

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 3504 of 2013**

A.R. Bairagi, S/o Shri Ram Saran Bairagi, Aged about 58 years, R/o bhartiya Nagar, Masjid Road, Police Station Civil Lines, Bilaspur, Distt. Bilaspur, Civil and Revenue Distt. Bilaspur, Chhattisgarh.

---Petitioner

Versus

- 1.State of Chhattisgarh, Through Secretary, Department of Home Affairs, Mantralya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
- 2.Director General of Police, Police Head Quarter, Raipur, Chhattisgarh.

---Respondents

For Petitioner	:- Mr. J.K. Gupta, Advocate
For Respondents/State	:- Mr. Soumya Rai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/10/2021

- 1.Invoking the extraordinary jurisdiction of this Court, the petitioner herein seeks writ of mandamus directing the respondents to grant notional promotion on the post of Deputy Superintendent of Police to the petitioner with effect from

23/05/2001 i.e. the date on which his juniors were promoted, and all the consequential benefits that would accrue due to extension of notional promotion.

2. The petitioner was initially appointed on the post of Sub-Inspector in the year 1977. Thereafter, he was promoted to the post of Inspector by order dated 01/07/1992 and accordingly, the gradation list was published on 01/03/2001 in which petitioner stood at serial No. 81. In the year 2001, the Departmental Promotion Committee was convened and the case of the petitioner as well as other eligible candidates was considered for promotion from the post of Inspector to Deputy Superintendent of Police, but on account of the pending departmental proceeding against the petitioner, his case was kept in a sealed envelope as per the decision rendered by the Supreme Court in the matter of Union of India v. K.V. Jankiraman¹ which is apparent from the memo dated 03/07/2003 (Annexure P/2) issued by the Police Headquarters, Raipur to the Superintendent of Police, Bilaspur indicating that petitioner's case which is kept in the sealed envelope will be opened after the conclusion of the departmental proceeding pending against him. Meanwhile, by order dated

¹ (1991) 4 SCC 109

01/08/2003, petitioner was punished with minor penalty of stoppage of one annual increment by the Disciplinary Authority, which was challenged by him in an appeal wherein the Appellate Authority by order dated 19/05/2004 (Annexure P/3) converted the punishment of stoppage of one annual increment into fine of Rs. 1,000/- which, though not specifically held, but is in fact a minor punishment under Rule 10(iii) of Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. Thereafter, on 03/11/2004, petitioner was promoted to the post of Deputy Superintendent of Police and in the gradation list published on 01/04/2007, he stood at serial No. 151 on account of which he made a representation for notional promotion with effect from 23/05/2001 and re-fixation of seniority along with all the consequential benefits, but by impugned order dated 31/01/2012 (Annexure P/9) his representation has been rejected against which this writ petition has been preferred.

3. Return has been filed by the respondents/State supporting the order impugned dated 31/01/2012 (Annexure P/9).

4. Mr. J.K. Gupta, learned counsel for the petitioner, would submit that though the sealed envelope procedure as envisaged by the Supreme Court in the

matter of K.V. Jankiraman (supra) was followed in the present case and petitioner's case was kept in a sealed envelope till the conclusion of departmental enquiry pending against him, but since by order dated 19/05/2004 (Annexure P/3), the order of the Disciplinary Authority dated 01/08/2003 was modified and the punishment of stoppage of one annual increment was set aside and only a fine of Rs. 1000/- was imposed upon the petitioner by the Appellate Authority, therefore, petitioner would be entitled for notional promotion with effect from 23/05/2001 i.e. the date on which his juniors were promoted, as such, the impugned order (Annexure P/9) rejecting petitioner's representation is liable to be set aside and appropriate direction be issued to the respondents to grant notional promotion to the petitioner with effect from 23/05/2001 along with all the consequential benefits.

5. Mr. Soumya Rai, learned State counsel, would rely upon the Circular dated 02/05/1990 to demonstrate that once petitioner has been inflicted with minor penalty of recovery of Rs. 1,000/- as fine, he cannot be promoted with prospective effect and he would also rely upon paragraph 26 of the decision of the Supreme Court in the matter of K.V. Jankiraman (supra) to demonstrate that since

petitioner has been inflicted with one of the minor penalty though modified by the Appellate Authority with another minor penalty under Section 10(iii) of the Rules of 1966, he cannot be granted the aforesaid reliefs as claimed by him. He would also rely upon the decision rendered by the Supreme Court in the matter of State of M.P. v. I.A. Qureshi².

6.I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

7.In the meeting of the Departmental Promotion Committee held on 23/05/2001 for promotion from the post of Inspector to Deputy Superintendent of Police, petitioner's case was kept in a sealed envelope following the procedure laid down by Their Lordships of the Supreme Court in the matter of K.V. Jankiraman (supra) on account of the pending departmental enquiry against him. Thereafter, vide order dated 01/08/2003, petitioner was inflicted with minor punishment of stoppage of one annual increment and subsequently, that order was modified by the Appellate Authority on 19/05/2004 and instead of punishment of stoppage of one annual increment, punishment for recovery of Rs. 1,000/-

2 (1998) 9 SCC 261

as fine was imposed upon the petitioner under Rule 10(iii) of the Rules of 1966. Thereafter, again in the meeting of Departmental Promotion Committee held on 03/11/2004, petitioner was promoted on the post of Deputy Superintendent of Police.

8. It is the case of the petitioner that he is entitled for promotion with effect from 23/05/2001 i.e. the date on which his juniors were promoted whereas on that day, his case was placed under a sealed envelope. At this stage, it would be appropriate to notice the Circular dated 02/05/1990, which states as under :-

म.प्र. कार्मिक, प्रशासनिक सुधार एवं प्रशिक्षण विभाग ज्ञापन क्रमांक सी. 6-1/90/3/49,
दिनांक 2-5-1990

विषय- परिनिन्दा आदि की लघु शास्तियों का शासकीय सेवकों की पदोन्नति पर प्रभाव ।

संदर्भ- सामान्य प्रशासन विभाग का (1) परिपत्र क्रमांक 208/2449/आई (3)/63, दिनांक 31-1-1964, एवं (2) परिपत्र क्रमांक सी-3-2/75/3/1, दिनांक 27-2-1975 ।

जिन शासकीय सेवकों के विरुद्ध विभागीय जांच लंबित हो, विभागीय जांच संभावित हो या जो निलम्बित हों, के प्रकरणों में विभागीय पदोन्नति समिति या विहित प्राधिकारी द्वारा पदोन्नति हेतु विचार के समय अपनाई जाने वाली प्रक्रिया तथा पदोन्नति पर लघु शास्तियों के प्रभाव के संबंध में, संदर्भित परिपत्रों द्वारा निर्देश प्रसारित किए गए हैं-

(एक) पत्र दिनांक 31-1-1964 के अनुसार उस शासकीय सेवक के संबंध में जिसके विरुद्ध विभागीय जांच लंबित हो, विभागीय जांच संभावित हो या जो निलंबन में हों, विभागीय पदोन्नति समिति या विहित अधिकारी द्वारा पदोन्नति संबंधी अनुशंसा सीलबंद लिफाफे में रखी जानी चाहिए एवं उसे विभागीय जांच में पूर्णतः निर्दोष पाए जाने अथवा उसका निलंबन पूर्णरूपेण अनुचित पाए जाने की अवस्था में ही, जैसी भी स्थिति हो, उसे पदोन्नत किया जाना चाहिए, अन्य अवस्था में नहीं । इसका अभिप्राय स्पष्ट है और वह यह है कि यदि ऐसे कर्मचारी को विभागीय जांच में कोई दण्ड दिया जाए तो फिर उसे उस विभागीय पदोन्नति समिति की अनुशंसा के आधार पर जिसमें उसका प्रकरण बंद लिफाफे में रखा गया था, पदोन्नति नहीं दी जानी चाहिए । अर्थात् दण्ड मिलने पर, चाहे उसका स्वरूप भी क्यों न हो, पदोन्नति की पात्रता समाप्त हो जाती है ।

(दो) पत्र दिनांक 27-2-1975 में इस बात का खुलासा किया गया है कि आखिर दण्डित शासकीय सेवक को कब तक, भावी पदोन्नति के लिए अपात्र माना जाता रहेगा, इसके लिए यह स्पष्ट किया गया था कि यदि किसी शासकीय सेवक को कोई लघु शास्ति दी गई हो तो उसके कारण यह मानकर कि वह पदोन्नति के योग्य है ही नहीं उसकी पदोन्नति के संबंध में विचार न करना ठीक नहीं है। ऐसे कर्मचारियों के बारे में भावी पदोन्नति समिति की बैठक, अर्थात् दण्ड अधिरोपित करने के बाद आयोजित विभागीय पदोन्नति समिति की बैठक में विचार किया जाना चाहिए और यदि उसके पिछले अभिलेख तथा कार्य के समय मूल्यांकन के आधार पर उसे पदोन्नति के लिए उपयुक्त समझा जाता है तो उसकी पदोन्नति करने में कोई आपत्ति नहीं है, किन्तु ऐसी पदोन्नति भूतलक्षी प्रभाव से नहीं दी जा सकती। यह भी स्पष्ट किया गया था कि ऐसे अभिक्रमित शासकीय सेवक को यदि "वेतन वृद्धि रोकने" या "पदोन्नति रोकने" का दण्ड दिया गया हो, तो उसे ऐसे दण्ड की सम्पूर्ण अवधि के दौरान पदोन्नति नहीं दी जानी चाहिए ताकि उसे दी गई शास्ति निष्प्रभावी न हो जाए। अर्थात् उक्त प्रकार दण्ड पाने वाले कर्मचारियों को दण्ड के प्रभाव की अवधि समाप्त होने के बाद ही पदोन्नति करने पर विचार किया जाना चाहिए, उसके पहले नहीं।

9. Their Lordships of the Supreme Court in the matter of I.A. Qureshi (supra) have considered the aforesaid Circular dated 02/05/1990 and held in paragraph 5 that sealed cover containing the recommendations of 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. Thereafter, Their Lordships further held that "Censure" cannot be equated with a warning since under Rule 10 of the Rules of 1966, "censure" is one of the minor penalties that can be

imposed on a Government servant. Paragraph 8 of the judgment states 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 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."

10. Likewise, in the matter of **K.V. Jankiraman** (supra), Their Lordships laid down similar proposition in paragraph 26 which has further been followed by the Supreme Court in the matter of **Union of India v. A.N. Mohanan**³. Paragraph 26 of **K.V. Jankiraman** (supra) states as under :-

"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 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 is 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."

11. Reverting to the facts of the present case in light of the Circular dated 02/05/1990 which is applicable in the instant case and which has been followed by the Supreme Court in the matter of I.A. Qureshi (supra), it is quite vivid that the sealed envelope containing the recommendations of DPC has to be opened only in the case where delinquent officer has been fully exonerated by the departmental enquiry and 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. In the instant case, it is not in dispute that petitioner has not been fully exonerated in the departmental enquiry though one kind of minor punishment inflicted upon him has been converted into another kind of minor punishment by the Appellate Authority and he has been found blameworthy. As such, since the petitioner has not been fully exonerated in the departmental proceeding, the recommendations of the DPC kept in a sealed envelope were rightly not opened and he has rightly not been granted promotion on the post of Deputy Superintendent of Police from the retrospective date i.e. 23/05/2001. Petitioner's case could have been considered for

promotion only after the conclusion of departmental proceeding pending against him. The departmental proceeding concluded on 01/08/2003 and thereafter, in the meeting of the Departmental Promotion Committee held on 03/11/2004, his case has rightly been considered and he has been granted promotion on the vacant post of Deputy Superintendent of Police from the prospective date i.e. 03/11/2004, which is strictly in accordance with law and in accordance with the principles of law laid down by the Supreme Court in the matters of K.V. Jankiraman (supra) and I.A. Qureshi (supra) and for the reasons described herein. I do not find any good ground to interfere with the impugned order dated 31/01/2012 rejecting petitioner's representation for grant of notional promotion with effect from 23/05/2001 along with all the consequential service benefits.

12. Accordingly, the instant writ petition deserves to be and is accordingly dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet