

State of M.P. and Another

Vs

Syed Naseem Zahir and Others

Civil Appeal No. 4198 of 1992

(Kuldip Singh, N. M. Kasliwal, B. P. Jeevan Reddy JJ)

13.10.1992

JUDGEMENT

KULDIP SINGH, J.:-

1. Special leave granted.

1A. Syed Naseem Zahir (Syed) joined service in the Irrigation Department of the State of Madhya Pradesh as Assistant Engineer on August 26, 1953. He was promoted as Executive Engineer in 1962. He was further promoted to the post of Superintending Engineer in April, 1978. In the year 1986 his name was included in the panel for promotion to the post of Chief Engineer but neither he nor anyone junior to him was promoted. The Departmental Promotion Committee (DPC) met on October 28, 1987 and considered his name for promotion. Since disciplinary proceedings were contemplated against him, the recommendation of the DPC qua him was kept in "sealed cover". On April 15, 1988 he was served with a charge-sheet.

2. Syed filed a writ petition before the Madhya Pradesh High Court on April 20, 1988 challenging the adoption of "sealed cover" procedure by the DPC and claimed that he was entitled to promotion specially when a person junior to him had been promoted. The writ petition was transferred to the Madhya Pradesh Administrative Tribunal (Tribunal) which allowed the same by its judgment dated February 7, 1992 and directed the State of Madhya Pradesh to promote Syed to the post of Chief Engineer as per the position which existed in February, 1986 or in any case to act in accordance with the "sealed cover" recommendation of the DPC which met in the year 1987. This appeal by way of special leave is by the State of Madhya Pradesh against the judgment of the Tribunal.

3. We make it clear that the learned counsel appearing for respondent Syed has confined his claim for promotion on the basis of the recommendation of the DPC which met in 1987. Even otherwise we are of the view that the Tribunal was not justified in directing his promotion from February, 1986.

4. The Tribunal allowed the application of Syed on the short ground that the Departmental Promotion Committee which met on October 28, 1987 acted illegally in adopting the "sealed cover" procedure. Relying upon the judgment of this Court in Union of India v. K. V. Jankiraman, (1991) 4 SCC 109 : (AIR 1991 SC 2010), the Tribunal came to the conclusion that "the sealed cover" procedure could be adopted only after the date of issuance of charge-sheet, that being the date from which disciplinary proceedings could be taken to have been initiated. Since in this case, admittedly,

on the date when the DPC met the charge-sheet had not been served on Syed, resort could not be had to the "sealed cover" procedure. The reasoning and the conclusion of the Tribunal are unexceptionable. The only question for our consideration is whether in the facts and circumstances of this case specially in view of the events subsequent to the meeting of the DPC, it would be in the interest of justice to promote respondent Syed to the post of Chief Engineer.

5. Syed was posted as Superintending Engineer, Mahandi Project Circle, Raipur where he was in charge of Ravishankar Sagar Project, Sondur Dam and the canals connected with the project. He was in charge of the total construction of the project. He continued in the said posting till August 3, 1986. In April, 1986 and thereafter State Government received various complaints against Syed indicating that he made excess payments towards the construction of the project. The State Government received a preliminary report on the said complaints from the Chief Engineer in charge on January 30, 1987. The report disclosed that respondent Syed committed irregularities which resulted in a loss to the State Government to the tune of rupees eighty lakhs. After examining the report the State Government ordered on the file on September 30, 1987 that departmental proceedings be initiated against him. As mentioned earlier he was served with the charge-sheet on April 15, 1988. It is not disputed that the departmental enquiry has been completed and the charges against Syed have been proved. According to the State Government keeping in view the gravity of the charge and the heavy financial loss to the State Government it has been tentatively decided to impose major penalty upon him and for that purpose the proceedings have been referred to the Madhya Pradesh Public Service Commission. It is admitted by respondent Syed in his counter-affidavit before this Court that he has received the enquiry report on August 25, 1992.

6. It is no doubt correct that in view of Jankiraman's case (AIR 1991 SC 2010) the DPC was not justified in keeping the recommendation pertaining to Syed in a "sealed cover", but it is difficult to ignore glaring facts in a given case and act mechanically. Even in Jankiraman's case (AIR 1991 SC 2010) while dealing with Civil Appeals Nos. 51-55 of 1990 this Court observed as under (Para 17 of AIR) :-

"In view of the aforesaid peculiar facts of the present case, the DPC which met in July, 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August / December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary."

Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of respondent Syed be not opened till the departmental proceedings against him are concluded. As mentioned above the enquiry report has already been received by Syed and it is a matter of days before the disciplinary proceedings would come to an end. In case he is completely exonerated, the "sealed cover" shall be opened and if the recommendation is in his favour, he shall be notionally promoted with effect from the date when a person junior to him was promoted to the post of Chief Engineer. In that event, he shall be entitled to all consequential benefits including backwages. In case, respondent Syed Naseem Zahir is punished in the proceedings, then action would be taken in accordance with the wages guidelines as laid down by this Court in Jankiraman's case, (AIR 1991 SC 2010).

7. We set aside the judgment of the Tribunal and allow the appeal in the above terms. No costs.

Order accordingly.

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