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Court : Rajasthan

Decided On : Jan-06-1993

Reported in : 1993WLN(UC)6

Judge : A.K. Mathur, J.

Appeal No. : S.B. Civil Writ Petition No. 1933 of 91

Appellant : Dev Dutt Vyas

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. M. Mridul

Judgement :

A.K. Mathur, J.

1. Petitioner by this writ petition has prayed that the respondents may be directed that the recommendations made by the Departmental Promotion Committee recommending name of respondent No. 3 for the post of Director, Government Press may be declared to be invalid and the respondents may be forbidden from giving effect to the recommendations of the D.P.C. and the respondents may be directed to appoint the petitioner to the post of Director of the Printing and Stationery, Government of Rajasthan.

2. Petitioner obtained a Diploma in printing Technology from Board of Technical Education, Uttar Pradesh. Petitioner came to be appointed for the post of Printing Foreman and was posted at Government Press, Alwar. Thereafter, he was promoted to the post of General-Foreman in the year 1967. Then the post of the Superintendent and of Assistant Superintendents in Government Presses were advertised by the Rajasthan Public Service Commission. Petitioner applied for the aforesaid post and he was duly selected in the year 1971 and was appointed on probation for a period of two years. He was confirmed on the post of Superintendent, Government Press vide order dated 15th February, 1974. The seniority list of the Superintendents and Assistant Superintendents was circulated vide order dated 29.6.1989 wherein the name of the petitioner appeared at serial No. 2 and the name of respondent No. 3 at item No. 3. He has also submitted that the respondent No. 3 was only selected for the post of Assistant Superintendent. In pursuance of the aforesaid advertisement, the respondent No. 3 was promoted on the post of Superintendent on 19th January, 1976.

3. One Shri Shiv Dutt Ramdeo whose name appeared at serial No. 1 retired as a Director, Government Press on 30.6.1990 and since then the post of the Director, Government Press fell vacant and petitioner being senior most Superintendent, was eligible and was entitled to be promoted as a Director. Therefore, he made a representation on 1st June, 1990 that petitioner may be appointed to the post of Director on account of retirement of Shri Shiv Dutt Ramdeo either on the urgent temporary basis or till the DPC is held on officiating basis. It is alleged that the Departmental Promotion Committee is reported to have been convened in July, 1990 but the same was postponed then another meeting was convened in the month of July-August, 1990 and it is alleged that none was found fit to be promoted to the post of Director on the basis of merit. Since this is the highest post in service, therefore, the candidate has to be selected on the basis of the merit, but since no suitable candidate was found suitable for post, therefore, the same was sought to be selected on the basis of seniority-cum-merit. It is alleged that the DPC again met in March, 1991 and they recommended the name of respondent No. 3 for promotion. Thereafter, petitioner made a representation and filed this writ petition and has prayed that the petitioner should be appointed on the post of Director, Government press as he is the senior most person.

4. The writ petition has been contested by the State as well as by the respondent No. 3. State has filed its reply and has taken the plea that the petitioner was found guilty of misconduct and for that a decision was taken by the Department to initiate disciplinary proceedings against the petitioner for misconduct under Rule 16 of the C.C.A. Rules. It is alleged that final chargesheet is likely to be served on petitioner after requisite sanction is received. The Departmental Promotion Committee on the basis of the service record decided to keep the recommendation with regard to the petitioner in sealed-cover and person next to him the respondent No. 3 was provisionally selected on the review and revision basis. It is further submitted that the respondent No. 3 would have been appointed on the post of Director, Government Press but petitioner filed this petition, and obtained the stay order from this Court against the implementation of the recommendations of the DPC. Meanwhile, respondent No. 3 has also superannuated.

5. It is not known what is the fate of the recommendation of the DPC qua petitioner as the recommendation of petitioner has already placed in a sealed cover on account of decision of the Government to initiate a disciplinary proceedings against the petitioner.

6. Mr. L.S. Udawat, Additional Advocate General stated at the bar that the chargesheet under Rule 16 of the C.C.A. Rules has not been served on the petitioner till this date, only preliminary inquiry was held against the petitioner.

7. Mr. M. Mridul, learned Counsel for the petitioner has submitted that simply because the Government proposed to initiate a departmental inquiry is no ground to withhold the recommendations of the DPC in a sealed cover. Learned Counsel for the petitioner has further submitted that the Hon'ble Supreme Court in Union of India v. K.V. Jankiraman has observed that such procedure of putting the recommendation in sealed cover when the charge-sheet has not been served on the incumbent is not correct. It was observed in the case of Union of India v. K.V. Jankiraman AIR 1991 Supreme Court, 2010 as under:

It is only when a charge-memo in a disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed

cover procedure is to be restored 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. The plea 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., would not be tenable. 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 to resort to the sealed cover procedure. The authorities thus, are not without a remedy.

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.

8. In view of observations of the Hon'ble Supreme Court that unless the charge-sheet has been served on the incumbent, the procedure of sealed-cover cannot be followed. In the present case no charge-sheet has been served on the petitioner and it is not known whether it is likely to be issued or not. It is also not known what is the recommendation of the DPC, therefore, no direction to appoint the petitioner on the post of Director, Government Press can be given. However, the respondents are directed to open the sealed-cover and if petitioner is found to be suitable for the post by the DPC then there is no reason why he should not be appointed on the aforesaid post.

9. In the result, I allow this writ petition in part and direct the respondent State to open the sealed-cover of the recommendation of the DPC and if the petitioner is

found suitable by the DPC then he may be appointed subject to departmental proceedings and he may be given the benefits from the date, he is entitled to. It will be open for the respondent to initiate a departmental proceedings and deal him in accordance with law.

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