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Date: 23/10/2025

Mrs. Kiran Vs Coal India Ltd. and Others

CWJC No. 2280 of 2001

Court: Jharkhand High Court

Date of Decision: Dec. 17, 2002

Acts Referred:
Constitution of India, 1950 â€" Article 226

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: P.K. Prasad, Prabhash Kumar and T. Kabiraj, for the Appellant; M.M. Banerjee and A.K. Das, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.
The only question that falls for consideration in this writ application is whether denial of monetary benefits to the petitioner

while giving to the petitioner the retrospective promotion with notional seniority is justified?

2. The petitioner was appointed as Welfare Officer in 1985 in E-1 grade and, thereafter, he was given promotion to the next higher grade and

lastly in 1997 she was promoted to the post of Dy. Personal Manager in E-IV. After completing three years of experience in E-IV grade she

became entitled to promotion in E-V grade. The promotion to E-V grade is under the cluster concept which was introduced by Coai India Limited

in 1993 whereby and whereunder it was resolved that promotion from E-IV to E-V grade within cluster concept would be time bound and

automatic on completion of stipulated period as per Common Coal Cadre. However, by office order dated 20.3 2001 many persons in E-IV

grade who were juniors to tbe petitioner, were given promotion but the petitioner was deprived of her legal right and her case was kept in a state

of suspended lamination. The petitioner then represented before the Management of the respondents and she came to know that she was not given

promotion on the ground that a vigilance case is contemplated against her. The petitioner then filed the instant writ application challenging the

authority of the respondents to debar her from being promoted to E-V grade.

3. It appears that during the pendency of the writ petition promotion order of the petitioner has been issued by the respondents vide office order

dated 22.5.2002 and she was also given notional seniority and notional fixation of pay with effect from 22.3.2001 i.e. the date of issuance of the

first order of promotion under cluster concept but without any financial benefits. The petitioner by filing an amendment petition has challenged the

aforesaid office order on the ground that denial of financial benefits with effect from the date of promotion is wholly illegal and unjustified.

4. Respondents" case is that as per the provisions of Common Coal Cadre applicable to the Executive cadre employees of Coal India Ltd. and its

subsidiaries all promotion orders are issued only after obtaining vigilance clearance from the subsidiary companies where the recommended

Executives are posted. While furnishing vigilance clearance in respect of the recommended Executives of Central Coalfield Limited by the

departmental Promotion Committee including the petitioner it was intimated to Coal India Limited by CCL vide letter dated 27.3.20C1 that a

disciplinary proceeding for major penalty has been contemplated against the petitioner in the vigilance case. Hence the Petitioner was not entitled to

promotion to E-V grade from the date her batch-mates were promoted Le. on 22.3.2001. It is stated that on closure of the case pending against

the petitioner and after vigilance clearance the petitioner was promoted to the post of Personal Manager in E-V grade with notional seniority and

notional fixation of pay without any financial benefits as per the rules.

5. I have heard Mr. P.K. Prasad, learned counsels appearing on behalf of the petitioner and Mr. A.K. Das, learned counsel appearing for the

respondents.

6. Mr. Prasad assailed the impugned decision of the respondents denying monetary benefits to the petitioner while giving retrospective promotion

as being illegal and contrary to the settled principals of law. Learned counsel submitted that the mala fide of the respondents is evident from the fact

that it is only when the petitioner approached this Court by filing the instant writ application, the respondents issued promotion order dated

22.5.2002 giving, retrospective promotion with notional seniority but without any financial benefit. Learned counsel submitted that admittedly no

disciplinary proceeding or any proceeding against the petitioner was pending on the date when the persons junior to her have been given promotion

and further that the petitioner was denied promotion only on the plea of contemplation of a proceeding against her. Learned counsel put heavy

reliance on the decision of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., .

7. On the other hand, Mr. A.K. Das, learned counsel appearing for the respondents submitted that according to the provisions of Common Coal

Cadre applicable to the executives of Coal India Limited and its subsidiaries all promotion orders are issued only after obtaining vigilance clearance

from the Subsidiary companies. The petitioner was not given promotion in 2001 because it was reported that disciplinary proceeding was

contemplated against the petitioner. The promotion of the petitioner was held up because of contemplation of charges against her. According to the

learned counsel the petitioner was rightly given promotion with notional seniority in accordance with the provisions contained in office

memorandum dated 19/27.6.1979.

8. First of all I will deal with the office memorandum dated 19/27,6.1979 issued by Coal India Limited on the basis of which the petitioner was

denied monetary benefits. The said office memorandum reads as under:

COAL INDIA LIMITED

COAL BHAWAN

10 Netaji Subhash Road,

Calcutta 700 001

No. C-5A/50972 (Vo. 1) Pt/1334.

OFFICE MEMORANDUM

Sub : Promotion to a higher ; post of an officer who has been kept under suspension and/or against whom vigilance/departmental action is pending.

The issue relating to procedure to be followed with regard to promotion of an officer who has been kept under suspension and/or against whom a

vigilance/departmental action is pending, has been engaging the attention of the management for some time past. Taking into consideration the

extant rules and orders of the Government of India in this regard the following decision has been taken :

(a) All orders for promotion will be issued only after vigilance clearance.

(b) An executive, who has been placed under suspension pending enquiry and/or against whom departmental/vigilance proceedings are pending,

will be promoted, if selected and placed in the select list by a DPC, only after completion of the proceedings and his complete exoneration of the

charges. Such an officer shall be promoted In the first vacancy that may be available immediately after his complete exoneration with prospective

effect.

(c) When an officer has been completely exonerated and he is subsequently promoted, his seniority should be fixed as if he had been promoted in

accordance with the position assigned to him in the select list. Period of his eligibility for consideration for promotion to the next higher grade

should be reckoned with reference to the date his immediate junior has been promoted, the pay of such an executive on promotion should be fixed

notionally by allowing the intervening period during which the officers could not be promoted due to his suspension and/or pending departmental

enquiry to be counted for increments in the higher grade, but no arrears would be admissible to him. [Corrected as per No. C-5(A)/50972 (Vo. I)

Pt./1507 dated 10.7.1979].

(d) ""Complete exoneration"" shall mean conclusion of departmental proceedings without imposing any prescribed penalty, as per Conduct,

Discipline and Appeal Rules, out imposing any prescribed penalty, as per Conduct, Discipline and Appeal Rules.

(e) Sometimes an officer might have been warned. The "warning" is not a penalty under Conduct, Discipline and Appeal Rules, 1978. This is

administered by any authority superior to the executive in the event of minor lapses with a view to toning up efficiency and maintaining discipline.

Where, however, a copy of warning is also kept in the Confidential Report dossier it will be taken to constitute an adverse entry and the officer so

warned will have the right to represent against the same in accordance with the existing rules relating to communication of adverse remarks.

(f) Where, however, a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he

should be awarded one of the recognized penalties according to the Conduct, Discipline and Appeal Rules, 1978. In such a situation a recordable

warning should not be issued as it would, for all practical purposes, amount to ""censure"" which is a formal punishment under the Rules. In the

circumstances, if it is considered, after conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates

cognizance of such fact, the disciplinary authority should award the punishment of ""censure"" at least. If the intention of the disciplinary authority is

not to award a penalty, then no recordable warning should be awarded.

(g) If a recordable warning has already been issued as a result of disciplinary proceedings before issue of this Office Memorandum it should be

treated as ""censure"".

(h) Where departmental proceedings have ended with the imposition of a minor or major penalty, the recommendation of the Departmental

Promotion Committee in favour of the executive whose promotion was withheld due to his suspension and/or pending departmental enquiry will not

be given effect to but his case can be considered for promotion by the next DPC when it meets after conclusion of the Departmental proceedings.

2. These instructions will come into force with immediate effect.

9. From bare reading of the aforesaid provisions it is clear that promotion of Executive is withheld only in cases where such officer is under

suspension pending inquiry or against whom departmental/vigilance proceedings are pending and he shall be promoted in the first vacancy that may

be available immediately after his complete exoneration with prospective effect. This memorandum further provides that when an executive has

been completely exonerated and he has been subsequently promoted, his seniority should be fixed as if he had been promoted in accordance with

the position assigned to him in the select list. However, pay of such an executive on promotion should be fixed notionally by allowing the

intervening period during which the officer could not be promoted due to his suspension and/or pending departmental inquiry but no arrears would

be admissible to him. This memorandum, however, does not contain the circumstance when vigilance clearance shall be withheld.

10. Exactly a similar memorandum issued by the Government of India (Department of Personnel & Training) on the subject of promotion of

officers came for consideration before the Supreme Court in K.V. Jankiraman"s case (supra). In that memorandum also there was a provision that

cases of officers (a) who are under suspension or (b) against whom disciplinary proceeding is pending or decision has been taken by the

competent disciplinary authority to initiate disciplinary proceeding or (c) against whom prosecution has been launched in a Court of law or action

for prosecution has been issued, are considered for promotion by the Departmental Promotion Committee at the appropriate time but the findings

of the Committee are kept in sealed cover to be opened after the conclusion of the disciplinary/court proceedings.While the findings are kept in the

sealed cover, the vacancy which might have gone to the officer concerned, is filled only on an officiating basis. If on the conclusion of the

departmental/court proceedings the officer concerned is completely exonerated and where he is under suspension, it is held that the suspension

was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted

earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer

gets benefit of seniority and fixation of pay on an notional basis with reference to the date on which he would have been promoted in the normal

course but for the pending disciplinary/court proceedings, however, no arrears of salary are paid in respect of the period prior to the date of actual

promotion.

11. The question that came for consideration before the Supreme Court in the above referred case are : (i) what is the date from which it can be

said that disciplinary/ court proceedings are pending against an employee? (ii) What is the course to be adopted when the employee is held guilty in

such proceedings if the guilt merits punishment other than that of dismissal? (iii) To what benefit the employee who is completely and partially

exonerated is entitled to and from which date?

12. Answering the question their lordships held that if on the date on which the name of a person considered by the DPC for promotion to higher

post, such person is neither under suspension nor has any departmental proceeding been initiated against him, his name, if he is found meritorious

and suitable, has to be brought in the select list and the ""sealed cover procedure"" cannot be adopted. The recommendations of the DPC can be

placed in a "sealed cover; only if on the date of consideration of the name for promotion; the departmental proceeding had been initiated or were

pending or on its conclusion, final orders had not been passed by the appropriate authority. Their lordships observed as under :

On the first question, viz. as to when for the purposed of the sealed cover procedure the disciplinary/ criminal proceedings can be said to have

commenced, the Full Bench or 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 counsels/or 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 would 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.

13. The law laid down by the Supreme Court in Jankiraman"s case (supra) has been following in another case decided by the Supreme Court in

the case of Union of India and Others Vs. Dr. (Smt) Sudha Salhan, . where their lordships held that if on the date on which the name of the person

considered by the DPC for promotion to the higher post, such person is neither under suspension nor has any departmental proceeding been

initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the; "sealed cover procedure" cannot

be adopted.

14. A similar question arose before this Court in the case of Manoj Kumar Singh v. Coal India Limited, CWJC No. 624/ 2001, where this Court

held that promotion of an officer cannot be withheld merely because a departmental proceeding was initiated against him after the Departmental

Promotion Committee considered his case for promotion.

15. In the instant case, as noticed above, inspite of the petitioner fulfilling all the requirements and criteria for promotion under clusture concept her

name was left out from the promotion order dated 22.3.2001. The petitioner immediately filed representation for knowing the reason and she came

to know that vigilance clearance was withheld because a vigilance case was contemplated against her.

16. In the counter affidavit filed by the respondents the only stand taken is that vigilance clearance was not given only because a disciplinary

proceeding for major penalty was contemplated against her. The respondents have not in any of the affidavits, have stated that a vigilance case

was, in fact, pending against the petitioner muchless even preliminary inquiry was pending against the petitioner or any show cause or charge sheet

of contemplated action was pending against her. One more interesting point is that in the light of the principles laid down by the Supreme Court in

Jankiraman''s case (supra) the respondents have issued another office memorandum dated 14.5.2002 clarifying and prescribing the circumstance

under which grant of vigilance clearance shall be withheld. This office memorandum provides that grant of vigilance clearance shall be withheld only

on the following grounds :

(1) Officers under suspension.

(2) Officers in respect of whom prosecution for criminal charge is pending or sanction for prosecution has been issued or a decision has been taken

to accord sanction for prosecution.

(3) In the case of a preliminary inquiry, either by; the CBI or departmental agency, the competent authority, on consideration of the result of

investigation, has formed the opinion that a charge sheet may be issued on specific imputations for departmental action, and

(4) In case of a regular case the competent authority has decided to accord sanction for prosecution of the officer in Court.

This memorandum further clarifies that until the competent authority arrives at such a conclusion the officer may be treated at par with others in the

matter of promotion, confirmation etc.

17. Admittedly neither the petitioner was under suspension nor against his a prosecution for criminal charge was pending or sanction for

prosecution was issued or even preliminary inquiry either by CBI or departmental agency was pending or any opinion was formed for serving

charge sheet upon the petitioner. In my considered opinion, therefore, denial of promotion of the petitioner along with others was absolutely illegal,

arbitrary, capricious and malafides.

18. The next question that arose for consideration is whether in such circumstance while giving promotion to the petitioner with retrospective effect

with notional seniority, denial of monetary benefits by the respondents is justified? The only stand taken by the respondents is that as per the

provisions contained in the office memorandum dated 19/27.6.1979 the petitioner became entitled for notional seniority/notional fixation of pay but

without any arrears of pay.

19. As discussed above a similar provision contained in the office memorandum issued by the Union of India was considered by the Supreme

Court in Jankiraman''s case (supra). Rejecting the contention of the respondents that a person cannot be allowed to draw benefit of the post the

duty of which he has not discharged under the normal rule of ''no work no pay''. Their lordships observed :

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 proceeding, 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 nonavailability 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

20. In the light of the ratio laid down by the Supreme Court sub-para (c) of the office memorandum dated 19/27th June, 1979 contained in the

Common Coal Cadre, is liable to be modified as the same cannot be applicable in cases like in hand.

21. Taking into consideration the entire facts of the case and the law discussed hereinabove, that part of the impugned letter dated 26.7.2002

whereby while giving retrospective promotion with notional seniority denied monetary benefits to the petitioner with effect from 22.3.2001, is

quashed and jt is held that the petitioner is entitled to all the monetary benefits of the promoted post with effect from 22.3.2001. The respondents

are, therefore, directed to pay to the petitioner the entire monetary benefits of the promoted post (E-V) grade with effect from 22.3.2001.