

GAHC010174662016



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

**Case No. : WP(C)/8036/2017**

PAWAN KUMAR TIWARI  
AGED ABOUT 48 YEARS  
S/O ADYA PRASAD TIWARI  
R/O IG M.P. SECTOR  
BANGARASIA  
BHOJPUR ROAD  
BHOPAL M.P

VERSUS

THE UNION OF INDIA and 11 ORS.  
THROUGH MINISTRY OF HOME  
NEW DELHI

2:THE DIRECTOR GENERAL  
CENTRAL RESERVE POLICE FORCE  
NEW DELHI

3:THE INSPECTOR GENERAL PERS  
OFFICE OF THE DIRECTOR GENERAL  
CENTRAL RESERVE POLICE FORCE  
NEW DELHI

4:SRI RAJEEV RAI IRLA NO.3120  
SL. NO. 120 TO THE ALL INDIA SENIORITY LIST 22ND BATCH I.E. YR. 1991  
5:SRI R.S. RAUTELA IRLA NO.3122

SL. NO. 121 TO THE ALL INDIA SENIORITY LIST 22ND BATCH I.E. 1991

6:SRI SANJIV SHARMA IRLA NO. 3152

SL. NO. 133 TO THE ALL INDIA SENIORITY LIST SSCO-I.E. SHORT SERVICE  
COMMISSIONED OFFICER WHO IS RETIRED FROM ARMY and THEN JOINED  
CRPF ON EX.SERVICEMAN QUOTA

7:SRI BALDEV SINGH IRLA NO. 3244  
SL. NO. 135 TO THE ALL INDI SENIORITY LIST LOCAL PROMOTEE  
PROMOTED FROM LOWER RANKS

8:SRI SUMER SINGH IRLA NO. 3282  
SL NO. 136 TO THE ALL INDIA SENIORITY LIST LOCAL PROMOTEE

PROMOTED FROM LOWER RANKS  
9:SRI MOHINDAR KUMAR IRLA NO. 3429  
SL NO. 137 TO ALL INDIA SENIORITY LIST LOCAL PROMOTEE PROMOTED  
FROM LOWER RANKS  
10:SRI NARINDAR SINGH IRLA NO. 3347  
SL. NO. 139 TO ALL INDIA SENIORITY LISTSSCO-I.E. SHORT SERVICE  
COMMISSIONED OFFICER WHO IS REITIRED FROM ARMY and THEN  
JOINED CRPF ON EX. SERVICE MAN QUOTA  
11:SRI M.I. MALLIK IRLA NO. 3367  
SL. NO. 140 TO THE ALL INDIA SENIORITY LIST 23RD BATCH I.E. YR. 1992  
12:SRI SHEEL NIDHI JHA IRLA NO. 3363  
SL NO. 141 TO THE ALL INDIA SENIORITY LIST 23RD BATCH I.E. YR 1992

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Advocate for : MS.T KALITA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 11 ORS.

**- B E F O R E -**  
**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

Date of Judgment : 28.05.2024.

**:: JUDGMENT AND ORDER (ORAL) ::**

Heard Mr. S. Sarma, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC appearing for the respondents.

**2.** This writ petition is preferred by the petitioner, who is presently holding the post of Commandant in the Central Reserve Police Force. The petitioner initially joined his services as Deputy Superintendent of Police. Subsequently, he was promoted to the post of Deputy Commandant. During his service career, there were several representations filed by the writ petitioner for promotion, which were overlooked by the authorities. A departmental enquiry was instituted against the writ petitioner in the year 2009. The departmental enquiry concluded finally on 31.12.2013. The enquiry committee recommended the penalty of reduction of pay by two stages for 2 years without curtailing the increment of pay. Subsequently, the Departmental Promotion Committee (in

short DPC) recommended the petitioner for promotion on 22.06.2015. However, the promotion was subsequently given effect to with effect from 01.01.2016. The petitioner was found fit and recommended by the DPC for promotion on 22.06.2015. His promotion, however, was given with effect from 01.01.2016. Being aggrieved, the petitioner represented before the authorities concerned. The said application was subsequently rejected. Being aggrieved, he has approached this Court praying for appropriate reliefs.

**3.** The learned counsel for the petitioner submits that he had accepted the punishment imposed on him which was "stoppage of two increments for 2 years". He submits that during the period the petitioner was undergoing the penalty, his case was considered for promotion to the next higher rank and the DPC had recommended the petitioner for promotion on 22.06.2015. But the effect of the promotion was given only from 01.01.2016 on the ground that the petitioner did not complete the period of penalty.

**4.** The learned counsel for the writ petitioner referring to the Office Memorandum dated 10<sup>th</sup> October, 1962 submits that where the reduction is for a specified period and is not to operate, to postpone, further increment, the seniority of the Government servant may, unless the terms of the order of punishment provide otherwise, must be fixed in the higher service, grade, or post or the higher time scale at what it would have been but for his reduction.

**5.** The learned counsel for the petitioner submits that this provision of the office memorandum is also reflected in subsequent office memorandums, which is 03.07.1986. It is submitted that unless the terms of the order of punishment otherwise provide, the seniority of the Government Servants may be fixed in the higher service, of grade, or post or in the higher scale at what it would have

been but for his reduction. In support of his contention the learned counsel for the petitioner refers to and relies on the Judgment of the Apex Court rendered in *Union of India and Anr. Vs S.C. Parashar* reported in (2006) 3 SCC 167 . He submits that in this case the Apex Court has held that the penalty imposed on the Government Servant should be restricted to that extent.

**6.** Learned counsel for the petitioner strenuously urges that if the seniority is not granted to the petitioner in terms from the date his promotion was recommended, it will amount to double jeopardy as the penalty that was imposed on the petitioner was to the effect of loss of two increments for 2 years. There was no penalty in respect of the petitioner for loss of his seniority. However, the inaction of the respondent department in refusing to issue necessary orders for promotion, with effect from the date of recommendation will have the effect of loss of seniority for the period in question. He, therefore, submits that the respondents be directed to give him the benefit of his promotion as well as the seniority with effect from the date of his recommendation for promotion, namely, 22.06.2015.

**7.** Per Contra, Mr. B. Deka, learned CGC strongly disputes the submissions of the learned counsel for the petitioner. Mr. Deka, submits that the department has contested the case by filing an affidavit-in-opposition. He submits that there is no infirmity in the order passed by the respondent authorities in as much as the petitioner was undergoing the punishment at the relevant point in time, and therefore it is immediately upon completion of his punishment that the benefit of his promotion was granted. He submits that the petitioner was considered repeatedly by the DPC, but he was not found suitable for promotion. He, therefore, submits that the DPC vide its meeting held on 22.06.2015, found the petitioner suitable and recommended him for promotion to the next higher post.

However, in view of the fact that the petitioner was undergoing the penalty of stoppage of two increments for 2 years, the effect of the recommendation of the DPC can only be given after the petitioner completes the period of penalty as mentioned in the order imposing penalty. As the petitioner completed his period of penalty on the 31.12.2015, therefore, his promotion was given effective from 01.01.2016.

**8.** Mr. Deka, learned CGC referring to the Office Memorandum dated 14<sup>th</sup> September, 1992 submits that by the said Office Memorandum at clause 3.1, it is provided that if any penalty is imposed on the Government Servant as a result of the disciplinary proceedings, or if he is found guilty in criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him. He submits that under such circumstances, the benefit of the recommendation of promotion by the DPC was correctly given with effect from 01.01.2016 after the petitioner completed his period of penalty on the 31.12.2015.

**9.** Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. The Judgments cited at the bar have been carefully taken note of.

**10.** There is no dispute that the petitioner was subjected to a departmental proceeding and on the basis of the recommendation of the enquiry committee, the petitioner was imposed penalty of "stoppage of two increments for a period of 2 years". The petitioner was imposed the said penalty by order dated 31.12.2015. The effect of the penalty imposed was reduction of pay by two stages for 2 years, from 01.01.2014 to 31.12.2015. From the averments made

in the affidavit it is seen that the case of the petitioner was considered by the DPC on 19.03.2010, 01.02.2012, 15.03.2013, 02.07.2013 and 18.09.2014. In so far as the consideration of the case of the petitioner for the periods 19.03.2010, 01.02.2012, 15.03.2013 and 02.07.2013 were concerned, the petitioner's case was put in sealed cover. On 18.09.2014, petitioner was again considered for promotion and he was found unfit. Finally, the DPC, which was convened on 22.06.2015, which found the petitioner fit for promotion for a vacancy in the year 2015-16. However, the DPC recommended that the petitioner be given the benefit of promotion after the currency of the punishment. Accordingly, the punishment which was imposed on the petitioner was completed on the 31.12.2015, and thereafter, he was promoted to the rank of the Commandant with effect from 01.01.2016.

**11.** As far back as 10<sup>th</sup> October 1962, the Government of India, Ministry of Home Affairs have issued a Office Memorandum, where it is provided that where reduction is for a specified period and is not to operate to postpone future increment, seniority of the Government servant may, unless the terms of the order of punishment provide otherwise, be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his reduction. This is reiterated in the office Memorandum dated 03.07.1986 at Clause 4.2.2. On the other hand, office memorandum dated the 14<sup>th</sup> September, 1992 at clause 3.1 which provides that if any penalty is imposed on the government servant as a result of the disciplinary proceedings, and if he is found guilty in the criminal proceedings against him, the findings of the DPC put in the sealed cover/covers shall not be acted upon. Such cases for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

**12.** It is this provision that the respondent counsel has referred to in support of his contention that the department authorities had given effect to the promotion recommendation of the writ petitioner only after completion of the penalty period as per the said Office Memorandum. As such, notwithstanding the recommendation of the petitioner on 22.06.2015, since he had completed the period of punishment imposed only on 31.12.2015, the benefit of the effect of the promotion was given to the petitioner with effect from 01.01.2016.

**13.** Upon a careful perusal of the provisions of the various notifications referred to at the bar it is seen that the provisions of the Office Memorandum dated 14.09.1992 at Clause 3.1, refers to a situation where, pursuant to a disciplinary proceeding, if any penalty is imposed on the government servant, or if he is found guilty in a criminal proceedings, then the findings of the sealed cover shall not be acted upon. His case for promotion is to be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

**14.** In the facts of the present case, it is evident that the petitioner's case put under sealed cover during the stage at which the departmental proceedings were initiated against the writ petitioner. At paragraph 6 of the counter affidavit filed by the respondents there is a chart, which is reproduced below:-

SI No.	Date of DPC	Vacancy year	Outcome of the DPC
1	19/03/2010	2010-2011	Sealed Cover
2	01/02/2012	2012-2013	Sealed Cover
3	15/03/2013	2013-2014	Sealed Cover
4	02/07/2013	2013-2014 (Second panel)	Sealed Cover
5	18/09/2014	2014-2015	UNFIT (Taking overall view of the record)

**15.** From the chart, it is seen that for the vacancy years mentioned at serial No. 1 to 4, above, the petitioner's case although was considered by the DPC the outcomes of the DPC recommendations if any were placed in sealed cover. For the vacancy arising in the year 2014-15, petitioner was again considered and was found to be unfit. Finally, for the vacancies arising in the year 2015-2016, petitioner was found to be fit and the DPC in its meeting held on 22.06.2015 recommended his promotion.

**16.** From the above chart extracted, it is seen that notwithstanding the petitioner's case being put under sealed cover, his case was duly considered by the DPC. The provisions of Clause 3.1 of the Office Memorandum dated the 14.09.1992 cannot be interpreted in the manner as sought to be done by the learned counsel for the respondent. The impart of the paragraph 3.1 of the Office Memorandum dated 14<sup>th</sup> September, 1992 is very clear that once penalty is imposed on the government servant or if he is found guilty in criminal prosecution, findings of the sealed cover shall not be acted upon and his case for promotion may be considered by the next DPC in the normal course.

**17.** However, in the facts of the present case, it is seen that the petitioner's case has been repeatedly considered for several years and it is only upon the petitioner being found fit that the petitioner was granted promotion in the year 2015. However, the effect of the promotion was given to the petitioner only from 01.01.2016 on the ground that till 31.12.2015 the petitioner did not complete his penalty. Such inference cannot be drawn from paragraph 3.1. of the Office Memorandum dated 14<sup>th</sup> September, 1992 as the petitioner had already been recommended for promotion by the DPC for the year 2015-16. For such period, no sealed cover procedure was adopted by the respondents. As

such there was no occasion not to grant the benefit of the recommendation of the DPC to the petitioner. As such this submission of the respondent cannot be accepted and the same, therefore, stands rejected.

**18.** In *Shiv Kumar Sharma Vs Haryana State Electricity Board, Chandigarh and Ors.* reported in 1988 (Supp) SCC 669, the Apex Court was considering the issue regarding delayed confirmation of the appellant therein because of infliction of minor penalty or stoppage of one increment without future effect. The Apex Court upon examining the matter found that the question of seniority has got nothing to do with penalty. In the facts of the case, the Apex Court held that the appellant therein was punished twice, that is first by stoppage of his one increment for one year and second by placing him below his juniors in the seniority list. The Apex Court held that if the government servant is found to be unsuitable, his services may be terminated on the other hand if he is found to be suitable, then he should be allowed to continue in service.

**19.** In the present proceedings, a similar situation has arisen. The petitioner was imposed a penalty of stoppage of two increments for a period of 2 years. However, notwithstanding that his case was considered on several occasions by the DPC and for the vacancies arising in the year 2014-15, as the petitioner was finally found to be suitable, he was recommended for promotion to the higher post of Commandant and that his recommendation was made by the DPC on the 22.06.2015, however, the effect of the same was given only from 01.01.2016 on the ground that till 31.12.2015, the petitioner did not complete/undergo his period of penalty. Such action of the respondents by reference to Clause 3.1 of the Office Memorandum dated 14<sup>th</sup> September, 1992 cannot be accepted to be legally correct. There is no provision pointed out under the various Office Memorandums or under the Rules by the respondent

counsel to suggest that till the government servant does not complete/undergoes the period of punishment, the benefit of promotion cannot be granted.

**20.** Under such circumstances, this Court is of the considered view that the petitioner's claim for being granted benefit of his promotion with effect from the date of recommendation which is 22.06.2015 finds force and is ordered accordingly.

**21.** This writ petition is allowed as indicated above and the respondents are directed to grant the benefit of seniority with effect from the date he was recommended which is 22.06.2015 instead of 01.01.2016.

**22.** The effective order by the respondents as directed shall be issued within a period of 60 (sixty) days from the date of receipt of certified copy of this order.

**23.** Writ petition is accordingly allowed and disposed of.

**JUDGE**

**Comparing Assistant**