

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.262 OF 2021**

Sri Rajdev Singh Yadav,

son of late Kamta Yadav, permanent resident of village- Keshawpur, Mohammdabad, P.O., P.S. & Sub-Division-Mohamadabad, District- Ghazipur, Uttar Pradesh, presently residing at 21 Assam Rifles, C/O 99 APO, Kunjaban, Agartala, West Tripura, 799001.

..... **Appellant(s)**

Vs.

1. The Union of India,

represented by the Secretary, Ministry of Home Affairs, Government of India, having his office at North Block Secretariat, New Delhi- 110001.

2. The Secretary,

Ministry of Home Affairs, Government of India, having his office at North Block Secretariat, New Delhi- 110001.

3. The Director General,

Assam Rifles, having his office at Head Quarter, Director General Assam Rifles, Shillong (Laitkor), Meghalaya.

4. The Inspector General,

Assam Rifles, having his office at Head Quarter, Inspector General Assam Rifles (East), Srikona, Silchar, Assam.

.....**Official Respondent(s)**

5. Commandant G.R. Pillai,

having his office at Head Quarter, 10th Sector, Assam Rifles, Ukhrul, Manipur.

6. Commandant Rampal Singh,

having his office at Head Quarter, 5th Sector Assam Rifles, Chieswema, Nagaland

.....**Respondent(s)**

For the Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Mr. P. Chakraborty, Advocate.

For the Respondent(s) : Mr. B. Majumder, Deputy SGI.

Date of hearing and delivery of
Judgment & Order : 04.10.2023.

Whether fit for reporting : YES.

**HON'BLE MR JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

(Justice T. Amarnath Goud)

The present writ appeal is presented against the impugned Judgment and Order(Oral) dated 16.09.20212, passed in WP(C) No.370 of 2021.

2. The brief fact of this case is that the appellant is holding the post of Second-in-Command in Assam Rifles. On 31.07.2015 Assam Rifles issued a "tentative charge sheet" in which, it is alleged that while working in the Directorate General of Assam Rifles at Shillong between 6th December 2012 to 14th January 2015 the appellant failed to establish the source of cash deposits of Rs.17,43,994/- in his bank account which was done during the period between 10th December 2011 to 3rd March 2014. It is also alleged that the appellant failed to establish the source of two fixed deposits of Rs.11,83,861/- and Rs.10,82,233/- in his bank accounts during the same period. Subsequently, on 29.07.2019, the first information report was also lodged against the appellant in Shillong for offence punishable under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption

Act. In this complaint, it was alleged that the appellant was holding assets to the extent of Rs.1,19,59,865/- disproportionate to the known source of income. A detailed account of the appellant's known sources of income, his reasonable expenditure, and the assets of the petitioner detected by the department were also listed. The CBI submitted a charge sheet in connection with the said criminal case on 30.03.2021. The criminal case is pending.

3. According to the appellant, two persons in his cadre who are junior to him namely, Shri G.R. Pillai and Sri Rampal Singh i.e., the private respondents in this appeal have been promoted to the next post of Commandant ignoring the claim of the appellant. The appellant, therefore, made representations to the department for grant of promotion. But his requests were refused. In one communication dated 02.07.2020, it was stated that the criminal case is still under investigation and, therefore, the appellant cannot be promoted for want of vigilance clearance. At that stage, the appellant has filed WP(C) No.370 of 2021 before this Court. In this said writ petition he requested that he should be promoted to the post of Commandant since when his turn arrived for consideration for promotion, neither departmental charge sheet was issued nor charge sheet was filed in the criminal case. The respondents filed counter affidavit *inter alia* contending

that the disciplinary proceedings were initiated against the appellant by the Department. Vide Order dated 16.09.2021, the said WP(C) No.370 of 2021 was dismissed by the learned Single Bench of this Court. Hence this appeal has been filed by the appellant herein seeking to quash/set aside the impugned Judgment & Order(Oral) dated 16.09.2021 passed in WP(C) No.370 of 2021.

4. Heard Mr. Somik Deb, learned Sr. counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the appellant as well as Mr. B. Majumder, learned Deputy SGI appearing for the respondents.

5. Mr. Somik Deb, learned Sr. counsel appearing for the petitioner submits that Hon'ble Single Judge failed to appreciate the chronological facts and circumstances of the case. The tentative charge sheet was filed against the petitioner on 31.07.2015, the CBI registered a criminal case against the appellant on 29.07.2019, and on 01.10.2020, the private respondents who were the Juniors to the appellant were promoted to the post of Commandant in the Assam Rifle, thereby superseding the appellant. On 28.06.2020, the appellant presented a representation for consideration of his promotion. On 02.07.2020, the prayer of the appellant tendered to the

respondents dated 28.06.2020 was repulsed on the ground that his case is still under investigation and that he cannot be promoted until Vigilance Clearance is received. On 21.03.2021, the appellant submitted a detailed representation seeking promotion. On 30.03.2021, the CBI submitted charge-sheet against the appellant. So, it is evident that on the relevant date of consideration i.e., 01.10.2020, when the Juniors of the appellant were promoted, the appellant was neither under suspension, nor any charge-sheet was issued against him in the criminal case nor any charge-sheet in a Departmental proceeding was issued to him. As such, the learned Single Judge failed to appreciate the said crucial fact that on the relevant date, none of the conditions precedent for invocation of sealed cover procedure was available to the respondents.

To support his contention that seal cover procedure is not applicable to the appellant herein, the learned Sr. counsel referred to **Paras-7, 13 and 16** of the Hon'ble Apex Court Judgment reported in **(2007) 6 SCC 704** titled as **Union of India and ors. Vs. Sangram Keshari Nayak** which is reproduced here-in-under:-

"7. The Tribunal as also the High Court proceeded to determine the issue on the basis that the term "Government Servant under cloud" would be the employees against whom a chargesheet has been issued, relying on or on the basis of paragraph 2 of the said circular, the relevant portion whereof reads as under:

"2. At the time of consideration of the case of Government Servants for empanelment, details of Government Servants in the consideration zone for

promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i) Government Servants under suspension;

(ii) Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;

(iii) Government Servants in respect of whom prosecution for a criminal charge is pending"

13. Whereas paragraph 6 of the said circular letter provides for a sealed cover procedure to be adopted by the DPC, the same has to be taken recourse to only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. The recommendations of the DPC, therefore, can be refused to be given effect to only inter alia when one or the other conditions mentioned in paragraph 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a chargesheet had been issued or, in other words, a disciplinary proceeding was pending. Admittedly, a chargesheet was issued as against him only on 24.09.1999.

16. Serious allegations of financial misdemeanours were made against the respondent therein. Central Bureau of Investigation took up investigation. He was suspended on 10.03.1988. Although the said order of suspension was revoked, investigation continued. The DPC considered his case for promotion on 3.04.1991 and resorted to sealed cover procedure. Only in the aforementioned situation, K.V. Janakiraman and other decisions following the same stood distinguished opining that paragraph 7 of the said office memorandum would be attracted, which is in the following terms(R.S. Sharma case, SCC P.398, Para-11:

"Sealed cover applicable to an officer coming under cloud before promotion .□A government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

It was held(R.S. Sharma Case, SCC . p. 399, Para.15)

"□One is that, what the Department did not do is not the yardstick indicated in para 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the government servant who is not "actually promoted" by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the second para, the recommendations of DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of para 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the Department for not opening the sealed cover immediately after 31-7-1991."

Learned Sr. counsel on the same point also referred to **paras-2 to 6** of the Hon'ble Apex Court Judgment reported in

(2013) 4 SCC 161 titled as **Union of India and ors Vs. Anil**

Kumar Sarkar which is reproduced here-in-under:-

"2. Anil Kumar Sarkar, the respondent herein, joined the Northern Railways as a Junior Clerk on 04.11.1977. He was promoted to various posts and while he was working as senior AFA/T-1 in the office of the Financial Adviser and Chief Accounts Officer of Northeast Frontier (N.F.) Railway at Maligaon, a Departmental Promotion Committee (DPC) was convened by the Union Public Service Commission (UPSC) on 26.02.2002 and 27.02.2002 to consider eligible Group 'B' officers of the Accounts Department for their substantive promotion to Group 'A' (Jr. Scale) of Indian Railways Accounts Service (IRAS) against the vacancies for various Zonal Railways/Production Units. In the said DPC, the respondent's name was also considered against the vacancies in N.F. Railway for the year 2001-2002 and accordingly, his name was placed in the extended select panel.

3. It was alleged by the appellants herein that during the year 1994-95, while the respondent was working as Assistant Accounts Officer in the Central Stores Accounts (Bills) in the office of the Financial Adviser and Chief Accounts Officer (Open Line), N.F. Railway, Maligaon, he committed gross misconduct in the matter of checking and passing the bills of various firms involved in manufacturing and supplying of cast iron sleeper plates to N.F. Railways. For the said acts, four memorandum of charges were issued to the respondent, out of which two were issued on 13.08.2003 and others on 01.09.2003 and 05.11.2003. On the basis of the said memorandums, four departmental proceedings were initiated against the respondent at three different places, i.e., Delhi, Kolkata and Gauhati, enquiries were completed and show cause notices were served.

4. Based on the similar charges, in the year 2004, the CBI lodged 11 FIRs against the respondent herein on different dates under Section 120B/420 of the Indian Penal Code, 1860 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and accordingly, cases were registered against him. Subsequently, 11 cases were amalgamated into 3 cases being numbered as Special Case Nos. 59/04, 60/04 and 62/04. According to the appellants, on the basis of these charges, the respondent was not promoted to Group 'A' (Jr. Scale).

5. By office order dated 21.04.2003, the batch mates of the respondent were promoted. Being aggrieved, the respondent herein filed several representations to the Department for consideration of his case for promotion which were duly rejected. Challenging the non-consideration of his case for promotion, the respondent filed O.A. No. 251 of 2007 before the Central Administrative Tribunal, Gauhati Bench for a direction to the appellants herein to promote him to Group 'A' (Jr. Scale) of IRAS w.e.f. 05.03.2002 in terms of the recommendations of the DPC held on 26.02.2002 and 27.02.2002 wherein his name was figured in the extended panel list. Vide order dated 21.08.2009, the Tribunal dismissed his application.

6. Challenging the order of the Tribunal, the respondent herein filed a petition being W.P.(C) No. 744 of 2010 before the Gauhati High Court. The High Court, by impugned order dated 27.04.2010, allowed the petition and set aside the order passed by the Tribunal and directed the appellants herein to issue appropriate order in favour of the respondent herein for promotion with all consequential benefits. Challenging the said order, the Union of India has filed this appeal by way of special leave.

Thereafter, the learned Sr. counsel submitted that preliminary investigation cannot form the basis for putting the

matter of the petitioner into seal cover and thus urged to allow this instant appeal.

6. On the other hand, Mr. B. Majumder, learned Deputy SGI appearing for the Union respondents submits that the matter related to the appellant herein was referred to the CBI in the year 2016 itself.

7. Heard both sides and perused the evidence on record.

8. The tentative charge sheet issued in the year 2015 by the Assam Rifle contains many serious allegations against the appellant herein, such as, the appellant failing to disclose the source of cash and fixed deposits in his bank accounts running into several lacs of rupees. In the year 2019, the department also filed a criminal complaint investigation which was handed over to CBI. CBI issued the charge sheet upon completion of the investigation in March, 2021 for offence punishable under Section 13(2) of the Prevention of Corruption Act alleging that the appellant was holding assets worth over rupees one crore than his known source of income. The appellant is thus facing serious allegations of holding large disproportionate assets.

9. Here it is pertinent to mention that the department had already taken a decision to proceed against the petitioner for allegation of undisclosed cash and fixed deposits in his bank accounts way back in the year 2015. In the year 2019, the department also lodged a criminal complaint against the petitioner for possessing vast assets in excess of his known sources of income and handed over the investigation to the CBI. Both these events took place before the appellant's case was ripe for promotion. The juniors of the appellant were promoted in the year 2020. Therefore by that time, the department had already issued a tentative charge sheet under the Assam Rifles Act and lodged a criminal complaint against the petitioner, and handed over the investigation thereof to the CBI.

10. In view of the above discussion it is clear that in the present case, at the time of filing the tentative charge sheet, substantive investigation was already done. Sufficient information was already there with the department against the petitioner. Though it was not the stage of the final filing of the charge sheet, the tentative charge sheet is to be considered against the petitioner. Further, the Judgments as referred by the learned Sr. counsel appearing for the petitioner is not relevant to the fact of this case.

11. Accordingly, the Judgment and Order(Oral) dated 16.09.2021 passed by the Hon'ble learned Single Judge in WP(C) No.370 of 2021 is confirmed and this present appeal is dismissed.

12. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

JUDGE

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