

Mohan Singh Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : May-30-2002

Reported in : RLW2003(3)Raj1585; 2002(1)WLC750; 2002(5)WLN89

Judge : Sunil Kumar Garg, J.

Acts : Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rule 17

Appeal No. : S.B. Civil Writ Petition No. 6454 of 1992

Appellant : Mohan Singh

Respondent : State of Rajasthan and anr.

Advocate for Def. : R.R. Chhaparwal, Addl. G.A.

Advocate for Pet/Ap. : Sandeep Shah, Adv.

Disposition : Writ petition dismissed

Judgement :

Garg, J.

1. This writ petition under Article 226 of Constitution of India has been filed by the petitioner against the respondents on 30.11.92 with a prayer that the order dated July 14, 1992 (annex.2) may be quashed and set aside to the extent it excludes

the petitioner from promotion on the post of Deputy Jailor and it was further prayed that the petitioner's case for promotion to the post of Deputy Jailor be considered avoiding punishment of censure imposed upon him by order dtd. 5.4.91.

2. It arises in the following circumstances:

i) The petitioner entered the services of respondents being appointed as Warden with effect from 25.10.1960. At the time of initial appointment, the petitioner was posted at Central Jail, Udaipur.

ii) The petitioner was promoted as Head Warden with effect from 2.2.1970. Though the petitioner was holding the post of Head Warden, he was discharging the duties of clerk at Central Jail, Udaipur. Thereafter the petitioner was promoted vide order dated. 6.7.1976 passed by the respondent No. 2 as Assistant Jailor at the sub-jail, Bheem. The promotion of the petitioner was on temporary basis.

iii) Vide order dated 29.8.1984, the petitioner was promoted as Assistant jailor on the recommendations of Departmental Promotion Committee against the vacancies of 1983-84 and 1984-85. The petitioner was confirmed on the aforesaid post on completion of 1 years' service on probation with effect from 29th August, 1985.

iv) The respondent No. 2 issued a final seniority list (Annex. 1) pertaining to the Assistant Jailor as on 18.4.92, vide order dtd. 16.5.92. In the aforesaid seniority list, the name of the petitioner appeared at serial No. 23.

v) The respondent No. 2 passed an order dtd. 14.7.92 (Annex.2) by which the petitioner was not promoted to the post of dy. Jailor, but on the contrary, 5 persons from general quota who were junior to the petitioner were promoted and this order has been challenged in this writ petition on various grounds.

vi) The petitioner submitted various representations about his supersession and later on he was told that since he was given punishment of censure vide order dtd. 5.4.91 in an enquiry held under Rule 17 of the Rajasthan Civil Services (Classification, control and Appeal) Rules, 1958 (hereinafter referred to as the Rules of 1958), therefore, he was not given promotion.

vii) A memorandum under Rule 17 of the Rules of 1958 was served upon the petitioner is that punishment of censure is very minor punishment and on this ground alone, his seniority cannot be overlooked and thus impugned order dated. 14.7.72 (Annex.2) to the extent it excludes the petitioner from promotion on the post of Deputy Jailor be quashed and he should be given promotion and the punishment of censure imposed on him vide order dtd. 5.4.91 should be overlooked.

3. Reply to the writ petitions was filed by the respondents and their case is that since he was punished in an enquiry held under Rule 17 of the Rules of 1958, therefore, his promotion was rightly withheld.

4. The word 'promotion' covers not only advancement to a higher grade but also to a higher pay scale or to a higher post. Appointment to selection scale confers a higher status or rank and, therefore, it is promotion. An employee has no right to promotion but he has only a right to be considered for promotion.

5. It may be stated here that the employee found guilty in an enquiry under Rule 17 or 16 of the Rules of 1958 cannot be placed at par with other employees and his case has to be treated differently. There is, therefore no discrimination when in the matter of promotion, he is treated indifferently.

6. So far as question of suitability is concerned, the decision entirely rests upon the concerned authorities. In other words the concerned authorities are the sole Judge as to who is the most suitable candidate for giving promotion. No doubt censure is a minor penalty, but censure is a penalty and thus there can be no two opinion on this point.

7. Censure in my opinion is a penalty imposed after holding departmental enquiry for all purposes. Censure is a sort of formal and is minimum minor penalty under the Rules of 1958 to be imposed for an act of commission or omission which is blameworthy.

8. In the present case, there is no dispute on the point that in a departmental enquiry held under Rule 17 of the Rules of 1958 against the petitioner, the

disciplinary authority imposed upon the petitioner punishment of censure vide order dtd. 5.4.91 and the petitioner was superseded vide order dtd. 14.7.92 on the basis of punishment of censure imposed on him. There is also no dispute in this case that the petitioner at the time of promotion was considered by the Departmental Promotion Committee, But he was not found suitable for promotion because of imposition of penalty of censure in a Departmental Enquiry held against him under Rule 17 of the Rules of 1958.

9. It may be stated that the promotion is not right of a Government servant, but consideration of promotion is right. Since the case of the petitioner was considered by the Departmental Promotion committee and he was not found suitable for promotion because of imposition of punishment of censure, in these circumstances, if he was not promoted, it cannot be said that the order dated 14.7.92 (Annex.2) refusing him promotion is violative of any of the articles of the Constitution of India. In this regard, following judgment of the Hon'ble Supreme Court may be referred to: Union of India v. K.V. Jankiraman (1)

10. In the case of Union of India v. K.V. Jankiraman (supra), the Hon'ble Supreme Court has held as under: -

'It cannot be said that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. The officer cannot be rewarded by promotion as a matter of course even if penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a 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. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does

not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on the account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion such denial is not illegal authority can take into consideration the penalty or penalties awarded to an employee in the past while considering him promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.'

11. Thus; promotion of a person can be withheld on account of imposition of some minor penalties under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

12. Keeping the above aspect in mind, if the respondent after considering the case of the petitioner has not found him fit for promotion because of penalty of censure imposed on him in an enquiry held under Rule 17 of the Rules of 1958, it cannot be said that any fundamental or legal right of the petitioner has been infringed.

13. The learned counsel for the petitioner has placed reliance on the case S. Mukundan Menon v. State of Kerala (2), in which Kerala High Court has held that punishment of censure itself is not a ground for overlooking seniority in the matter of promotion.

14. No doubt the Kerala High Court in the case of S. Mukundan Menon (supra) has taken the above view and there is also no dispute on the point that there is no absolute bar for giving promotion on the basis of punishment of minor penalty imposed under Rule 17 of the Rules of 1958, but keeping in the mind the fact that the respondents after considering the case of the petitioner has not found him fit for promotion and keeping in mind the law laid down by the Hon'ble Supreme

Court in the case of K.V. Jankiraman (supra), this Court under Article 226 of the Constitution of India will not sit as court of Appeal and would not like to interfere with the discretion exercised by the concerned authorities, in the present case by the respondents, in not giving promotion to the petitioner as denial of promotion on the basis of punishment imposed under Rule 17 of the Rules of 1958, is not a penalty but is a necessary consequence of his conduct, thus, the impugned order dtd. 14.7.92 (Annex.2) does not suffer from any basic illegality.

15. So far as case of Bal Kishan v. Distt. Judge Pali (3), is concerned, this authority would also not be, helpful to the petitioner as the facts of the present case and that case are different in nature as in the present case the petitioner was punished after enquiry under Rule 17 of the Rules of 1958.

16. For the reasons mentioned above, the present petitioner is not entitled to the relief claimed for in the writ petition and the writ petition deserves to be dismissed.

17. Accordingly, the present writ petition is dismissed.

18. Cost made easy.