

publication of the notification. That would be contrary to the provisions of sub section (4) of Section 17 and clearly impermissible. It must thus be held that the declaration under section 6 of the Act cannot be made prior to the date of publication of the notification under section 4 of the Act. The question posed in the earlier part of the judgment has to be declaration under section 6 was made on 23rd January, 1998 whereas notification under Section 4 was published in two newspapers on 2nd February, 1998 which has to be taken as the date of its publication. Since the declaration under section 6(1) was made prior to the date of publication of the notification under section 4, which is contrary to the scheme of the Act, the same cannot be sustained.

(5) In the result, the writ petition is allowed and the declaration published on 23rd January 1998 quashed. It will, however, be open to the respondents to proceed in accordance with law. There is no order as to costs.

J.S.T.

Before R.S. Mongia & K.C. Gupta, JJ

NIRMAL SINGH,—*Petitioner*

versus

F.C.I. AND OTHERS—*Respondents*

C.W.P. No. 17040 of 1999

18th September, 2000

Constitution of India, 1950—Art. 226—Food Corporation of India Staff Regulations, 1971—Reg. 68—F.C.I. initiating proceedings for a major penalty against the petitioner—Regular inquiry ordered as reply of the petitioner found not satisfactory—Zonal Manager (FCI) issuing order promoting the petitioner but actual promotion not given on account of the pendency of the enquiry—Enquiry Officer recording a finding in favour of the petitioner—Sr. Regional Manager, FCI, disagreeing with the enquiry report and inflicting a major penalty after considering the reply of the petitioner—Appellate Authority exonerating the petitioner with all consequential benefits—Whether on being exonerated from the enquiry, petitioner's promotion can be withheld because of pendency of some other subsequent enquiries—Held, no—If he is found guilty in subsequent enquiries he can be awarded punishment in the promoted rank.

Held that the record of a particular officer for purpose of promotion has to be considered only upto the date the consideration takes place.

If an enquiry is pending on that date, a sealed cover method can be resorted to or the promotion can be kept in abeyance till the departmental enquiry is over. On being exonerated, the promotion cannot be withheld on the ground that when the exoneration was ordered in the earlier enquiry, some other enquiry or enquiries had been started later on, which have not reached the final stage. If this is allowed perhaps an officer may not get promotion at all. If a person is found guilty in the subsequent enquiries he can be awarded punishment in the promoted rank.

(Para 8)

Further held, that the respondents are not justified in withholding the promotion of the petitioner as Assistant Grade I with effect from 18th September, 1991. Consequently, we allow the writ petition and direct the respondents to promote the petitioner with all consequential benefits.

(Para 10)

J.S. Wasu, Advocate,—*for the petitioner.*

N.S. Boparai, Advocate,—*for the respondent.*

JUDGMENT

R.S. Mongia, J

(1) The petitioner, who was working as an Assistant Grade-II (D) with the respondent-Food Corporation of India (hereinafter referred to as the Corporation), was issued a charge-sheet on 9th May, 1991 for initiating proceedings for a major penalty. Since the reply to the charge-sheet was not found satisfactory, a regular enquiry was ordered to go into the charges. However, on 18th September, 1991, an order of promotion was issued promoting the petitioner as Assistant Grade-I (D) by the Zonal Manager (North), FCI. A copy of the order has been appended as Annexure P. I. However, actual promotion was not given to the petitioner by the Senior Regional Manager, FCI, Punjab Region, Chandigarh on account of the pendency of the enquiry, as aforesaid. The petitioner filed a representation that pendency of the enquiry was no impediment to actually giving promotion to the petitioner as per order dated 18th September, 1991. Since the representation did not bear any fruit, the petitioner filed CWP No. 16607 of 1992 in this Court for directing the respondents to actually and physically give promotion to the petitioner as Assistant Grade-I. That writ petition was disposed of at the motion stage by giving directions to the respondents to decide the representation of the petitioner by passing a speaking order within

a period of three months. However, the representation of the petitioner was rejected,—*vide* order dated 20th/22nd April, 1993, by placing reliance on H.Qr. circular No. 36/92 dated 17th December, 1992, read with Department of Personnel and Training Circular OM No. 22011/4/91-Estt. (A) dated 14th September, 1992. However, it was mentioned in the order rejecting the representation that the petitioner would be promoted in case he was completely exonerated of the charges levelled against him in the charge-sheet dated 9th May, 1991, which was being enquired into by the enquiry officer. After holding the enquiry, the enquiry officer submitted his report on 26th February, 1995, holding that the charges levelled against the petitioner were not proved. A show cause notice dated 2nd March, 1995 was issued to the petitioner wherein it was mentioned by the Senior Regional Manager of the Corporation that the tentatively intended to disagree with the enquiry report dated 26th February, 1995, on certain grounds and the petitioner was given an opportunity to make representation if he so desired. A copy of this notice has been appended as Annexure P. 3 with the writ petition. The petitioner filed a reply to the show cause notice. The Senior Regional Manager did not agree with the reply of the petitioner and inflicted a major penalty of stoppage of three increments with cumulative effect and also ordered recovery of Rs. 14515.30 from the petitioner.

(2) Petitioner filed a statutory departmental appeal under Regulation 68 of the FCI Staff Regulations, 1971 against the order of imposition of penalty. The appeal was decided by the Zonal Manager (North) FCI, New Delhi and,—*vide* order dated 20th/22nd January, 1999. Annexure P. 5, exonerated the petitioner with all consequential benefits. On 8th March, 1999, the petitioner made a representation to the Senior Regional Manager of the FCI that in view of the complete exoneration of the petitioner by the appellate authority with all consequential benefits the petitioner should now be given physical promotion to the rank of Assistant, Grade-I, which was ordered on 18th September, 1991. Since there was no response to the representation of the petitioner, he got served a legal notice also on 3rd June, 1991, which also did not bear any fruit. Hence the present writ petition.

(3) Notice of motion was issued. Reply has been filed on behalf of the respondents.

(4) It has been stated in the written statement that as per the order dated 18th September, 1991, by which the petitioner was promoted, it had clearly been mentioned that “it may be ensured that no vigilance case is pending/contemplated against the official before

the release of promotion orders by the concerned authority." Since there were five subsequent enquiries pending against the petitioner on different charges, out of which the charge-sheets in four cases were issued in 1998 and in one case where the charge-sheet was issued in 1993 and recovery of Rs. 7189.60 had been ordered, the petitioner could not be given physical promotion to the rank of Assistant, Grade-I (D), pursuant to the order, dated 18th September, 1991.

(5) Learned counsel for the petitioner argued that the petitioner's promotion,—*vide* order dated 18th September, 1991 could be withheld or kept in abeyance as on that date an enquiry was pending, but after being exonerated from the same the petitioner's promotion cannot be withheld with effect from 18th September, 1991 because of pendency of some enquiries subsequently started in the year 1998. According to the learned counsel, for promotion with effect from 18th September, 1991, which in fact had been ordered, the record only upto the date of consideration for promotion had to be taken into consideration and the subsequent enquiries can have no bearing on the petitioner's promotion with effect from 18th September, 1991. In support of his contention, learned counsel for the petitioner cited judgments reported as *Bank of India & another v. Degala Suryanaryana* (1), *Des Raj v. Food Corporation of India* (2) and *State Bank of Patiala & Ors. v. O.P. Latka* (3) (both Division Bench judgments of this Court) and *New Bank of India v. N.P. Sehgal* (4).

(6) On the other hand, learned counsel for the respondents argued that since in the order of promotion, dated 18th September, 1991, it was clearly contemplated that it should be ensured that no vigilance case is pending/contemplated against the official before the release of promotion orders by the concerned authority, the petitioner cannot be promoted as enquiries are pending against him.

(7) After hearing the learned counsel for the parties we are of the view that the writ petition is liable to succeed.

(8) It is by now well settled that the record of a particular officer for purpose of promotion has to be considered only upto the date the consideration takes place. If an enquiry is pending on that date, a sealed cover method can be resorted to or the promotion can be kept in abeyance till the departmental enquiry is over. On being exonerated, the promotion cannot be withheld on the ground that when the exoneration was ordered in the earlier enquiry, some other enquiry or

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- (1) 1999 (4) SLR 292 (S.C.)
 - (2) 1996 (2) SLR 781
 - (3) 1995 (3) RSJ 148
 - (4) 1991 (1) RSJ 789 (SC)

enquiries had been started lateron which have not reached the final stage. If this is allowed perhaps an officer, as in the present case, may not get promotion at all. If a person is found guilty in the subsequent enquiries he can be awarded punishment in the promoted rank. The authorities cited by the learned counsel for the petitioner do support the above mentioned view. In para 14 of the judgment in Degala Suryanarayana's case (*supra*), it was observed by the Apex Court as under :—

“14. However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (*see Union of India etc. etc. v. K.V. Jankiraman etc.*, AIR 1991 (SC) 2010 (2113), 1991 (5) SLR 602 (SC). As on 1st January, 1986 the only proceedings pending against the respondent were the criminal proceedings which ended into acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge sheet on 3rd December, 1991. In the year 1986-87 when the respondent became due for promotion and when the promotion committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. proceedings initiated at the fag end of the year 1991. The High Court was, therefore, right in directing the promotion to be given effect to which the respondent was found entitled as on 1st January, 1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1st January, 1986.”

(9) In Des Raj's case (*supra*), in paragraph 6 it was observed as under:—

“We are not in agreement with the stand taken by the respondents in view of the settled position of law laid down in various

authorities and in this regard we would like to refer to The State Bank of Patiala and Ors. v. O.P. Latka, 1995 (3) RSJ 148 (DB) an authority of this Court—in which it was clearly laid down that when disciplinary proceedings had not started against the employee on the dates when the written test and the interview for promotion were carried out and the promotional process was going on, any subsequent charge sheet does not give any right to the management to put the result regarding the promotion of the employee in the sealed cover. Admittedly, there was no charge sheet or any penal action as on 30th December, 1987, which is the material date for our determination. In these circumstances the respondents were not justified in withholding the promotion of the petitioner, when the promotion order was passed,—*vide* Annexure P.1. At the most as on 30th December, 1987, the Department was contemplating some inquiry. Such contemplation may or may not become effective. The matter was again considered in another authority of the Hon'ble Supreme Court reported as New Bank of India v. N.P. Sehgal and another, 1991 (1) RSJ 789, 1991 (2) SLR 59 (SC), their Lordships of the Apex Court were pleased to hold that when the disciplinary proceedings were contemplated or under consideration against an employee, it does not constitute a good ground for not considering the employee concerned for promotion, if he is in the zone of consideration. The case in hand is on better footing than the one, just relied upon by us. In the present case, the order of promotion of the petitioner, making him Assistant Grade-I (Depot) was passed. This order could not be withheld or withdrawn under the garb of contemplated inquiry. Such like matters again came into consideration of the Apex Court and our attention has been invited to the case reported as The State of Madhya Pradesh v. Bani Singh and another, 1990 (2) RSJ 38, 1990 (2) SLR 798 (SC), and it was the view of the Hon'ble Supreme Court that a promotion of an employee could not be withheld merely on the ground of pendency of disciplinary proceedings which had not even reached at the stage of framing of charge after *prima facie* case is established. The ratio of this authority is applicable to the facts of the case in hand. In this context we also reply on Union of India v. K.V. Jankiraman (*supra*), wherein it was held that sealed cover proceedings can be restored to only after issuance of charge-memo/charge sheet to an employee. Even the pendency of a preliminary investigation prior to that stage is not sufficient to enable the authorities to adopt his

procedure. Shir Hemant Kumar, learned counsel, appearing on behalf of the respondents, made an attempt, but in vain, by drawing our attention to the instructions (R. 3). In our considered view these instructions cannot supersede the law of the land and any instructions contrary to the established law have to be ignored.”

(10) In view of what has been observed above, we are of the opinion that respondents are not justified in withholding the promotion of the petitioner as Assistant Grade-I with effect from 18th September, 1991. Consequently we allow this writ petition and direct the respondents to promote the petitioner as Assistant Grade-I with effect from 18th September, 1991 with all consequential benefits. Let these directions be carried out within a period of two months.

(11) A copy of this order, attested by the Special Secretary of this Court, be given to the learned counsel for the respondents for onward transmission to the concerned quarters.

S.C.K.

Before Amar Bir Singh Gill, J

ANAND SINGH DANGI,—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

CRIMINAL MISC. No. 16172/M of 2000

8th June, 2000

Code of Criminal Procedure, 1973—S. 438—Indian Penal Code, 1860—Ss. 218, 406, 409, 418, 420, 467, 471 & 120-B—Prevention of Corruption Act, 1988—S. 13(i) (d)—Displaced Persons (Compensation and Rehabilitation) Act, 1954—S. 2 (e)—F.I.R. against an Ex. Revenue Minister of Haryana & others on the allegations of glaring irregularities/illegalities in the allotment of land to persons not entitled to under the 1954 Act—Minister approving allotments to his favourites, causing wrongful loss to the State by misusing his official status and amassing unaccounted wealth disproportionate to his known sources of income—Fake allotments made without following the norms and procedures prescribed under the 1954 Act and the rules framed thereunder—Custodial interrogation of such accused is necessary to collect information and the material which otherwise would remain concealed—Ex-Minister not entitled to concession of anticipatory bail—