

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 998 of 2009

Benedict Tigga, S/o. Late Paulus Tigga, Aged about 56 years, working as Company Commandant, Home Guard, Baikunthpur, District Korea, Chhattisgarh, R/o. Home Guard Camp, Baikunthpur, District Korea, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through: the Secretary, Home (Police), Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Under Secretary, Government of Chhattisgarh (Home Department), D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
3. The Director General of Police (Home Guard), Police Headquarter, Raipur, District Raipur, Chhattisgarh
4. The Divisional Commandant (Home Guard), Bilaspur, District Bilaspur, Chhattisgarh
5. V.S. Chouhan, District Commandant, Office Korba, District Korba Chhattisgarh
6. R.P. Gupta, District Commandant, Presently working at Mana Camp, Raipur, District Raipur Chhattisgarh
7. Asarfilal Nikhar, District Commandant, Ambikapur, District Surguja Chhattisgarh
8. Narsingh Ram Tandon, District Commandant, Mahasamund, District Mahasamund Chhattisgarh
9. Philmon Toppo, District Commandant, Bijapur, District Bijapur, Chhattisgarh

---Respondents

For Petitioner	:	Mr. V.K. Pandey, Advocate
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/01/2019

1. Present is the second round of litigation. The claim revolves around the promotion, which the petitioner is seeking from the post of Company Commander to the post of District Commander (Home Guard).
2. The relevant facts before this Court necessary for disposal of the present writ petition is that the petitioner at the first instance, when the D.P.C. was

convened on 26.05.2004, though the name of the petitioner stood in the zone of consideration, but the petitioner was not recommended for promotion, whereas the juniors of the petitioner i.e. the respondents No. 7 to 9 were recommended for promotion.

3. The petitioner immediately had challenged the said action of the respondents by way of a writ petition i.e. WP No. 1865/2004 (Benedict Tigga v. State of Chhattisgarh & Ors.). The writ petition stood disposed of vide order dated 04.07.2007 and in the operative part the High Court held as under:

“11. In view of the well settled principles of law enunciated by the Supreme Court in various cases (supra), this Court, despite having limited scope of judicial review of the merits of selection made by the DPC, can exercise its jurisdiction, if it is found arbitrary and unreasonable. Applying the above well settled principles of law to the facts of the present case, it is evident that the evaluation done by the DPC in case of the petitioner by down grading from grade “B” to grade “C” in the annual confidential report of the year 2003, is unreasonable and not inconsonance with the Circular dated 16.06.1999 which provides for evaluation of grading by the DPC only in case of contradictory entries made in the report.

12. I have perused the departmental proceedings. The second contention that adverse remark was communicated and a charge-sheet was issued against the petitioner. The DPC ought to have resorted to the sealed cover procedure as held by the Supreme Court in the matter of “Union of India and others vs. K.V. Jankiraman and others” (supra) followed subsequently in other cases. The DPC has not resorted to the sealed cover procedure in the case of the petitioner. The petitioner was later on punished with a minor punishment i.e. 'censure' which admittedly does not

come in the way of promotion. Thus, irregularity and arbitrariness are writ large.

13. In view of the foregoing, the petition is allowed. The respondents No. 1 to 6/authorities are directed to hold DPC as on 26.05.2004 considering the cases of the petitioner and other respondents for promotion, in accordance with law.”

4. Subsequently, the case of the petitioner was again reconsidered by the authorities concerned in compliance to the High Court's order dated 04.07.2007 and after scrutiny of the case, the respondents again rejected the claim of the petitioner vide the impugned order dated 03.03.2008. The respondents while rejecting the claim of the petitioner were of the view that the petitioner since he was inflicted with a punishment of censure vide order dated 22.06.2004, would not be entitled for being considered for promotion as District Commander (Home Guard).
5. According to the petitioner, the action on the part of the respondents was not proper and justified for the reason that this Court while disposing of the writ petition in 2007 had in very categorical terms ordered that a review D.P.C. was to be convened and the case of the petitioner was to be considered on the position as it stands on 26.05.2004. According to the petitioner, till 26.05.2004, there was absolutely no embargo or a disqualification available, by which the petitioner could be denied of his promotion. According to the petitioner, the material, which has been used by the department in rejecting the representation of the petitioner, was certain documents, which were of a period subsequent to the date on which the previous D.P.C. was convened i.e. 26.05.2004 and this the respondents could not have relied upon or used against the petitioner and thus prayed for appropriate relief in this regard. He further submits that the aspect of the

subsequent punishment dated 22.06.2004 and the adverse entry of censure were also taken note by the High Court while deciding the writ petition on 04.07.2007. After taking note of both these aspects, this Court is of the view that those could not have been used against the petitioner for grant of promotion. As the said order was of a period subsequent to the period on which the D.P.C. was held. According to the petitioner, this aspect has not been considered by the respondents while complying with the order of this Court and therefore the impugned order is bad.

6. The State counsel on the contrary submits that the review D.P.C. was convened on 14.01.2008 and by which time the petitioner was already inflicted with a punishment on 22.06.2004, as also another punishment order was passed in October, 2007, where a punishment of withholding of one increment was imposed against the petitioner and therefore since there were these two orders passed, the respondent authorities have rightly not found the petitioner fit for promotion. According to the State counsel on 26.05.2004, a departmental enquiry already was pending and for this reason also the authorities have not found the petitioner to be fit for promotion to the post of District Commander. The State counsel also referred to the circular of the State Government, with which the State counsel canvassed that the petitioner would not have been entitled for promotion in the light of a minor penalty, which has been imposed upon him and the same could have been granted to the petitioner only after the sealed cover would have been opened.
7. Having heard the contentions put forth on either side and on perusal of record, what cannot be lost sight of is the admitted factual matrix as it stands. Admittedly, the petitioner was working as a Company Commander (Home Guard). The next promotional post to which the petitioner was

entitled for was District Commander. The petitioner was undoubtedly in the zone of consideration. The case of the petitioner was considered.

8. The issue now left to be considered is, whether the petitioner has been rightly left out from being promoted. If we look into the order passed by this Court on 04.07.2007, the operative part, which has been reproduced in the preceding paragraph, it clearly reflects that the High Court had made a reference in respect of down grading of his grade from "B" to "C" for the year 2003 to be unreasonable. At the same time, this Court had taken note of the fact that the sealed cover procedure was not adopted in the case of the petitioner and this Court had also mentioned that the imposition of a minor punishment of censure would not have come in the way of the petitioner from being promoted.
9. This Court had further directed the State Government to reconsider the case of the petitioner for promotion by holding a fresh review D.P.C. on a position as it stood on 26.05.2004. This order of the High Court was not challenged before any other higher forum, thus the same has attained the finality and the respondents were required to comply with the order in its letter and spirit.
10. Once when this High Court has categorically held that the minor punishment of censure should not come in the way of promotion to the petitioner. There was no reason, why the authorities could have rejected the claim of the petitioner again on the same ground.
11. What all the more is required to be considered is that the writ Court had directed the authorities to consider the case of the petitioner on the position as it stood on 26.05.2004, by which time the petitioner had not been inflicted with any punishment and it is only being inflicted later on and that

to a minor punishment of censure, which according to this Court itself could not have been detrimental to the petitioner for promotion. This aspect has not been considered by the authorities while passing Annexure P/1 dated 03.03.2008. The authorities concerned have also not made any discussion in this regard, so far as the view of the High Court is concerned. The impugned order to that extent is therefore is not sustainable and in the opinion of this Court, the case of the petitioner needs a reconsideration so far as the promotion to the post of District Commander from the post of Company Commander is concerned. The impugned order therefore is quashed and the matter stands remitted back to the authorities concerned for passing a fresh order, strictly in accordance with the directives given by this Court while disposing of WP No. 1865/2004, decided on 04.07.2007.

12. Let this exercise be concluded within a period of 3 months from the date of receipt of the copy of this order. It is made clear that now that the petitioner having retired, if the authorities find him fit for promotion in accordance with the Rules governing the field, the petitioner would be entitled for all consequential benefits including that of the revised retiral dues. The writ petition accordingly stands allowed.
13. It shall be the responsibility of the petitioner to appraise the authorities concerned, so far as the order passed by this Court is concerned.

Sd/-
(P. Sam Koshy)
Judge