



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: February 22, 2024

+ W.P.(C) 2618/2024

(54) TH. GENLIANMANG

..... Petitioner

Through: Dr. S.S. Hooda and Ms. Rashmi
Rawat, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Radhika Bishwajit Dubey, SPC
with Mr. Hamendra Singh and Mr.
Jitendra Mishra for BSF
Mr. Shubham Prasad, GP

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“In view of the foregoing facts and circumstances, this Hon’ble Court may graciously be pleased to:

(a) Issue a Writ, order, or direction in the nature of certiorari thereby quashing and setting aside Rejection Order dated 01.08.2022 passed by the DG BSF; and

(b) Issue a Writ, order or direction in the nature of mandamus directing the Respondents No. 1 and 2 to consider the Petitioner for promotion to the rank of Inspector (Min) w.e.f. 28.01.2022 i.e. the date on which his immediate juniors were promoted; and

(c) Award costs of litigation in favour of the Petitioner; and

(d) Pass any other or further order/s as this Hon’ble Court may deem fit and proper in the facts and circumstances of



the case.”

2. The primary challenge in the present petition is to an order dated August 01, 2022 whereby the respondents have rejected the representation of the petitioner for non inclusion of his name in the promotion order to the post of Inspector (Min).

3. The submission of Dr. Hooda, learned counsel appearing for the petitioner is that though the petitioner, after the GSFC proceedings were held, was awarded the sentence of forfeiting four years of service for the purpose of promotion and for the purpose of pension, but not for seniority and pursuant thereto, the petitioner having attained the eligibility to be considered for promotion to the post of Inspector (Min) and his case having been considered, the same has been denied on the ground that the petitioner has been found unfit is arbitrary.

4. Dr. Hooda, has drawn our attention to page 30 of the paper-book more specifically paragraph 4 wherein the following has been stated as under:

“The candidature of the petitioner was assessed by the Departmental Promotion Committee held on 14.12.2021 for the vacancy year 2022 wherein the DPC has adjudged him as 'unfit' due to inconsistent record of service i.e. punishment awarded by GSFC under Section 20(a) of BSF Act 1968 meld with effect from 16.11 2017 to 20.11.2017.”

5. Mr. Hooda has further drawn our attention to the impugned order from paragraph 4 which reads as under:

“4. As per the instructions contained in para 5.2.3 of Guidelines on DPC issued by DOP&T vide OM No.22011/5/86-Estt (D) dated 10th April 1989, before making the overall grading after considering the CRs for the relevant years the DPC should take into account whether the officer has been awarded any major or



minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the ACRS The candidature of the petitioner was assessed by the Departmental Promotion Committee held on 14.12.2021 for the vacancy year 2022 wherein the DPC has adjudged him as 'unfit' due to inconsistent record of service i.e. punishment awarded by GSFC under Section 20(a) of BSF Act 1968 meld with effect from 16.11 2017 to 20.11.2017.

5. As per the instructions contained in para 6.1.2 of DoP&T CM No. 22011/5/86-Estt. (D) dated 10th April 1989, DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them.

6. As per instructions envisaged in para 7(g) of DoP&T OM dated 28.04. 2014, in assessing the suitability on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for the promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit for promotion.

7. The representation of petitioner dated 02.02.2022 seeking justice for not including his name in promotion order has been examined in the light of existing guidelines and provisions on the subject and found that while assessing his candidature by the DPC held for the vacancy year 2022, he was adjudged as "Unfit'.

8. Representation of No 990010472 SI(Min) Th Genlianmang was examined within the ambit of policy guidelines and the DG BSF has not considered his application being devoid of merit.

9. This is for information with request to communicate to No.990010472 SI(Min) Th Genlianmang of SHQ BSF Teliamura at your end, please."

6. It is his submission that it is primarily the punishment awarded by GSFC which weighed with the DPC to find the petitioner "unfit" for promotion to the post of Inspector (Min).



7. Hence, it is a case of double jeopardy.
8. We are not in agreement with the submission made by Dr. Hooda as the impugned order has to be read in totality and not separating the paragraph 4 with the other paragraphs.
9. The conclusion drawn in the impugned order is on the basis of overall record including the fact that the petitioner has been imposed the punishment by the GSFC, that the DPC has found the petitioner unfit for promotion.
10. In this regard, we may reproduce the judgment of the Supreme Court in the case of ***Union of India v. K.V. Jankiraman*** (AIR 1991 SC 2010) which has been referred to in the Office Memorandum dated April 28, 2014 of the Ministry of Personnel, Public Grievances and Pension Department of Personnel and Training in the following manner :

“5. The role of Departmental Promotion Committee(DPC) in assessment of the officers being considered for promotion, including the officer(s) against whom a chargesheet has been issued or on whom a penalty has been imposed, has been examined by the Supreme Court in several judgments. The observations of Supreme Court in some of the important cases are summarized as under:

.....

(b) In Union of India vs. K.V. Jankiraman case(AIR 1991 SC 2010), the Supreme Court has taken cognizance of role of DPC the case of an officer on whom a penalty has been imposed and has held that:

"An employee has no right to promotion. He has only right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to



ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed on par with the other employees, and his case has to be treated differently. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified."

11. So it follows that the DPC is within its rights to consider the whole record of a government servant while considering his case for promotion to a higher post i.e. Inspector (Min), in the present case.

12. Dr. Hooda had relied upon the judgment of the Supreme Court in the case of ***Shiv Kumar Sharma v. Haryana State Electricity Board, Chandigarh and Ors.*** 1988 (Supp) SCC 669, to contend that penalty cannot be a ground to deny promotion. The paragraph 6 thereof reads as under:

"6. We are unable to accept the above contention. The penalty was imposed on April 15, 1968 and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from December 1, 1969, that is, long after the date of confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by



placing him below his juniors in the seniority list.”

13. Suffice to state the said judgment has no applicability to the facts of this case in as much as in the said case the Supreme Court was concerned with a case wherein the imposition of penalty of stoppage of one increment has affected the seniority of the petitioner.

14. It is not such a case here. Even otherwise, the fact that the juniors have been found fit for being promoted surely shall march over the petitioner in so far as seniority is concerned.

15. The reliance of Dr. Hooda on the following stipulation in the OM dated April 28, 2014 is concerned, in view of the law, laid down by the Supreme Court as referred above, we are of the view, if the officer has been found unfit because of the overall record including the penalty, the above instruction has no applicability.

“7.....

i) While there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be in violation of the provisions of Article 20 of the Constitution”.

16. In view of the above, we do not see any merit in the petition and the same is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 22, 2024/So..