

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No. 499/2002

MP No. 491/2002

LPASW No. 420/2002

MP No. 604/2002

Date of order: 31.12.2015

LPASW No. 499/2002

Narinder Singh Jamwal, age 47 years
B S Gde-I
Office of Chief Engineer,
Udhampur Zone, Udhampur.

.....Appellant.

vs

1. Union of India,
Through Secretary
Ministry of Defence, Government of India,
New Delhi.
2. Engineer-in-Chief,
Army HQs
Kashmir House, DHQ New Delhi.
3. The Chief Engineer,
Northern Command,
C/O 56 APO.
4. MES 454968, Supervisor BS Gde-I
Shri Vijay Pal Singh
C/O E-in-C, Army HQs,
DHQ PO New Delhi-110011.

.....Respondents.

LPASW No. 420/2002

1. Union of India,
Through Ministry of Defence, Government of India,
New Delhi.
2. Engineer-in-Chief,
Army HQs DHQ
P.O New Delhi- 110011.
3. The Chief Engineer,
Northern Command,
C/O 56 APO.
4. MES 454968, Supervisor BS Gde-I
Sh. Vijay Pal Singh
C/O E-in-C, Army HQs,
DHQ PO New Delhi-110011.

.....Appellants.....

Vs

Narinder Singh Jamwal, B S Gde-I
Office of Chief Engineer,
Udhampur Zone, Udhampur.

.....Respondent.....

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice
Hon'ble Mr. Justice Tashi Rabstan, Judge

Appearing counsel:

For the Appellants(s)	:	Mr. Sunil Sethi, Sr. Advocate with Mr. Ankesh Chandel, Advocate (in LPASW 499/2002) Mrs. Sindhu Sharma, ASGI,(in LPASW 420/2002)
For the Respondent(s)	:	Mrs. Sindhu Sharma, ASGI,(in LPASW No. 499/2002) Mr. Mr. Sunil Sethi, Sr. Advocate with Mr. Ankesh Chandel, Advocate in (LPASW No. 420/2002).

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

N. Paul Vasanthakumar,

1. L.P. appeal No. 499/2002 is filed by the writ petitioner challenging the order 11.07.2002 of the learned Single Judge in dismissing the writ petition, SWP No. 193/2002, insofar as not interfering the order dated 22.07.1997 imposing punishment of censure and penal recovery of Rs. 1000/- to be recovered in ten equal installments passed by respondent no.3. L. P. Appeal No. 420/2002 is preferred by the respondents in the writ petition, namely, Union of India and its officers, insofar as giving directions to examine the contents of the decision kept in the sealed cover i.e. non-promotion of the writ petitioner with effect from 10.07.1995 within a period of three months.
2. The decision to be rendered in LPASW No. 499/2002 will have a direct bearing on LPASW No. 420/2002 filed by the Union of India. Hence the said LPA is taken up for consideration at the first instance.

3. The brief facts necessary for disposal of these appeals are that the writ petitioner, namely the appellant in LPASW no. 499/2002 and respondent in LPASW No. 420/2002, was proceeded with the departmental action while he was posted as Supervisor BS Grade-II in GE Project 6351. The allegation was that 405 CGI sheets were stolen from MES Store yard when the writ petitioner was the Supervisor for the store yard. The theft was reported on 8/9th July, 1990 which resulted in loss of Rs. 60,547.50 to the State. Charge memo was issued on 15.07.1992 under Rule 14 of CCS (CCA) Rules, 1965 for failure to exercise visual and physical check of CGI sheets and detect losses and report to senior officer. The writ petitioner was also charged for failure in providing proper security light and proper supervision on functioning of the staff employed under him and for providing torch calls to the Chowkidars. Inquiry Officer was appointed on 10.09.1992 to inquire into the charges framed against the writ petitioner and two others. According to the writ petitioner, the Inquiry Officer submitted his findings on 20.04.1993 holding that the charges against the writ petitioner were not proved.

4. The contention of the department is that the charges were proved. Though it is contended that by the learned senior counsel for the appellant that the Inquiry Officer gave a finding

that the charges have not been proved and only in the show cause notice issued by the Disciplinary Authority the writ petitioner was called upon to explain as to why he has failed to supervise the putting up of lights near the store.

5. As the charge memo dated 15.07.1992 issued was pending, the Departmental Promotion Committee held in 1995 kept his performance appraisal in a sealed cover while preparing the panel for promotion as Supervisor BS Grade-I which was circulated on 10.07.1995. The disciplinary authority awarded the penalty of censure and penal recovery of Rs. 1000/- by order dated 14.06.1997. The next DPC was held in 1997 and the name of the writ petitioner was included in the promotion panel circulated on 21.01.1997. The writ petitioner claimed promotion after the final order was passed in disciplinary proceedings, without challenging the punishment imposed and the said request was rejected in the year 2001 as per the statement made by the writ petitioner in his writ petition. The punishment imposed in the year 1997 and consequential denial of promotion was challenged by the writ petitioner in SWP No. 193/2002, i.e. after a period of five years.

6. In the affidavit filed in support of the writ petition the delay in challenging the punishment order has not been explained by the writ petitioner except stating that he was making

representations to give him the benefit of promotion to the post of Supervisor Grade-I retrospectively i.e. from the date promotion was given to his juniors. The said challenge was rejected by the Writ Court on the ground of delay and laches.

7. The delay having not been explained and the writ petitioner having kept quiet for more than 4 years in not challenging the order of imposing punishment, namely, censure and penal recovery, we are of the view that the learned Single Judge was right in not accepting the plea made by the writ petitioner seeking to quash the order of punishment in the light of the judgment of Hon'ble the Supreme Court reported in **AIR 2011 SC 1084 (Union of India and ors v. A. Darairaj)**. In paragraph 13 it is held thus:-

“ 13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

8. In the light of the said reason i.e. unreasonable and unexplained delay, LPASW no. 499/2002 is dismissed on the ground of delay and laches.

9. The learned counsel appearing for the appellants in LPASW No. 420/2002 argued that since the writ petitioner was facing departmental proceedings, his claim for promotion was considered and kept in a sealed cover subject to final order to be passed in the departmental proceedings and the departmental proceedings having ended with imposing the order of punishment, the sealed cover cannot be opened and after currency of the punishment he was rightly given promotion. She has relied on Office Memo No. 22011/4/91-Estt.(A) dated 14.09.1992. According to the learned counsel, if any penalty is imposed on the government servant as a result of disciplinary proceedings and if he is found guilty in the criminal prosecution against him, the findings of the sealed cover shall not be acted upon and his case for promotion may be considered by the next DPC. The learned counsel further submitted that the promotion given to the writ petitioner in the year 1998 is perfectly in order and denial of promotion to the writ petitioner on earlier occasion is just and proper.

10. The learned senior counsel appearing for the respondent in LPASW no. 420/2002 argued that the punishment of censure

and penal recovery being minor in nature, the same cannot be put against the respondent in getting his due promotion from 1995. He also argued that the Government is not justified in denying the promotion on the basis of the Office Memorandum dated 14.09.1992 as the alleged delinquency happened in the year 1990 and the Office Memorandum issued earlier in the year 1972 alone will apply.

11. We have considered the rival submissions.

12. The appellant was proceeded for the delinquency due to the theft on 8/9th, July, 1990. The Charge memo was issued for the said delinquency on 15.07.1992. The Inquiry Officer was appointed to go into the allegations on 10.09.1992 who submitted his findings on 20.04.1993. The punishment of censure and penal recovery of Rs. 1000/-to be recovered at the rate of Rs. 100/- per month in ten equal installments was imposed by order dated 14.06.1997. The payment of installments commenced in July, 1997 and completed in April, 1998. Thus the punishment was in currency till April, 1998. Even as per Office Memorandum No. 21/5/7-Estt (A) dated 15.05.1971, during the currency of punishment a person is debarred to claim promotion. In this case the charge memo having been issued to the appellant on 15.07.1992 and enquiry having been pending and punishment being imposed in the

year 1997, the Office Memorandum dated 14.09.1992 is applicable as the promotion claim of the writ petitioner came up for consideration only in the year 1995. In the said Office Memorandum also in paragraph 3.1 it is stated as follows:-

“If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case of promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.”

13. In the light of the said Office memorandum, particularly paragraph no. 3.1, the respondent is disqualified for promotion up to the end of the currency of punishment and immediately after the punishment was over he was given promotion as per the recommendations made by the Departmental Promotion Committee in the year 1997. Thus the learned Single Judge was not right in giving directions to the appellants to examine the contents of the decision kept in the sealed cover and re-examine the whole issue and the said direction is not sustainable.

14. Hon'ble the Supreme Court in the decision reported in **(2011) 14 SCC 235 (State of Rajasthan and ors v. Shankar Lal Parmar)** has held that if there is a rule or official memorandum imposing debarment of promotion due to punishment imposed, like censure or penal recovery, the government servant is not

entitled to get promotion during the period for which he is ineligible for promotion. In paragraph 19 it is held thus:-

“19. It has not been disputed before us that censure is a minor penalty and has a minimum penalty as prescribed under the Rules of Rajasthan. Thus, it cannot be said that an employee who has earned censure would automatically be entitled for promotion or respective Selection Grade after the completion of 9, 18 or 27 years of service.”

15. Applying the said judgment to the facts of this case, the L.A. Appeal filed by the appellants in LPASW No. 420/2002 is bound to succeed and according the directions issued by the learned Single Judge are set aside and the appeal is allowed.

16. In fine, LPASW No. 499/2002 is dismissed and LPASW No. 420/2002 is allowed.

17. No costs.

(Tashi Rabstan)
Judge

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
31.12.2015
Anil Raina, Secy