

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag,
Judicial Member

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member

J U D G M E N T

-of-

Case No. : O.A. 570 of 2017 : Dr. Rupam Barua

..... Applicant.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicant:-

Mr. S. Srimani,
Learned Advocate.

For the State Respondents:-

Mr. S.N.Ray,
Learned Advocate.

Judgment delivered on: 23.12.2019

JUDGMENT

The applicant in the present application joined Government service on February 9, 2001 as Veterinary Surgeon vide order no. 287-AR & AH dated February 6, 2001 issued by the Animal Resources Development Department (in short ARD Department). Subsequently, he was appointed to the post of Deputy Director, Animal Resources Development and Parishad Officer (in short DDARD & PO) and was posted in the office of the Purulia State Poultry Farm on December 22, 2011. The applicant is presently

working as Deputy Project Director, PBGSBS in the rank of Deputy Director, Animal Resources Development in the office of the Chief Executive Officer, PBGSBS.

2. In this application, the applicant has prayed for a direction upon the state respondent authorities to appoint the applicant in the promotional post of Joint Director, ARD with effect from August 13, 2015, the date on which four Deputy Directors were appointed on promotion as Joint Director, ARD and for release of all consequential benefits.

3. Appearing on behalf of the applicant, Mr. S. Srimani, Learned Counsel for the applicant submitted that the application should be allowed on the following grounds:

(i) The applicant belongs to the Scheduled Tribe community and his case was considered for promotion to the post of Joint Director, ARD along with others in the year 2015, but although 4th position in 50 point roster was reserved for Scheduled Tribe candidate, he was not promoted to the said post.

(ii) The names of 23 candidates including the name of the applicant were sent to the State Vigilance Commission by the ARD Department for obtaining Integrity Clearance Report. The State Vigilance Commission through a letter dated June 11, 2015 informed the ARD Department that there was nothing adverse against 23 candidates which included the name of the applicant.

(iii) That since the State Vigilance Commission granted Integrity Clearance Report in favour of the applicant and his asset declaration statements were up to date and he fulfills all the other conditions for promotion to the post of Joint Director, ARD including passing of the Departmental Examination, he should not have been denied promotion to the post of Joint Director, ARD.

(iv) That no disciplinary proceeding or vigilance enquiry was pending against the applicant on the date when promotion was granted to the four officers in the post of Joint Director on August 13, 2015.

(v) That prior to issuance of the order of promotion on August 13, 2015 to the four officers, a preliminary fact finding enquiry was conducted against the applicant on the basis of an anonymous letter. The applicant attended the said enquiry and refuted in writing each and every allegation. Subsequently, however, a Departmental Enquiry was initiated against the applicant only to deny promotion to the applicant.

(vi) That the respondents have claimed that the applicant was denied promotion as Integrity Clearance Certificate of the applicant was withheld by the ARD Department. This act of the respondent is arbitrary, irrational, malafide and illegal as the State Vigilance Commission issued Integrity Clearance in favour of the applicant.

4. Appearing on behalf of the state respondents, Mr. S.N. Ray, Learned Counsel submitted that the application should be dismissed on the following grounds :

(i) That a preliminary enquiry was conducted against the applicant by the Additional Director, ARD (Health) and he submitted a report on March 4, 2015 wherein it was clearly mentioned that the allegations made against the applicant need vigilance enquiry and suggested that the allegations should be examined and verified by a specialised agency. The report was sent to the Vigilance Commission for enquiry.

(ii) That the Vigilance Commission had no opportunity to know about the preliminary fact finding enquiry report before issuing the vigilance clearance certificate in respect of the applicant on June 11, 2015. On the basis of the preliminary enquiry report dated March 4, 2015, the ARD Department requested the Vigilance Commission to conduct an enquiry into the allegations against the applicant by sending letter dated May 21, 2015. The Vigilance Commission detected on July 2, 2015 that the preliminary fact finding enquiry report dated March 4, 2015 was not forwarded to the Commission by the Department by mistake. So, the preliminary fact finding enquiry report was with the ARD Department when the Vigilance Commission submitted integrity clearance of 23 officers including the applicant on June 11, 2015.

(iii) That the State Vigilance Commission conducted the enquiry and submitted its report on the basis of which the Disciplinary Authority initiated a departmental enquiry against the applicant under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 (hereinafter referred to as WBS (CCA) Rules, 1971) vide Memorandum No. 910-AD/O/Con-06/2015 dated May 8, 2017, which is still pending.

(iv) That since there was contemplation of the departmental enquiry against the applicant at the time of consideration for grant of promotion to the post of Joint Director, the case of the applicant was not considered for promotion as per Memorandum No. 339-GAC(Vig.) dated May 28, 1973 as the said post is a high administrative post having considerable scope for use of discretion on many important matters.

(v) That mere pendency of a vigilance enquiry cannot be the ground for withholding promotion, but where the competent authority is satisfied that charge-sheet is going to be issued on completion of enquiry on the basis of available records and evidence, it is a fit case for withholding vigilance clearance for grant of promotion. This matter has been clarified in the judgment of the Hon'ble Supreme Court of India in "Coal India Ltd & Others v. Saroj Kumar Mishra" reported in (2007) 9 SCC 625. In the instant case, the Animal Resources Development Department did not grant Integrity Clearance in favour of the applicant as Departmental Enquiry was contemplated on the basis of the preliminary enquiry report.

(vi) That the decision of the administrative authority was proper which is evident from the fact that on the basis of the report of the State Vigilance Commission, the disciplinary authority has initiated a departmental enquiry under Rule 10 of the WBS (CCA) Rules, 1971 against the applicant.

5. Having heard the submissions of Learned Counsel for the applicant and the state respondents and on the basis of materials on record, we find the main issue involved in this application is whether the state respondents were justified in withholding Integrity Clearance Certificate to the applicant and in denying promotion to the applicant when four officers were promoted vide order dated August 13, 2015.

6. The applicant was denied promotion as Integrity Clearance Certificate was not issued by the ARD Department in favour of the applicant. The ARD Department requested the Vigilance Commission to provide Integrity Clearance Report in favour of 23 officers including the applicant vide letter May 25, 2015. On June 11, 2015, the Vigilance Commission replied that there was nothing adverse against 23 officers including the applicant as per available records of the Commission, as preliminary fact finding enquiry report against the integrity of the applicant was pending before ARD Department. The Integrity Clearance Certificates in respect of officers in the rank of Deputy Director, ARD are to be issued by the Department and the Department can ask for report from different authorities. The report of the Vigilance Commission is one of many such reports to be taken into consideration for issuance of integrity certificate in favour of an employee. The Vigilance Commission can only submit report on whether any vigilance case is pending in respect of an employee, but cannot give any information whether any vigilance matter is pending in the Department or Directorate of the concerned employee.

7. A preliminary enquiry regarding allegations against the applicant was conducted by Additional Director, ARD (Health) and he submitted a report on March 4, 2015 wherein it has been clearly mentioned that the allegations made against the applicant need to be examined and verified by a specialised agency. The matter was referred to the Vigilance Commission on May 21, 2015 by the Animal Resources Development Department. This means that the Department was prima facie satisfied about the genuineness of the allegations and decided that an enquiry needs to be conducted by a specialised agency like Vigilance Commission. Thereafter the Vigilance Commission conducted enquiry into the allegations against the applicant as revealed from preliminary fact finding enquiry report. Subsequently, the disciplinary authority initiated departmental enquiry under Rule 10 of the WBS (CCA) Rules, 1971 under

Memorandum No. 910-AD/O/Con-06/2015 dated May 8, 2017 against the applicant after considering the report submitted by the Vigilance Commission.

8. Apparently, therefore, before March 4, 2015 preliminary enquiry was held against the applicant. Under the provisions of the relevant Government Circulars once disciplinary proceeding starts against a Government employee, his promotion can be withheld, but mere pendency of vigilance enquiry may not be sufficient ground for withholding promotion of a Government employee. The issue has been dealt with elaborately in the judgment of the Hon'ble Supreme Court of India in the case of "Coal India Ltd & Others v. Saroj Kumar Mishra" reported in (2007) 9 SCC 625, wherein it is observed that mere pendency of a vigilance enquiry cannot be a ground for withholding promotion, but if the competent authority is satisfied that a charge-sheet is going to be issued on completion of enquiry on the basis of available records and evidence, a case is made out for withholding vigilance clearance and promotion. The chronology of events like conducting preliminary enquiry against the applicant by Additional Director, ARD (Health) on March 4, 2015 followed by enquiry by specialised agency like Vigilance Commission culminating in issuance of charge sheet for conducting departmental enquiry against the applicant, unerringly point out that the disciplinary authority of the applicant contemplated the initiation of disciplinary proceeding against the applicant by conducting departmental enquiry when 4 (four) Deputy Directors were granted promotion to the post of Joint Director, ARD. In view of our above observations, we have no hesitation to hold that the department of the applicant withheld vigilance clearance of the applicant at the time of his consideration for promotion as the disciplinary authority of the applicant was under contemplation of initiation of departmental enquiry against the applicant by issuance of charge sheet, which was done within a reasonable period of time and thereby promotion was denied to the applicant.

9. In view of our above findings, we would like to hold that there was nothing illegal or arbitrariness on the part of the ARD Department in withholding the integrity clearance of the applicant. Since the applicant was not given promotion for withholding integrity clearance certificate, we do not find any illegality or arbitrariness in denying promotion to the applicant. As a result, the original application is **dismissed**.

10. The urgent xerox certified copy of the judgment and order may be supplied to either of the parties, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).