

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3894 of 2007

D.L. Divyakar, S/o Late Shri Latiram Divyakar, aged about 48 years, presently residing at House of Shri B. M. Prasad, Retired Principal, Darbari Toli, Jashpur, District- Jashpur Nagar (CG) permanent resident of Village- Khaira, P.O. Jhabdi, Tehsil _ Kasdoi, District _ Raipur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh – Through the Secretary, Department of Tribal Development and Welfare, DKS Bhavan, Raipur (CG).
3. The Commissioner, Department Of Schedule Tribe, Schedule Caste, Backward Class And Minority Development, Raipur (CG)
4. The Chief Executive Officer Zila Panchayat, Bilaspur, [Departmental Enquiry Officer] (CG)
5. The Collector, Jashpur District- Jashpur Nagar, (C.G)

-----Respondents

For Petitioner: Mr. Vikas Pandey, Advocate.

For State : Mr. Chandresh Shrivastava, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

30/04/2018

1. This petition has been filed by the petitioner seeking direction for multiple reliefs. The petitioner has prayed for quashing of the charge-sheet and all further previous orders passed during the course of enquiry instituted under the charge-sheet. The petitioner has also prayed for the direction to respondents to consider the petitioner's case for promotion with effect from 30-04-1999 to the post of principal.
2. The relevant facts are that that petitioner was appointed as lecturer

in 1988 and he was due consideration for promotion to the next higher post of principal. However, at this crucial juncture of his service career, on certain allegations of misconduct, he was placed under suspension vide order dated 11-09-1995. Later on, suspension was revoked on 13-02-1996. A charge-sheet, however followed, instituting departmental enquiry on 29-08-1997 on as many as three charges. After the petitioner submitted reply, the enquiry continued. According to the learned counsel for the petitioner, on 24-04-1999, he was informed by the enquiry officer that the enquiry is complete and enquiry report would be prepared and forwarded to the competent authority, however on 03-10-1999, the enquiry officer was changed. The new enquiry officer again gave notice to the petitioner to participate in the enquiry and in this manner, the enquiry was protracted. In the meantime, promotion orders were issued on 13-04-1999 and 31-07-2000 by which number of lecturers were promoted. The efforts made to seek consideration and promotion did not yield any result and at the same time the enquiry remained pending, compelling the petitioner to approach this Court.

3. Learned counsel for the petitioner would submit that the enquiry against the petitioner having been instituted and one enquiry officer appointed, another enquiry officer could not be appointed to continue the departmental enquiry. He further submits that the enquiry is actuated with oblique motives to victimize the petitioner and deny him promotion.

4. Learned State counsel would submit that the petitioner has challenged the enquiry on grounds which are not tenable in law. The charges against the petitioner are, prima facie, made out. The rules regulating the conduct of departmental enquiry does not prohibit change of enquiry officer in appropriate circumstances and only for that reason, it will not have any vitiating effect on the departmental enquiry. He submits, in any case, the petitioner's right of being considered for promotion is not denied but only deferred because of the pending departmental enquiry. He further submits that during the course of time the petitioner was considered and time bound promotion to the next higher pay scale has been given effect to vide order dated 22-01-2007.

5. Learned counsel for the petitioner would submit that departmental enquiry was concluded by the enquiry officer and he submitted enquiry report on 05-06-2006 by which he is fully exonerated of all the charges.

6. Considering that that departmental enquiry was initiated against the petitioner way back in the year 1997 which culminated in his exoneration as stated at the bar by the learned counsel for the petitioner, the petitioner would certainly be entitled for consideration of his case for promotion as on the date other colleagues including the junior were promoted. Issuance of promotion orders on 03-04-1999 and 31-07-2000 is not in dispute that means but for the institution and pendency of departmental enquiry, the petitioner was also entitled to be considered for promotion in the year 1999 itself. The return of the respondents, does not show that the petitioner's case was also considered and recommendation were kept in sealed cover for being opened after conclusion of enquiry.

7. In the case of **Union of India and Others Vs. K.V. Jankiraman and Others**, (1991) 4 SCC 109, the Supreme Court has examined the right of delinquent employee for consideration of promotion. It has been held that though during the pending departmental enquiry an employee may not claim as right of promotion to the next higher post, nevertheless, his right of being considered for promotion has also to be taken care of by striking balance between the individual interest and interest of administration. In view of the said decision of the Supreme Court where an employee has been subjected to departmental enquiry, he would be entitled to be considered for promotion though recommendation will not be given effect to till the conclusion of the enquiry. In case, an employee is exonerated the charges he would be entitled for promotion from due date provided, if he was found fit for promotion.

8. The petitioner, if not considered, shall be considered for promotion to the post of principal as on the date lecturers who were promoted on 03-04-1999 were considered by the review DPC. If on the basis of review DPC as on 1999, the petitioner is found fit for promotion he would be entitled to promotion with all consequential benefits of pay, seniority and it will not be open for respondents to deny the monetary benefits on the principle of no work no pay which is not applicable in the present circumstances. If the petitioner had already been considered but recommendation have been kept in sealed cover, it shall be opened forthwith and if the petitioner is found fit, he will be granted promotion as directed above. It needs, however, to be stated that if on application of criteria of promotion, petitioner was not entitled or found fit for promotion for any reasons other than the pendency of the departmental enquiry, only

for reason of he having been exonerated, petitioner may not be entitled to any benefit of promotion as on 1999 though he will have a right of being considered on other subsequent occasion as and when DPC was held during the period enquiry was pending.

9. Accordingly, the petition is disposed off.

Sd/-

(Manindra Mohan Shrivastava)

Judge