

CASE NO.:
Appeal (civil) 2020 of 2007

PETITIONER:
Union of India & Ors

RESPONDENT:
A.N. Mohanan

DATE OF JUDGMENT: 18/04/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T
CIVIL APPEAL NO. 2020 2007
(Arising out of SLP (C) No. 26408 of 2004)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment of the Division Bench of the Kerala High Court dismissing the writ petition filed by the appellants. In the writ petition challenge was made to the order passed by the Central Administrative Tribunal, Ernakulam Bench (in short the 'CAT') in O.A. No. 203 of 2002.

The controversy lies within a very narrow compass.

Departmental enquiry was started against the respondent on 3.8.1999. The Departmental Promotion Committee (in short the 'DPC') made the selection on 1.11.1999. Since the enquiry was pending against the respondent, sealed cover procedure was adopted. On 13.9.2001 the penalty of censure was awarded. Promotion was granted to the respondent on 26.11.2001. However, he claimed that promotion should have been given to him with effect from 1.11.1999. He moved the CAT seeking for such direction. CAT by its order dated 18th June, 2004 held that penalty of censure is not a bar for promotion and though the sealed cover procedure was adopted, the sealed cover should have been opened and the recommendation of DPC should have been given effect to by giving the respondent promotional benefit with effect from 1.11.1999.

The order of CAT was challenged before the High Court by filing a writ petition. The High Court noted that awarding of penalty of censure would not affect the promotion of the respondent and the department was not right in contending that the awarding of penalty (censure) would stand on the way of promotion. Accordingly the writ petition was dismissed.

Learned counsel for the appellants submitted that the effect of Rule 3.1 of the Office Memorandum relating to promotion of government servants dated 14.9.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and

Training, has been lost sight of. According to him, Rule 3.1 clearly postulates that where penalty has been imposed, findings of the sealed cover/covers are not to be acted upon and the case of promotion can be considered by the next DPC in the normal course.

Learned counsel for the respondent on the other hand submitted that the awarding of penalty i.e. censure was not the sole ground for seeking promotion with effect from 1.11.1999, and it was because of the conclusion that the validity of previous panel had been exhausted.

Few Rules as contained in the Office Memorandum need to be noted.

Rules 3 and 3.1 read as follows:

Rule 3 : On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the Junior, most officiating person. He may be promoted notionally with reference to the date of promotion of junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc., these are only some of the circumstances where such denial can be justified.

Rule 3.1: If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the Criminal prosecution against him, the finding 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."

Though learned counsel for the respondent submitted that awarding of censure does not amount to awarding of penalty, the same is clearly untenable. In Union of India etc.etc. v. K.V. Jankiraman etc.etc. (AIR 1991 SC 2010) at page 2017 it was held as follows:

"We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears

of salary or part of it, it will record its reasons for doing so."

Awarding of censure, therefore, is a blameworthy factor. A bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside.

The appeal is allowed without any orders as to costs.