

COAL INDIA LTD. AND ORS.

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v.

SAROJ KUMAR MISHRA

APRIL 17, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Service Law—Promotion—Employees of Government Company—Denied promotion as vigilance case was pending against them—Writ Petition by employees seeking notional promotion from the date, their juniors were promoted—High Court holding them entitled to notional promotion in view of Office Memorandums permitting such promotion—On appeal, held: Employees were entitled to the notional promotion as claimed for—Rules do not provide that only because some allegations have been made against an officer, that itself would justify keeping a right to promotion in abeyance—A right to promotion can be kept in abeyance only in terms of valid rules—The employer being a State, their action should satisfy the test of reasonableness and fairness—Constitution of India, 1950—Articles 12, 14 and 16.

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Interpretation of Statutes/Rules—When a valuable right of an employee is in question, the rules operating in the field must be construed in the light of Constitutional Scheme.

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Respondents were the employees of a Government Company. Appellant-Company was the holding company of the employer-Company. The names of the respondents were recommended for promotion by DPC. But they were not promoted in view of the fact that vigilance cases were pending against them. Juniors of the respondents were promoted. Respondents filed Writ Petitions praying for notional promotion w.e.f. the date, their juniors were promoted. During pendency of the Writ Petitions charge sheets were issued, disciplinary proceedings initiated and punishment was imposed.

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High Court, relying on Office Memorandums dated 19/27th June, 1979 and 8th January 1981, held that once the respondents had been allowed the benefit of recommendation of DPC by giving them promotion, they were entitled to notional promotion w.e.f. the date their juniors were promoted. Hence the present appeal.

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A Dismissing of the appeal, the Court

HELD: 1. There is no infirmity in the impugned judgments. Both First Appellant as also the employer Company are 'State' within the meaning of Article 12 of the Constitution of India. Their action must, therefore, satisfy the test of reasonableness and fairness. Although an employee of a State is not entitled to promotion to a higher post as a matter of right, he is entitled to be considered therefore in terms of Article 16 of the Constitution of India. A right of promotion can be withheld or kept in abeyance only in terms of valid rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. When a question of that nature comes up for consideration before a superior court, the extant rules operating in the field must necessarily be construed in the light of the constitutional scheme of equality. [Paras 25 and 10] [241-G; 238-A, B, C]

D *State of Madhya Pradesh v. Srikant Chaphekar*, [1992] 4 SCC 689, distinguished.

State of Kerala and Anr. v. N.M. Thomas and Ors., AIR [1976] SC 490; *E.V. Chinnaiah v. State of Andhra Pradesh and Ors.*, [2005] 1 SCC 394; *Bhagwandas Tiwari and Ors. v. Dewas Shajapur Kshetriya Gramin Bank and Ors.*, (2006) 11 SCALE 593 and *B.V. Sivaiah and Ors. v. K. Addanki Babu and Ors. Etc.*, [1998] 6 SCC 720, referred to.

F 2. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a charge sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued. [239-G; 240-A; 241-D]
[Paras 13 and 21]

G 3. The Circular Letters issued by the appellants put restrictions on a valuable right of an employee. They therefore, are, required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard. [Para 14] [240-A, B]

H 4. Only because, there is a possibility of floodgate litigation by giving

such promotion, a valuable right of a citizen cannot be permitted to be taken away. Despite such promotion if the delinquent employee has suffered punishment, subsequently appropriate steps may be taken on the basis thereof. [Paras 22 and 24] [241-D, E, F] A

Zee Telefilms Ltd. and Anr. v. Union of India and Ors., [2005] 4 SCC 649 and *Guruvayoor Devaswom Managing Committee and Anr. v. C. K. Rajan and Ors.*, [2003] 7 SCC 546, referred to. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1997 of 2007.

From the Judgment and Order dated 12.04.2006 of the High Court of Orissa in OJC No. 2760 of 2002. C

WITH

C.A. No. 1998 of 2007.

Ajit Kumar Sinha, Amitabh and G.P. Pandey for the Appellants. D

Janaranjan Das and Swetaketu Mishra for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted. E

2. These two appeals involving similar questions of law and facts were taken up for hearing together and are being disposed of by this common judgment.

3. Respondents herein were employees of Mahanadi Coalfields Ltd., a Government Company within the meaning of Section 617 of the Companies Act. Coal India Limited admittedly is the holding company of Mahanadi Coalfields Ltd. Appellant No. 1 framed rules laying down terms and conditions of service of its Executive Officers. The Executive Cadre of the Officers of Appellant No. 1 is divided in various grades namely Gr. E/1 to Gr. E/8. Indisputably, promotion from A/3 to A/4 grades is governed by the rule of Seniority-Cum-Merit. For the purpose of considering the cases for promotion of the eligible officers from Grade E/3 to E/4, a departmental promotion committee held its meeting in April-May, 1999. F G

4. Respondents were, however, not promoted inter alia on the premise H

A that the General Manager (Vigilance) of the Mahanadi Coalfields Ltd. intimated to the concerned authority that vigilance cases were pending against them. Orders of promotion were issued in favour of the officers who were admittedly junior to them on 31.8.1999. When despite representation, they were not promoted on the ground of pendency of vigilance cases, they filed writ petitions before the Orissa High Court praying *inter-alia* for notional promotion with effect from the date their juniors were promoted.

B 5. During pendency of the Writ Petitions namely in June, 2002, charge sheets were issued and upon a disciplinary proceeding having been initiated, a penalty of reduction of pay by one stage for a period of one year without cumulative effect was imposed upon the respondents in July, 2003.

C 6. Before the Orissa High Court as also before this Court, reliance has been placed by the appellants on office memorandums dated 19/27th June, 1979. Upon taking into consideration the said office memorandum as also subsequent memorandums and in particular the one dated 8.1.1981, the High Court held;

D “15. Taking into consideration of the entire factual matrix of the case and keeping in view the ratio decided by the Apex Court in different cases, so far as the present petitioner is concerned, the ratio decided in the case of *Union of India v. K.V. Jankiraman and Union of India-v. Dr.(Smt.) Sudha Salhan* has to be followed and since the concerned employees in the cases of *Delhi Development Authority v. H.C. Khurana*, AIR (1993) S.C. 1488, *Union of India v. Kewal Kumar*, AIR (1993) SC 1585 and *Union of India v. R.S. Sharma*, AIR (1993) S.C. 2337 stand on a different footing than the present petitioner, the ratio decided in those cases cannot be followed in the case of the present petitioner. In the case of R.S. Sharma the order of the Tribunal directing to open the sealed cover and giving effect to the recommendation made by the DPC on the ground of non-service of charge memo, was set aside keeping in view the Rules/Circulars/O.M. in force more particularly clause-iv of the O.M. wherein it is provided that during the pendency or “investigation on serious allegation of corruption, bribery or similar grave misconduct is in progress either by the CBI or any agency, departmental or otherwise”, sealed cover procedure can be resorted to till the proceeding is over in all respect. But in the instant case on the basis of O.M./Circular/Rules followed by the MCL/Coal India, the sealed cover was opened and the petitioner was

given promotion to next higher grade (Grade-4) since the so called investigation was not completed within two years from the date the immediate junior to the petitioner was promoted. This particular office memorandum has been issued may be with the intention to check prolonged enquiry covering a period of more than two years in respect of certain allegations against an employee, so that the concerned employee shall not be harassed or debarred from getting benefit on the recommendation of DPC for an indefinite/prolonged period on the ground of pendency of such enquiry, without initiation of a departmental proceeding after service of charge memo. However once the sealed cover is opened and the petitioner is allowed the benefit of the recommendation of DPC by giving him promotion to the next higher grade, he shall be entitled for all consequential benefits from the date his immediate junior got the same. In this case the petitioner had never been suspended during the period of the so-called preliminary enquiry nor during the period of departmental enquiry. As such, he shall be entitled for promotion notionally with effect from the date his immediate junior got the same along with all service and financial benefit.”

On the said findings, the writ petitions were allowed.

7. Mr. Ajit Kumar Sinha, learned counsel appearing on behalf of the appellants took us through the said office memorandum dated 27.6.1979 and submitted that as in terms thereof pendency of a vigilance or departmental action would itself be sufficient for not promoting the officer who would, in the event of their complete exoneration would be promoted as and from the date his immediate junior has been promoted; the impugned judgment cannot be sustained. The High Court, Mr. Sinha submitted, committed manifest error in invoking the sealed cover procedure which is not applicable to the fact of the present case. If the impugned judgment is upheld, a flood-gate of litigation would ensue. Strong reliance in this behalf has been placed by Mr. Sinha on a reported decision of this case in *Manoj Kumar Singh v. The Coal India Ltd. & Ors.*, in Civil Appeal No. 17 of 2005 disposed of on 2.1.2006 as also on *State of Madhya Pradesh v. Srikant Chaphekar*, [1992] 4 SCC 689.

8. Mr. Janaranjan Das, learned counsel appearing on behalf of the respondent, on the other hand, supported the judgment of the High Court.

9. The factual matrix involved in the matter being not in dispute, the only question which falls for our consideration is interpretation of the office

A memorandums dated 27.6.1979 and 8.1.1981.

10. Both First Appellant as also Mahanadi Coalfields Ltd. are 'State' within the meaning of Article 12 of the Constitution of India. Their action must, therefore, satisfy the test of reasonableness and fairness. Although an employee of a State is not entitled to promotion to a higher post as a matter of right, he is entitled to be considered therefor in terms of Article 16 of the Constitution of India. A right of promotion can be withheld or kept in abeyance only in terms of valid rules. Rules operating in the field do not provide that only because some allegations have been made as against an officer of the company, the same would itself justify keeping a valuable right to be considered for promotion of an employee in abeyance. When a question of that nature comes up for consideration before a superior court, the extant rules operating in the field must necessarily be construed in the light of the constitutional scheme of equality.

11. The office memorandum dated 19/27 June 1979 reads as under:-

"The issue relating to procedure to be followed with regard to promotion of an officer who has been kept under suspension and/or against whom a vigilance/departmental action is pending has been engaging the attention of the management for some time past. Taking into consideration the extant rules and orders of the Government of India in this regard the following decision has been taken:

(a) All orders for promotion will be issued only after vigilance clearance.

(b) *** **

(c) When an officer has been completely exonerated and he is subsequently promoted, his seniority should be fixed as if he had been promoted in accordance with the position assigned to him in the select list. Period of his eligibility for consideration for promotion to the next higher grade should be reckoned with reference to the date his immediate junior has been promoted. The pay of such an executive on promotion should be fixed notionally by allowing the intervening period during which the officers could not be promoted due to his suspension and/or pending departmental enquiry to be counted for increments in the higher grade but no arrears would be admissible to him. (Corrected as per No. C-5(A)/50972 (Vol.1) Pt./1507 dated 10.07.1979)."

The said office memorandum was, however, clarified by a subsequent memorandum dated 8.1.1981 wherein it was laid down A

“It has been laid down in CIL O.M. number quoted above that all orders for promotions will be issued only after vigilance clearance. The stage at which a vigilance enquiry should affect the promotion, confirmation et. Of an employee of CIL and its subsidiaries has not been clearly defined in the above. Quoted office memorandum. Vigilance inquiries take considerable time to complete and in absence of a clear indication regarding the point at which such inquiries should stand in the ay of an officer’s promotion, there is scope for confusion on this score. This matter has been engaging the attention of the management for quite some time. Taking into consideration the existing orders of the Government of India in this regard, the following decision has been taken. B C

“All orders for promotions will be issued only after vigilance clearance. However, vigilance clearance shall not be withheld for the mere fact that a P.E. or R.C. has been registered by the CBI against an officer or that complaints are being looked into a preliminary enquiry departmentally but no conclusion has been reacted about the *prima facie* guilt of the officer. Vigilance clearance shall be withheld only when : D

(1) In the case of a Preliminary Enquiry, either by the CBI or departmental agencies, the competent authority, on consideration of the results of the investigation, has formed the opinion that a charge-sheet may be issued on specific imputations for departmental action, and E

(2) In case of a regular case, the competent authority has decided to accord section for prosecution of the officer in Court. F

12. Until the competent authority arrives at such a conclusion, the officer may be treated at par as per with orders in the matter of promotion, confirmation etc. G

These instructions shall come into force with immediate effect.”

13. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that H

A a charge sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They therefore, are, required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard.

15. We may also notice that a revised guideline was also issued on or about 14.5.2002, wherein it was stated;

C “the Vigilance clearance shall be withheld only on the ground (a) when officer is under suspension (b) when the officer, in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; and (c) when an officer in respect of whom prosecution for a criminal charge is pending.”

D 16. The said circular although is not *ipso facto* applicable in this case, clearly lays down the law otherwise prevailing.

E 17. Reliance placed by Mr. Sinha on *Manoj Kumar Singh* (supra) is wholly misplaced. Therein no law was laid down. It does not contain any ratio decidendi. The question as to whether in absence of any chargesheet or at least in absence of any satisfaction having been arrived by the disciplinary authority that a prima facie case has been made out for proceeding against an employee, the Vigilance clearance can be given or not, did not fall for consideration at all therein. No issue in that behalf was framed; no argument was advanced; no reason has been assigned in support of the said order. This

F Court merely stated;

“In the present case, the decision to take action against the appellant had been formed on 20.1.99. Therefore, the appellant could not have been granted vigilance clearance. In the circumstances, we see no reason to interfere with the order under challenge. The appeal is, accordingly, dismissed. There shall be no order as to costs.”

G 18. It is surprising that although the appellant is a ‘State’ within the meaning of Article 12 of the Constitution of India, it failed even to be fair to this Court inasmuch as the subsequent office memorandum dated 8.1.1981 and/or 14.5.2002 were not brought to its notice. Had the subsequent office memorandums and in particular the one dated 8.1.1981 been brought to the

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notice of the Court, we have no doubt in our mind that the terms of the order passed in *Manoj Kumar Singh* (supra) would have been different. A

19. Similarly, reliance placed on *Srikant Chaphekar* (supra) by Mr. Sinha, is equally mis-placed. Therein a Departmental Promotion Committee considered the adverse remarks passed against the employee concerned. In this case, a departmental promotion committee did not take into consideration the case of the respondents at all. They were indisputably entitled to be considered for promotion having regard to the rule of seniority-cum-merit. Although, in the said rule, merit has some role to play, but the promotion would not be based only on merit. B

20. See *State of Kerala and Anr. v. N.M. Thomas and Ors.*, AIR (1976) SC 490, *E.V. Chinnaiah v State of Andhra Pradesh & Ors.*, [2005] 1 SCC 394, *Bhagwandas Tiwari and Ors. v. Dewas Shajapur Kshetriya Gramin Bank and Ors.*, (2006) 11 SCALE 593, *B.V. Sivaiah and Ors. v. K. Addanki Babu and Ors. etc.*, [1998] 6 SCC 720]. C

21. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued. D

22. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties. E

23. See *Zee Telefilms Ltd. and Anr. v. Union of India and Ors.*, [2005] 4 SCC 649 and *Guruvayoor Devaswom Managing Committee and Anr. v. C.K. Rajan and Ors.*, [2003] 7 SCC 546. F

24. Even, in such a case, the Employer is not in a helpless situation. Despite such promotion if the delinquent employee has suffered punishment, subsequently appropriate steps may be taken on the basis thereof.

25. We, therefore, are of the opinion that there is no infirmity in the impugned judgments. The appeals being wholly without merits, are dismissed with costs. Counsel's fee assessed at Rs. 50,000/-. G

K.K.T.

Appeals dismissed.