Family Hospital, P.S.- Tilka Manjhi, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
2. The Labour Commissioner, Department of Labour Resources, Government of Bihar, Patna.
3. The Deputy Labour Commissioner, Department of Labour Resources, Government of Bihar, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar

For the Respondent/s : Smt. ANURADHA SINGH, SC-21

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 03-04-2018

The present writ petition has been filed for considering the case of the petitioner, who is currently serving a Lower Division Clerk, for promotion to the post of Labour Enforcement Officer and further for payment of the consequential benefits.

The short facts of the case are that the petitioner was appointed by the Department of Labour on 15.05.2002 on the post of Lower Division Clerk whereafter his appointment was confirmed on 30.07.2010 and then he was granted the benefits of first A.C.P. Subsequently, a departmental enquiry was instituted against the petitioner vide letter dated 14.06.2016. The respondents had then initiated the process of promotion and the Labour Commissioner by



his letter dated 16.09.2016, while finalizing the case the list of eligible candidates for promotion, had called for objections / claims from the concerned authorities. In the said list, the name of the petitioner was shown at serial no. 28, however, against his name a remark was made regarding pendency of the departmental proceeding. Thereafter, the Deputy Labour Commissioner, Bhagalpur had sent a list of candidates to the Labour Commissioner and the petitioner's name was shown at serial no. 1. Finally on 13.10.2016, a list of 23 persons was published vide office order no. 10 dated 13.10.2016, granting promotion to them on the post of Labour Enforcement Officer, however, the name of the petitioner was missing from the said list. It is the further contention of the petitioner herein that the respondents vide letter dated 31.10.2016 had informed the petitioner that the Enquiry Officer, upon enquiry has found all the charges levelled against him to have not been proved, hence he was being exonerated of all the charges. The petitioner being dejected represented before the Labour Commissioner, however, to no avail.

The learned counsel for the petitioner has submitted that the sealed cover procedure as envisaged in a judgment of the Hon'ble Apex Court reported in **(1991) 4 SCC 109 (Union of India & ors. Vs. K.V. Jankiraman & ors.)** ought to have been followed by the respondents herein and the sealed cover was required to be opened



only in case of complete exoneration of the petitioner herein from all charges whereafter notional promotion could have been given to the petitioner herein from the date on which juniors were promoted. However, the respondent authorities have clearly derelicted on the said score, more so in view of the fact that subsequently, the petitioner has been exonerated in the departmental enquiry, as such, he was/is entitled to be granted promotion with effect from the date on which his juniors have been granted promotion.

Per contra, the learned counsel for the respondents no. 1 to 3 has filed counter affidavit and has submitted that since a departmental proceeding was initiated against the petitioner vide office order dated 14.06.2016, the case of the petitioner was not considered for promotion.

I have heard learned counsel for the parties as also perused the materials on record and I find that though it is true that a departmental proceeding was pending against the petitioner on the date of consideration of the petitioner for grant of promotion as also on the date on which promotion was granted to similarly situated persons, the respondents ought to have followed the mandate of the decision rendered by the Hon'ble Supreme Court in the case of **K.V. Jankiraman** (supra), paragraph nos. 8, 14, 16, 19, 20, 21, 23, 26 whereof reads as follows:-



“8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:- (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? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' 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'. Hence, the relevance and importance of the questions.

14. To bring the record up to date, it may be pointed out that in view of the decision of this Court in [Union of India & Anr. v. Tajinder Singh](#), [1986] 2 Scale 860 decided on September 26, 1986, the Government of India in the Deptt. of Personnel & Training issued another' Office Memorandum No. 22011/2/86. Estt. (A) dated January 12, 1988, in supersession of all the earlier instructions on the subject including the Office Memorandum dated 30th January, 1982 referred to above. There is no difference in the instructions contained in this and the earlier aforesaid Memorandum of January 30, 1982, except that this Memorandum provides in paragraph 4 for a six-monthly review of the pending proceedings against the Government servant where the proceedings are still at the stage of investigation and if as a result of the review, the appointing authority comes to the conclusion on the basis of material and evidence collected in the investigation till that time, that there is no prima facie case in initiating disciplinary action or sanctioning prosecution, the sealed cover is directed to be opened and the employee is directed to be given his due promotion with reference to



the position assigned to him by the DPC. A further guideline contained in this Memorandum is that the same sealed cover procedure is to be applied where a Government servant is recommended for promotion by the DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken.

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 chargesheet 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/chargesheet. 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. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

- (2) * * **
- (3) * * **

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before . '

19. The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January. 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits, is discriminatory when compared with other employees' who are not at the verge of promotion when the disciplinary proceedings 'were initiated against them.

20. The Tribunal has, therefore, directed that on exoneration, full salary should be paid to such employee which he would have on promotion if he had not been subjected to disciplinary proceedings.

21. We are afraid that the Tribunal's reference to paragraph-2



of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the 'last sentence of the first sub-paragraph after clause (iii) of paragraph 3 of the Memorandum which is reproduced above. That sentence reads as follows:

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1)' of the Fundamental Rules and Supplementary Rules which reads as follows:

"F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

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 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 sub-paragraph 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."



It is apparent from what has been discussed hereinabove that the respondents herein have faltered by not following the law laid down by the Hon'ble Apex Court inasmuch as they have failed to resort to the sealed cover procedure resulting in grave prejudice having been caused to the petitioner herein.

For the reasons mentioned hereinabove, while deprecating the conduct of the respondents herein, I deem it fit and proper to direct the respondent authorities to immediately consider the case of the petitioner for grant of promotion to the post of Labour Enforcement Officer and in case he is found eligible and entitled to grant of such promotion, then the respondent authorities are directed to grant him promotion to the post of Labour Enforcement Officer from the date his juniors have been promoted. The entire exercise, as stated hereinbefore is directed to be completed within a period of four weeks from today failing which penal action shall be taken against the erring officials.

The writ petition is allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
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