

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2265 of 2019

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Shailesh Mishra, S/o- Surya Narayn Mishra, R/o- Ruchira Apartment, Flat no- 3/B, Anugrah Narayan Path, North Sri Krishnapuri, P.S.- Sri Krishnapuri, Patna. At Present Posted as Executive Engineer (Monitoring) Road Construction Department, Road Circle, Purnea, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Road Construction Department Bihar, Patna.
3. The Deputy Secretary (Management Cell) Road Construction Department Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Bhan Singh, Advocate
For the Resp- State : Mr. Mahtab Alam, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 11-11-2024

Heard Mr. Uday Bhan Singh, learned counsel for the petitioner and Mr. Mahtab Alam, learned counsel for the State.

2. The petitioner by filing the present writ petition prays for issuance of a writ in the nature of certiorari seeking quashing of the order contained in Memo No. 7173(S) dated 17.09.2018 issued under the signature of Joint Secretary, Road Construction Department, whereby the claim of the petitioner for grant of 2nd MACP has been rejected.

3. The short facts which led to the filing of the present writ petition are that the petitioner was initially appointed to the post of Assistant Engineer on 25.06.1987. On being found



eligible, the petitioner was extended the benefit of 1st ACP w.e.f. 09.08.1999. While the Screening Committee convened meeting on 08.11.2012 to consider the claim of the Assistant Engineers (Civil), Road Construction Department for grant of 2nd MACP; nonetheless, the name of the petitioner finds place at SI. No. 218, it has not been found favour on account of the alleged pendency of departmental proceeding as well as criminal proceeding.

4. Learned counsel for the petitioner while assailing the order impugned contended that the rejection of the claim of the petitioner was totally misplaced, as the date on which the petitioner became entitled to get the benefit of 2nd MACP on 09.08.2009 and the date on which the Screening Committee considered the claim of the petitioner along with others for grant of benefits under the 2nd MACP on 08.11.2012, there had neither been any departmental proceeding nor a criminal case pending against him. Drawing the attention of this Court to the impugned order, it is further contended that the promotion of a government servant may be denied only on account of the pendency of disciplinary/criminal proceeding or in case the employee(s) is under suspension. The disciplinary proceeding is said to be pending only with effect from the date on which the



memo of charge has been issued. So far the criminal proceeding is concerned, it is said to be pending with effect from the date when the charge-sheet is submitted, is the contention of learned counsel.

5. Referring to the afore-noted contention, learned counsel for the petitioner contended that admittedly the date on which the claim of the petitioner was under consideration before the Screening Committee, there was neither memo of charge issued to the petitioner nor the charge-sheet was filed in a criminal case. Thus, in no circumstances, it can be said that the departmental proceeding/judicial proceeding was pending against the petitioner.

6. On the other hand, learned counsel for the State countering the afore-noted submissions of the petitioner vehemently contended that the impugned order as contained in Annexure-5 clearly reveals that apart from the pendency of Vigilance P.S. Case No. 54 of 2010, there was recommendation made by the Patna Municipal Corporation for initiation of departmental proceeding. It is further contended that in the afore-noted criminal case, vide order dated 60 dated 05.07.2013, sanction for prosecution has also been accorded and the petitioner is still facing criminal case along with the



departmental proceeding. Learned counsel for the State supported the impugned order by making the submissions as afore-mentioned.

7. This Court has heard learned counsels for the respective parties.

8. The grant of MACP benefit is not a matter of right and it is after the Screening Committee finds that the officer meets the benchmark that an upgradation can be granted.

9. From the materials available on record, it appear that the date on which the Screening Committee convened meeting and the claim of the petitioner was under consideration along with other Assistant Engineers (Civil), there was neither any memo of charge issued against the petitioner nor any charge-sheet was submitted in Vigilance P.S. Case No. 54 of 2010.

10. The Hon'ble Supreme Court in the case of **Union of India and Others v. K.V. Jankiraman and Others [(1991) 4 SCC 109]** has in no uncertain terms clarified the position as to on which date the departmental/judicial proceeding shall be deemed to have been initiated. The Hon'ble Supreme Court unequivocally 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 proceeding is initiated against the employee. To deny promotion, the disciplinary/criminal proceeding must be at the relevant time pending at the stage when the charge-memo/charge-sheet has already been issued to the employee.

11. It would be apt and proper to quote paragraphs 16 and 17 of the afore-noted decision to clarify the position.

“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.

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 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. Thus read, there is no inconsistency in the two conclusions.”

12. In view of the settled legal position as also the Resolution No. 7457 dated 11.09.2002 issued by the Government of Bihar in the General Administrative Department, this Court has no hesitation to hold that the departmental proceeding is said to have been initiated with effect from the date when the memo of charge is issued or in case of judicial proceeding, the charge-sheet is submitted.

13. In the case in hand, the date on which the claim of the petitioner was considered by the Screening Committee, there was neither any memo of charge issued nor the charge-sheet was submitted in Vigilance P.S. Case No. 54 of 2010; hence, there was no departmental proceeding/criminal case pending against the petitioner, the date on which the Screening Committee convened the meeting.

14. In view of the aforesaid facts, this Court finds that the impugned order as contained in Memo No. 7173(S) dated 17.09.2018 is unsustainable and accordingly it is hereby set aside.

15. The matter is remitted to the concerned



department authorities, who shall place the case of the petitioner in the forthcoming Screening Committee for grant of 2nd MACP, in accordance with law.

16. Suffice it to say that on the recommendation of the Screening Committee, the concerned department shall ensure consequential benefits to the petitioner, preferably within a period of twelve weeks from the recommendation made by the Screening Committee.

17. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14-11-2024
Transmission Date	

