

GAHC010042822024



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1295/2024

PRANJAL KATAKI AND ANR
S/O LATE JOGENDRA NATH KAKATI, R/O VIP ROAD, ROOP KONWAR PATH,
CHACHAL, P.O.-KHANAPARA, P.S-DISPUR, GUWAHATI-781022, DIST-
KAMRUP (M), ASSAM

2: PRADIP KUMAR BHUYAN
S/O LT. PRAFULLA KUMAR BHUYAN
R/O ANIL NAGAR
BYE-LANE NO.1
HOUSE NO. 7
RAJGARH LINK ROAD
P.O.-ULUBARI
P.S.-GEETANAGAR
GUWAHATI-07
DIST- KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, GUWAHATI-06, DIST- KAMRUP (M), ASSAM

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI-06
DIST- KAMRUP (M)
ASSAM

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE (HOFF)
ARANNYA BHAWAN

PANJABARI
GUWAHATI-37
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. S KATAKI

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 21.06.2024

Heard Mr. S. Kataki, learned counsel for the petitioners. Also heard Mr. D. Gogoi, learned standing counsel for the Forest Department, representing all the respondents.

2. The petitioner no.1 is currently serving as Assistant Conservator of Forest and posted at DFO, Kamrup West and petitioner no.2 is presently serving as Assistant Conservator of Forest and attached to the Director, Assam Forest School, Guwahati. By a notification dated 22.02.2024, the Government in the Environment and Forest Department had granted promotion to 26 personnel to the next higher post of Deputy Conservator of Forest. However, the names of the petitioners were not reflected in the said notification. The petitioners came to know that their names were not included in the promotion list due to non-submission of vigilance clearance report. Accordingly, the petitioners had submitted a joint representation on 29.12.2023, to the Principal Chief Conservator of Forest and HOFF, Assam to grant promotion to the petitioners to the post of ACF to the next higher promotional post of DCF, which was not considered. Accordingly, by filing this writ petition under Article 226 of the

Constitution of India, the petitioners are praying to declare that the action of the respondents of resorting to seal cover procedure for promotion of the petitioners was illegal and arbitrary and for issuance of a direction upon the respondent authority to open the seal cover and if the petitioners are found to have been recommended, to direct the respondents to give them promotion to the next higher post.

3. The learned standing counsel for the respondents has vehemently opposed the prayer made in the writ petitioner and it was submitted that as there was a regular enquiry against the petitioner no.1 vide government letter dated 22.12.2014, while he was serving as a Ranger, Rani Range, Assam and similarly a regular enquiry is also pending against the petitioner no.2 vide government letter dated 22.12.2014, while he was serving as Ranger, Kulsi Range, Assam, and accordingly, the vigilance clearance for the petitioners was withheld. In support of his submissions, the learned standing counsel for the Forest Department has produced a copy of instruction and a copy of communication regarding vigilance clearance report vide (i) letter dated 04.04.2024 and (ii) No.eCF-297485/30. Copy of the said instruction and the communication regarding vigilance clearance report are kept as a part of record.

4. On examination of the instructions and documents produced by the learned standing counsel for the Forest Department, it appears that only a preliminary enquiry against the petitioners was initiated on 24.12.2014, which is still continuing for nearly 10 years. Therefore, till date, the petitioners have not been charge-sheeted either in a any criminal proceeding initiated against him or in connection with any departmental/ disciplinary enquiry.

5. Moreover, it appears that in this case washout theory as propounded by the Supreme Court of India in the case of *Badrinath Vs. Govt. of*

Tamil Nadu, (2000) 8 SCC 395, would apply as in the meanwhile, during the pendency of the purported regular enquiry, the petitioners have been promoted by a common promotion order no. FRE.111/2019/79 dated 26.02.2021. Therefore, if the authorities have any fresh material against the petitioner for the period after he was holding the post of Assistant Conservator of Forest, that only could have been a material before the respondent authorities for taking recourse to seal cover procedure.

6. It would be appropriate to quote paragraph 16 and 17 of the case of *Union of India & Ors. Vs. K.V. Jankiraman & Ors., (1991) 4 SCC 109*.

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of 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 counsel for 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. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the

Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2).....

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench-has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that 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. Thus read, there is no inconsistency in the two conclusions."

7. Therefore, this writ petition deserves to be and accordingly, allowed. It is held that the respondent authorities could not have resorted to a seal cover procedure in respect of the petitioners. It is also held that the cause for which the seal cover procedure was adopted in case of the petitioners is contrary to the law laid down by the Supreme Court of India in the case of *K.V. Jankiraman & Ors. (supra)*. Accordingly, the Secretary to the Govt. of Assam, Environment and Forest Department (respondent no.2) and/ or any other authority who are holding the seal cover of the result of the DPC in respect of the petitioners shall open the seal cover and announce the DPC recommendation and take appropriate measures as may be so warranted in the event the petitioners are found to have been recommended for the promotion to the next higher post. The entire exercise shall be completed within an outer time limit of 6(six) weeks from the date when a certified copy of this order is served on the respondent nos. 2 and 3.

8. The petition stands allowed to the extent as indicated above.
9. The parties are left to bear their own cost.

JUDGE

Comparing Assistant