

## राजस्थान सिविल सेवा अपील अधिकरण, जयपुर

अपील संख्या :- 943/2011

रेवड़मल

—अपीलार्थी

### बनाम

1. राजस्थान राज्य जरिये प्रमुख शासन सचिव, राजस्व विभाग, सचिवालय, जयपुर।
2. पंजीयक, राजस्व मण्डल, अजमेर।
3. जिला कलेक्टर, दौसा।

—प्रत्यर्थीगण

आदेश की दिनांक : 26.06.2024

उपस्थिति :-

अपीलार्थी की ओर से : श्री देवेन्द्र सोलंकी, अभिभाषक

प्रत्यर्थी विभाग की ओर से : श्री हेमन्त धारीवाल, राजकीय अधिवक्ता

समक्ष :- अनन्त भंडारी, सदस्य (न्यायिक)  
लेखराज तोसावड़ा, सदस्य

### आदेश

1. इस अपील में अपीलार्थी के अधिवक्ता ने यह तथ्य अंकित किये हैं कि अपीलार्थी की प्रथम नियुक्ति पटवारी के पद पर आदेश दिनांक 15.09.1980 से हुई थी। वर्तमान में अपीलार्थी भू-अभिलेख निरीक्षक के पद पर कार्यरत है। अपीलार्थी के अधिवक्ता का तर्क है कि अपीलार्थी को सीसीए नियम-17 के तहत एक आरोप पत्र दिया गया था, जिसमें अपीलार्थी के विरुद्ध यह आरोप लगाया गया था कि अपीलार्थी स्वेच्छापूर्वक अनुपस्थित रहा है एवं राजकार्य में लापरवाही बरती है। अपीलार्थी द्वारा आरोपों से इनकार किया गया। जिला कलेक्टर दौसा द्वारा आदेश दिनांक 07.04.2007 को अनुशासनात्मक कार्यवाही किये जाने का आदेश पारित किया, जिसमें अपीलार्थी को परिनिन्दा के दण्ड से दण्डित किया गया। दिनांक 01.10.2010 एवं 04.11.2010 को राजस्व मण्डल राजस्थान द्वारा पदोन्नति आदेश जारी किये गये, जिसमें भू अभिलेख निरीक्षकों की पदोन्नति नायब तहसीलदार के पद पर नियम-31, राजस्थान तहसीलदार सेवा नियम-56 के तहत किये जाने के आदेश पारित किये गये। उक्त दोनों आदेशों में अपीलार्थी को पदोन्नति का लाभ नहीं दिया गया, जबकि अपीलार्थी से कनिष्ठ व्यक्तियों को पदोन्नति का लाभ दिया गया। अपीलार्थी के अधिवक्ता का तर्क है कि पदोन्नति का

आधार वरिष्ठता सह योग्यता है। ऐसे में अपीलार्थी को पदोन्नति का लाभ दिया जाना चाहिए था। अपीलार्थी के सेवाभिलेख में केवलमात्र एक परिनिन्दा के दण्ड से दण्डित किये जाने की लघु शास्ति उल्लेख है, जिसे देखा नहीं जा सकता था और अपीलार्थी को तदर्थ पदोन्नति का लाभ दिया जाना चाहिए था, जो लाभ उससे कनिष्ठ व्यक्तियों को दिया गया था।

2. प्रत्यर्थी विभाग की ओर से जवाब प्रस्तुत कर यह अंकित किया गया है कि आदेश दिनांक 07.04.2007 के द्वारा अपीलार्थी को परिनिन्दा के दण्ड से दण्डित होने के कारण नायब तहसीलदार के पद पर तदर्थ पदोन्नति नहीं दी जा सकी। कार्मिक विभाग के परिपत्र दिनांक 04.06.2008 के बिन्दु संख्या-16.3 के अनुसार कार्मिकों को एक परिनिन्दा के दण्ड हेतु एक पदोन्नति से वंचित किया जाता है। उक्त परिपत्र के अनुसार जिला कलेक्टर के आदेश दिनांक 07.04.2007 के द्वारा परिनिन्दा का दण्ड दिया जाने के कारण स्क्रीनिंग कमेटी द्वारा अपीलार्थी को पदोन्नति के योग्य नहीं पाया गया।
3. हमने दोनों पक्षों द्वारा दिये गये तर्कों पर विचार किया गया।
4. उपलब्ध अभिलेख का अनुशीलन किया। प्रत्यर्थी विभाग का यह कथन रहा है कि अपीलार्थी को परिनिन्दा के दण्ड से दण्डित किये जाने के कारण नायब तहसीलदार के पद पर तदर्थ पदोन्नति नहीं दी जा सकती। प्रत्यर्थी विभाग की ओर से यह कथन है कि कार्मिक विभाग के परिपत्र दिनांक 04.06.2008 से परिनिन्दा के दण्ड हेतु एक पदोन्नति से वंचित किया जा सकता है। यह सही है कि कार्मिक विभाग द्वारा जारी परिपत्र में एक परिनिन्दा के दण्ड हेतु एक बार पदोन्नति से वंचित करने का प्रावधान है परन्तु माननीय उच्च न्यायालय द्वारा अनेक प्रकरणों में परिनिन्दा के आधार पर पदोन्नति नहीं देने को उचित नहीं माना है। माननीय उच्च न्यायालय जयपुर ने हरभजन मीणा बनाम राजस्थान राज्य एवं अन्य (एस.बी. सिविल रिट पिटीशन संख्या 5715/1997) में पारित निर्णय दिनांक 04.02.2010 में यह अभिनिर्धारित किया है:-

"Service Law-Promotion-Stoppage of two grade increments with cumulative effect awarded to petitioner-Sald penalty followed by censure-No other adverse entry against petitioner-No allegation that service record was not good-Criteria of promotion being seniority-cum-marit, withholding promotion on penalty of censure not Justified--

Minimum merit alone necessary-Petitioner held entitled to promotion for vacancy of 1995-36."

राजस्थान राज्य बनाम अशोक सिंघवी (डी.बी. सिविल स्पेशल अपील (रिट) संख्या 232/2013) में पारित निर्णय में माननीय उच्च न्यायालय द्वारा राज्य सरकार द्वारा दायर अपील को खारिज कर निम्न सिद्धान्त प्रतिपादित किया है:—

"Rajasthan Medical & Health Service Rules, 1963, Rule 24-A Service Law - Promotion - Promotion to post of Junior Specialist, (Orthopaedics, sans) the Circular, dated 26.7.2006 Order of Single Judge directing authorities to consider petitioners case ignoring said circular - No merit in this appeal - Hence, appeal dismissed."

5. माननीय उच्च न्यायालय द्वारा निर्णीत नवीनतम प्रकरण एस.बी. सिविल रिट याचिका संख्या 20358/2018 रघुवीर सिंह बनाम राजस्थान राज्य एवं अन्य में कार्मिक विभाग द्वारा परिपत्र दिनांक 04.06.2008 के संबंध में व्याख्या करते हुए दिनांक 07.05.2024 को निर्णय पारित किया है, जिसमें निम्न प्रकार से विवेचना की गई है:—

"34. As per the provisions of the Circular dated 04.06.2008, it is envisaged that the employee who has suffered the penalty of 'Censure' or stoppage of Annual Grade Increments with cumulative effect or without cumulative effect, are debarred from promotions for equivalent number of years as that of the number of the increments.

35. Bare reading of the provisions of the Service Rules of the Rule 14 of the Rules of 1958 clearly speaks that penalty of withholding increments can be imposed by the Disciplinary Authority in case certain charges are found to be proved or otherwise penalty of withholding promotion can be imposed. Meaning- thereby, either the penalty of withholding increments or withholding promotion can be imposed upon a Government servant by the Disciplinary Authority being found that the charges are proved by the Disciplinary Authority. While imposing the penalty of 'Withholding Annual Grade Increment' or 'Censure', it was very much clear that law was not intending to withhold the promotion of the concerned Government servant. In the present case, the petitioner has been imposed with the penalty of 'Censure'.

36. The respondents have issued the Circular dated 04.06.2008 whereby effect of imposing penalty of 'Censure' and withholding increment would also deprive the petitioner from chance of promotion, though the Rules of 1958 do not speak so and therefore, this Court finds that the Circular dated 04.06.2008, is

contrary to the intention of the Rules of 1958. It seems that respondents have issued the impugned Circular so as to supplement the Rules and filling up the gaps. The respondents cannot create a new state of things which were never intended in the relevant Service Rules governing the provisions regarding promotion.

37. Rule 14 of the Rules of 1958 provides for minor and major penalties to be imposed upon a Government servant on being found charges proved which are levelled against him in the charge-sheet. Rule 14 of the Rules of 1958 is quoted as under:

14. Nature of Penalties.—The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government servant, namely :—

(i) censure ; (ii) withholding of increments or promotion; (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order ; (iv) reduction to a lower service, grade or post; or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules ; (v) compulsory retirement on proportionate pension ; (vi) removal from service which shall ordinarily not be a disqualification for further employment ; (vii) dismissal from service which shall ordinarily be a disqualification for further employment. Explanation :— (1) The following shall not amount to a penalty within the meaning of the rule:— (i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the Service or post or the terms of his appointment; (ii) stoppage of Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar ; (iii) non-promotion whether in a substantive or officiating capacity of Government servant, after consideration of his case, to a Service, Grade or post for promotion to which he is eligible ; (iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered after trial, to be unsuitable for such higher Service, grade or post or on administrative grounds unconnected with his conduct ; (v) reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation ; (vi) compulsory retirement of Government servant in accordance with the provisions relating to his superannuation or retirement ; (vii) termination of the services — (a) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation ; or (b) of a temporary Government servant appointed otherwise than under contract on the expiration of the period of appointment; (c) of a Government servant under an agreement, in accordance with the terms of such agreement; (d) of a Government servant in the services of any of the integrating units of Rajasthan, on non-selection or non-absorption for appointment in any of the services of the integrated State of Rajasthan in accordance with the integration rules. Explanation:— (2) The discharge of a person appointed on an ad-hoc or provisional basis to any of the posts in the integrated setup of Rajasthan Services otherwise than for reasons of non-selection or non-absorption to any such services or posts in a accordance with

the integrated rules, shall amount to removal or dismissal as the case may be. Note— The disqualification for further employment on account of dismissal under Rule 14 (vii) can only be waived by the Government if the merits of an individual case so justify.”

38. On bare reading of Rule 14, it is clear that while framing the rules the rule framers were of the opinion that the Government servant can be imposed with the penalty of either (I) ‘Censure’, or (II) ‘Withholding Annual Grade Increment’ or ‘Withholding Promotion’. The language of the said rule clearly speaks that rule framers were of the view that while in case of imposing penalty of ‘withholding annual grade increment’, the same itself will not adversely affect the avenue of promotion, if the Government servant is otherwise found suitable. The rule framers while incorporating the penalty of ‘withholding annual grade increment’ or ‘withholding promotion’ with a specific intention used the word “or” in between ‘withholding annual grade increment’ and ‘withholding promotion’. By using word “or” the intention of the rule framers is very clear that in case of imposing penalty of ‘withholding annual grade increment’ their intention is not to withhold the promotion avenue of the Government servant merely on account of penalty. Withholding annual grade increment and withholding promotion are different kinds of penalties which may be imposed upon Government servant. Meaning thereby, if penalty of ‘withholding annual grade increment’ is imposed on a Government servant, that cannot be termed to be a penalty of ‘withholding promotion’ also.

On consideration of the provisions of the Rules this Court is of the view that rule framers were not having intention to withhold the promotion of a Government servant merely on account of imposing penalty of ‘Censure’ or ‘Withholding the annual grade increment’. If that would have been the intention of the rule framers they would have mentioned in the Rule 14 as ‘withholding annual grade increment’ and ‘withholding promotion’ but they have mentioned the penalty as ‘withholding annual grade increment’ “or” ‘withholding promotion’.

39. In view of the discussions made above, this Court safely can held that withholding promotion for a Government servant on account of imposition of penalty of ‘Censure’ or ‘withholding increment’ is illegal and arbitrary and unconstitutional and therefore the Circular issued by the respondent- State in this regard disasters to be set aside.”

40. In the case of Guman Singh Vs. State of Rajasthan & Ors. [(1971) 2 SCC 452], the Hon’ble Supreme Court has held that the Government cannot amend or supersede the statutory Rules by administrative instructions and any Circular containing the provisions for making the system so rigid that it curtail or restrict the powers conferred on the Selection Committee and Appointing Authority by the Rules. The Court further opined that such

circulars/administrative instructions is per se opposed to the selection procedure envisaged under the Rules:

“The Apex Court made following observations in Para 39 of the verdict:

39. Then the question is whether Government is competent to issue the said Circular and whether the Circular in any manner affects the discretion and powers of the Committee functioning under the statutory rules. The position is clear, as laid down by this Court in Sant Ram Sharma v. State of Rajasthan & Anr. (supra)

“It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

The Court further proceeded to observe on evaluation of the Circular, in Para 47, as under:

47. One gets a fairly good picture of the nature of the instructions contained in the circular issued by the Government. No doubt a properly evaluated marking system may be helpful for assessing the merit of persons who are already in service. But the instructions given in the circular are so rigid that they are opposed to the selection to be made strictly on merit as provided under Rules 28-B and 32.

While appreciating the object of the Circular, the Apex Court proceeded to observe that such a circular offend the Rules, in Para 53 of the verdict:

53. The object of the circular may be to bring about uniformity in the award of marks. But the directions contained therein do offend the rules. This is not a case of the Government filling up the gaps or of giving executive instructions on matters not provided for by or not inconsistent with the rules. The Learned Judges of the Division Bench of the High Court, have by and large, upheld the validity of the marking system as well as the other instructions contained in the circular of 1966 on the ground that the marking system as pointed out by the State has been in vogue from 1960, on the basis of a previous circular, dated August 31, 1960, issued by the State Government. Reliance placed upon this circular of 1960 by the High Court, in our opinion, is not justified. We have gone through the circular of 1960 which is No.F.1(6)Appts.(D)/60, dated August 31, 1960. That circular was issued by the State to clarify the misapprehension that appears to have been caused in the application, for promotion on the principle of merit-cum seniority or seniority-cum merit. For the purpose of having uniformity, the State Government had laid down certain principles in the said circular to be borne in mind by the Promotion Committees. No doubt there is a marking system indicated therein. But there are two features which distinguish the circular of 1960 from that of the 1966 circular. In Paragraph 3 of the former circular, it is specifically laid down that the principles mentioned therein are only in the nature of executive instructions to be kept in view by the Committees when marking promotions. It is made clear that those Committees “should however, exercise their own discretion while applying the above principles in view of the fact that occasionally the Confidential Rolls may not have been written with full sense of responsibility. Moreover, some of the rules permit interview before selection and in such cases the Selection Committee will have to assess suitability of the officer as a result of the interview also”. Under the circular of 1966, we have already indicated, no such discretion is left to the Selection or Promotion Committees to adopt any method other than that indicated in the circular. In fact, it is emphasised that the Statutory Service Rules and the instructions contained in the circular are to be treated as a complete code by the Committees. Another point to be noted is that in 1960 the question of promotion on the basis of merit alone had no place.

That principle was adopted only, as pointed out by us earlier, in 1965 which led to the amendment of the rules. Therefore, the principles mentioned in the circular of 1960 cannot be relied on when considering the validity of the present circular, when promotion by merit alone has been recognized by the Rules from 1965. We have already indicated that the instructions in the 1966 circular contravene the Rules. Therefore, we are of the opinion that the circular, dated August 27, 1966, is bad and accordingly it is struck down. We make it clear that we express no opinion on the validity or otherwise of the circular of August 31, 1960. We have only referred to that circular to show that the High Court has committed an error in placing reliance on the same.”

41. The Hon’ble Apex Court while reiterating the principles laid down in the Constitution Bench judgment in case of Guman Singh (supra) as held in case of Sarva U.P. Gramin Bank Vs. Manoj Kumar Chak [(2013) 6 SCC 287), has held as under:

“43. We also do not find any merit in the submission of Mr. Dhruv Mehta that Circular No.17 of 2009 dated 30.11.2009 and Circular dated 12.7.2010 are to ensure that the individual members of DPC do not recommend for promotion an individual officer despite having been punished in the proceeding five years. Such curtailment of the powers of DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum marks in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by an eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.

44. There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as “withholding of promotion, reduction in rank, lowering in ranks/pay scales”. However, there is another range of penalty such as censure, reprimand, withholding of increments, etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/reprimand would, in fact, read as censure/reprimand plus five years' debarment from promotion. Thus the circulars issued by the Bank debarring such employees from being considered would be clearly contrary to the statutory rules. The circulars clearly do not fall within the ratio in Sant Ram case.

45. In our opinion, the observations made by this Court in Ram Ashish Dixit are a complete answer to the submissions made by the learned counsel for the appellants, Mr. Dhruv Mehta. Therefore the High Court, in our opinion, has rightly quashed the aforesaid two circulars and directed that the respondent be considered for promotion in accordance with the applicable rules.”

42. The Hon'ble Division Bench of this Court in case of State of Rajasthan & Ors. Vs. Ashok Singhvi D.B. Special Appeal (Writ) No. 232/2013, decided on 06.08.2013, after giving thoughtful consideration to the judgment of the Hon'ble Apex Court in case of State of Rajasthan & Ors. Vs. Shanker Lal Parmar (AIR 2012 SC 1913, Guman Singh (supra), held Sarva U.P. Gramin Bank (supra) has observed as under:

“We have heard the learned counsel for the parties at length, scanned the materials on record and perused the impugned order passed by the learned Single Judge.

A glance at the impugned order passed by the learned Single Judge clearly and unequivocally reveals that the learned Single Judge has simply confined the relief to the respondent visa- vis his right of consideration for promotion and question of his suitability for promotion has been left open to be decided by the competent authority. Learned Single Judge has further observed that if the penalty suffered by the incumbent adversely effects minimum merit necessary for efficiency of administration, the DPC can adjudge him unsuitable for promotion. Learned writ Court has further concluded that debarring an incumbent from his right of consideration for promotion on the strength of Circular dated 26th of July 2006 is not sustainable and that being so issued directions to consider the candidature of the respondent ignoring the said Circular. On examining the impugned order in the light of Rule 24A of the Rules of 1963 and on the touchstone of the Constitution Bench judgment of the Apex Court in Guman Singh's case (supra), and the latest verdict of the Hon'ble Apex Court in case of Sarva U.P. Gramin Bank's case (supra), we do not feel persuaded to interfere with the impugned order. The legal precedents which are cited by the learned Addl. Advocate General, are having no bearing whatsoever on the issue involved in the matter, and therefore, these judgments are of no help to the appellants. We, therefore, fully concur with the impugned order passed by the learned Single Judge and find no merit in this appeal.”

43. The Co-ordinate Bench of this Court at Principal Seat Jodhpur in case of Jhhabar Singh Charan Vs. State of Rajasthan & Ors. S.B. Civil Writ Petition No. 7119/2022, decided on 10.05.2023 after relying on various judgments has observed as under:

“8. In the present matter, it is not disputed that the criteria for promotion is seniority-cum merit and therefore, the ratio as laid down vide the above judgments would definitely apply. In the present petition, earlier, specific directions were issued to the respondent-Department and in pursuance to the same, result of DPC has been placed on record and as per the said result, the petitioner has been recommended for promotion.

9. In view of the settled proposition of law, the present writ petition is partly allowed. As the petitioner has already been recommended for promotion in the DPC, the orders qua his promotion be issued in terms of law within a period of one month from the date of receipt of the present order.”

44. So considering the provisions of Rules and the law laid down in various judgments, as referred above, this Court can safely held that the Circular dated 04.06.2008 issued by the Department of Personnel to the extent of depriving the Government servants from consideration for promotion in case of criteria for promotion being Seniority-Cum-Merit on account of penalty of ‘Censure’ or withholding increments, is not sustainable and deserves to be set aside.

45. Accordingly, the present writ petition is allowed. The order of penalty dated 30.05.2013, passed by the Deputy Commissioner of Police, Jaipur, the order dated 27.12.2013 passed by the Commissioner of Police, Jaipur and also the order dated 26.10.2015 passed by the Joint Secretary Government of Rajasthan (Appeal) and so also the Circular dated 04.06.2008 issued by the Department of Personnel to the extent as observed in above paras, are quashed and set aside. The petitioner shall be entitled for all consequential benefits which accrue to him as if no such order of penalty was ever passed against him.

46. The exercise for promotion or review so as to extend the consequential benefits to the petitioner, be completed by the respondents within a period of three months from today.

47. In view of the order passed in the main petition, the stay application and pending application(s), if any, also stand disposed of."

6. माननीय उच्च न्यायालय ने उपरोक्त न्यायिक दृष्टांत में परिनिन्दा के दण्ड से दण्डित किये जाने पर कार्मिक विभाग के परिपत्र दिनांक 04.06.2008 के आधार पर पदोन्नति से वंचित रखा जाना उचित नहीं माना है। वर्तमान प्रकरण में अपीलार्थी को केवल परिनिन्दा के दण्ड के आधार पर पदोन्नति के लाभ से वंचित रखा गया है जो माननीय उच्च न्यायालय द्वारा दिये गये उपरोक्त न्यायिक दृष्टांत के आधार पर हम उचित होना नहीं पाते हैं। परिणामस्वरूप हम यह पाते हैं कि अपीलार्थी को तदर्थ आधार पर नायब तहसीलदार के पद पर पदोन्नति दिये जाने में कोई बाधा नहीं है।
7. परिणामस्वरूप यह अपील स्वीकार कर प्रत्यर्थी विभाग को आदेश दिया जाता है कि प्रत्यर्थी विभाग अपीलार्थी के विरुद्ध परिनिन्दा के दण्ड को नजरअंदाज करते हुए अपीलार्थी के संबंध में नायब तहसीलदार के पद पर तदर्थ रूप से पदोन्नति दिये जाने पर विचार किया जाए। यदि अपीलार्थी के संबंध में पदोन्नति दिये जाने में कोई अन्य बाधा न हो तो अपीलार्थी को पदोन्नति का लाभ उसी दिनांक से दिया जाए जिस दिनांक से उससे कनिष्ठ व्यक्तियों को प्रदान किया गया है। अपीलार्थी को समस्त नोशनल परिलाभ भी प्रदान किये जाएं।

(लेखराज तोसावड़ा)  
सदस्य

(अनन्त भंडारी)  
सदस्य (न्यायिक)