

(2003) 07 PAT CK 0137

Patna High Court

Case No: C.W.J.C. No. 3001 of 2003

Prem Chand Chaudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: July 8, 2003

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.N. Jha, J.

By this writ petition the Petitioner seeks direction upon the Respondents to notify his promotion on the post of Additional District Magistrate in the Senior Selection Grade of the Bihar Administrative Service. The relevant facts are as follows.

2. The Petitioner was appointed as Deputy Collector in the Bihar Administrative Service in the year 1977. He was allowed time bound promotion with effect from 17.11.87, and later, regular promotion to the Junior Selection Grade with effect from 1.4.90. He was asked to submit an explanation with respect to circumstances relating to misuse of official telephone during his tenure as Sub-divisional Magistrate at Pakur between 17.4.93 and 4.10.97. On 12.9.97 the Petitioner was finally awarded the punishment of censure and withholding of one increment with cumulative effect. The said order was quashed by this Court in CWJC No. 1258/98 on 2.9.99. Meanwhile on 3.9.98 the Departmental Promotion Committee (DPC) had considered the Petitioner's case but kept his promotion on hold (debarred) till 31.3.99. This apparently was in view of the punishment awarded to the Petitioner on 12.9.97 which was later set aside by this Court. On 19.6.2000 the Departmental Promotion Committee considered the Petitioner's case afresh and recommended him for promotion to the Senior Selection Grade i.e. on the post of Additional District Magistrate. Council of Ministers also approved the recommendation. However, notification has not been issued while similarly situate officers-some of them junior to him-have been granted promotion.

3. The Respondents do not deny that the DPC found the Petitioner fit for promotion in its meeting on 19.6.2000, and the same was approved by the Council of Ministers. The stand of the Respondents is that before promotion could be notified the Petitioner was served with charge memo and departmental proceeding was initiated against him on 26.7.2002. In the circumstances, in view of the decision of the Supreme Court in [Union of India Vs. K.V. Jankiraman, etc. etc.](#), the Government decided to follow the "sealed cover" procedure and that is how his promotion has not been notified.

4. The Petitioner relies on two decisions of the Supreme Court in the cases of [Union of India and Others Vs. Dr. \(Smt\) Sudha Salhan](#), and [Delhi Jal Board Vs. Mahinder Singh](#), In the former case the Court observed as under:

If on the date (on) which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings 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. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had been passed by the appropriate authority.

In the latter case the Court observed as under:

The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary enquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary enquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated by the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior section.

5. From a plain reading of the above observations of the Apex Court, it is manifest that the case of the Petitioner is well founded and he must succeed. There is no dispute that on the date when the DPC took up consideration of his case, 19.6.2000, no departmental proceeding was pending against the Petitioner nor he was under suspension. The proceeding was initiated much later on 26.7.2002. The "sealed cover" procedure in the facts and circumstances cannot be applied. The suit would be that Petitioner's promotion already approved by the Council of Ministers must be notified.

6. I would however like to clarify that Petitioner's promotion would be without prejudice to the departmental proceeding duly initiated against him on 26.7.2002 which will be decided on its own facts in accordance with law.

7. In the result, the petition is allowed. Respondents are directed to issue necessary notification in regard to the promotion on the post of Additional Magistrate in the Senior Selection of the Bihar Administrative Service two weeks of receipt/production of this order.

8. The petition stands disposed of.