

State of M.P. and Another

Vs

I. A. Qureshi

Civil Appeal No. ... of 1996

(S. C. Agarwal, G. T. Nanavati JJ)

04.01.1996

ORDER

1. Special leave granted.
2. This appeal is directed against the judgment dated 24-2-1993, passed by the M.P. State Administrative Tribunal, Jabalpur Bench, in OA No. 2402 of 1992 (hereinafter referred to as "the Tribunal").
3. The respondent is employed as Executive Engineer in the Public Works Department of the Government of Madhya Pradesh. Departmental proceedings were initiated against him on charges of misconduct. During the pendency of those proceedings, Departmental Promotion Committee (hereinafter referred to as "the DPC") considered the case of the respondent for promotion to the higher post of Superintending Engineer. In view of the pendency of departmental proceedings against the respondent, the recommendations of the DPC as regards the respondent were placed in a sealed cover. In the departmental proceedings, minor penalty of censure was imposed on the respondent. Thereafter, the respondent filed an application (OA No. 2402 of 1992) before the Tribunal wherein he sought the relief that the sealed cover containing the recommendations of the DPC should be opened and the recommendations of the DPC be given effect to. The said application of the respondent has been allowed by the Tribunal by the impugned order. The Tribunal has directed that the sealed cover be opened and that appropriate orders be issued in accordance with the recommendations of the DPC and the question whether the respondent should be promoted retrospectively or otherwise should be considered on the basis of the recommendations of the DPC.
4. Shri S. K. Agnihotri, the learned counsel appearing for the appellants, has submitted that the Tribunal was in error in directing opening of the sealed cover in the facts of this case. In this context, Shri Agnihotri has invited our attention to the circular dated 2-5-1990 which contains the guidelines in the matter of giving effect to the minor punishment of censure about the promotion of government servants. A translated version of the said circular has been filed on behalf of the appellants. Clauses (i) and (ii) of the said circular are reproduced hereunder :

"(i) Vide letter dated 31-1-1964, this has been directed that in the cases of those officers against whom either departmental enquiry is pending or who have been suspended on the recommendations of the DPC should be kept in the sealed cover and that should be opened only when the delinquent officer has been fully exonerated by the departmental enquiry otherwise it should not be opened. The meaning of this is very clear that if the delinquent employee has been punished by the departmental enquiry then his case which has been kept in the sealed cover will not be opened and

he will not be granted promotion on the basis of the recommendations of the DPC which is kept in the sealed cover. Hence once the punishment has been granted, the delinquent employee is not entitled for the promotion irrespective of the nature of the punishment.

(ii) In the letter dated 27-2-1975, this direction has been explained in more detail. In this letter, it has been explained that till that time the delinquent officer who has been punished by the departmental enquiry will not be considered or will not be considered eligible for promotion to the next post. Regarding those government employees who have been awarded minor punishment, it would not be proper to delete their names from the subsequent DPC on this ground that they have been punished. The cases of such government employees who have been awarded minor penalties should be kept before the subsequent DPC for promotion. It means that the minor penalty will not disentitle the delinquent officer from promotion on the basis of the recommendation of the subsequent DPC. If on the basis of the previous documents and valuation of the DPC, it is necessary to promote any officer who has been awarded with minor punishment then in that case it would be proper to promote the said officer with prospective effect and the promotion in any event should not be from retrospective effect. This also is being clarified that if the punishment of stoppage of increment or promotion has been awarded for a specific period then any promotion should be made after the expiry of such period of punishment. Hence in this way the employee against whom such orders have been passed should be promoted only after the period of order has expired and not before that."

5. From the aforesaid circular, it would be evident that the sealed cover containing the recommendations of the DPC has to be opened only in those cases where the delinquent officer has been fully exonerated by the departmental enquiry and in cases where the delinquent officer has been punished in the departmental proceedings, the sealed cover is not to be opened and the delinquent officer cannot be granted promotion on the basis of the recommendation of the DPC which is kept in the sealed cover.

6. Shri S. S. Khanduja, the learned counsel appearing for the respondent, has, however, placed reliance on the Note in the said circular which reads as follows :

"Note. - The nature of the departmental enquiry should be either to exonerate the delinquent officer on the basis of the facts of the case or to award some punishment; the departmental enquiry should never end in the form of only giving warning to the delinquent officer because this does not come within the purview of the punishment. If due to some reasons, it is necessary to give only warning to the delinquent officer then competent authority will have to give reasons as to why it is necessary to give only warning to the delinquent officer.

The contempt authority while considering the punishment of warning (which is not punishment as such) will consider the facts and circumstances under which the warning has been given to the concerned officer and will state that whether this warning comes within the definition of punishment or not and then only will either grant the promotion or refuse the promotion."

7. The submission of Shri Khanduja is that "censure" is only a recorded warning and does not

constitute punishment and, therefore, the directions contained in the circular in relation to imposition of minor penalty would not apply and the Tribunal was justified in giving the directions for opening of the sealed cover and for giving effect to the recommendations of the DPC.

8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2-5-1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given-in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings.

9. The grievance of the respondent is that even after the conclusion of the departmental proceedings, no steps have been taken to hold a fresh DPC for considering the case of the respondent for promotion. That is a matter for the appellants to consider. If there was any vacancy on the date of conclusion of the departmental proceedings against the respondent, he should be considered for promotion against such vacancy by holding a DPC for that purpose.

10. The appeal is, therefore, allowed, the impugned judgment of the Tribunal dated 24-2-1993 in OA No. 2402 of 1992 is set aside and the said petition filed by the respondent before the Tribunal is dismissed. No order as to costs.