

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1622/1989.  
T.A. No.

199

DATE OF DECISION 19.9.1991.

<u>Shri Lachhman Dass Gandhi</u>	<b>Petitioner</b>
<u>Shri Sant Lal,</u>	Advocate for the Petitioner(s)
Versus	
<u>The Chief Postmaster General,</u>	<b>Respondent</b>
<u>Delhi Circle, New Delhi-110001.</u>	
<u>Shri N.S. Mehta,</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? —
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

*Amitav Banerji*  
(AMITAV BANERJI)  
CHAIRMAN.  
19.9.1991.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

D.A. No. 1622/1989.

Date of decision: September 19, 1991

Shri Lachhman Dass Gandhi ...

Applicant.

vs.

The Chief Postmaster General  
Delhi Circle, New Delhi-110001. ...

Respondent.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the applicant ... Shri Sant Lal, counsel.

For the respondent ... Shri N.S. Mehta, Sr. Standing  
counsel.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

The applicant, Shri Lachhman Dass Gandhi, is aggrieved  
that while his colleagues S/Shri J.M. Chhabra and R.S. Tokas  
were promoted to Higher Selection Grade-I (HSG-I) on adhoc  
basis, the applicant was ignored and deprived of his right  
of consideration for the similar promotion. He represented  
to the Chief Postmaster General Delhi Circle, New Delhi  
against his supersession, and Deputy Chief Postmaster Delhi  
GPO vide his letter dated 21.7.1989 intimated that the  
applicant was not considered for promotion because a case  
was pending inquiry with C.B.I. against him. The applicant's  
stand is that he has neither been suspended nor chargesheeted  
nor is there any disciplinary proceeding pending against  
him. Mere pendency of an inquiry by the C.B.I. is not

enough to withhold the promotion, even if it be as on adhoc capacity, is not permissible.

The applicant has pointed out that he had joined originally the Department of Posts as a Clerk in Delhi Circle w.e.f. 17.8.1960. He had passed the departmental examination held in 1972 securing first position in the merit list. He was promoted as Inspector of Post Offices w.e.f. 23.4.1973 in Delhi Circle. He was thereafter promoted as Assistant Superintendent of Post Offices w.e.f. 5.9.1980 in the revised scale of Rs.550-900. Further promotion to the HSG-I (Inspectors & Assistant Superintendents quota) in the pre-revised scale of Rs.700-900 (Revised as Rs.2000-3200 w.e.f. 1.1.1986) is by seniority-cum-fitness. The applicant was seniormost for promotion to the H.S.G.-I in the scale of Rs.2000-3200 and was due for consideration for such promotion. But his colleagues who were junior to him were given the promotion and the same was denied to him.

In the counter affidavit, a plea was taken that the applicant has not exhausted his other remedy before coming to the Tribunal as he had not preferred any representation to the higher authority of the Department for ignoring him the promotion. It was stated that the case of the applicant was considered for adhoc promotion from ASPOs cadre to HSG-I cadre, but he was not found fit/promotion on adhoc basis for as there was a case of grave nature pending for investigation with the C.B.I. authorities. It was lastly urged that

the applicant was not entitled to any interim relief nor any order on the merits of the case.

Shri Sant Lal, learned counsel for the applicant contended that in the absence of any chargesheet being served on the applicant or an Inquiry Officer appointed or disciplinary proceedings having commenced, his promotion could not be withheld and his juniors could not be promoted in preference to him as he was senior to them. Meritwise also, the applicant's case was better than the other two persons. He, therefore, urged that the supersession of the applicant by his immediate two junior colleagues was unwarranted and has caused irreparable loss to the applicant.

Shri N.S. Mehta, learned counsel for the respondent urged that in any event it was a promotion on an adhoc basis and there is no right in anyone to be promoted as such. At the most, the applicant can claim that his case was to be considered and nothing more. As a matter of fact, his case had been considered and he was found unfit because there was an inquiry pending with the C.B.I. against him. Learned counsel contended: there can be an ad-hoc appointment but not ad-hoc promotion and whether the latter is a promotion? The appointment which has been given to the two colleagues of the applicant was only a stop gap arrangement and they were asked to hold charge of a post one rank above than what they were holding.

It appears to us that the question for consideration is what was the position vis-a vis the applicant when his

10

juniors were promoted, i.e., in June, 1989. There is no iota of doubt that in June, 1989, there was no disciplinary proceeding pending against the applicant. No chargesheet had been prepared and served and there was no order of suspension either. Only a case was referred to the C.B.I. for inquiry. If the charge against the applicant was really grave or serious, the Department could have taken action against him promptly.

On the question of promotion, the law is well settled that no one has a right to promotion. He has only a right to be considered for promotion. It is undisputed that two colleagues of <sup>the</sup> applicant, both junior to him, were promoted to HSG-I/ASPOs cadre vide Memo No. Staff/BB-I dated 12.6.1989 (Annexure A-1). It is also true that if the two colleagues are continued in the higher post and absorbed, their seniority will count from 12.6.1989 whereas the applicant would stand to lose, for he has not yet been promoted. If, however, these two persons are not absorbed or confirmed as HSG-I and reverted to their earlier post, the position will be different. But they have not been reverted. It is also true that they are holding a place higher than what they were holding earlier and that too for more than two years now. This amounts to a supersession of the applicant who was senior to the aforementioned two colleagues of his. The stand taken by the respondent is that a C.B.I. inquiry was pending against the applicant in respect of a grave charge and, therefore, the applicant could not be promoted at the time of the promotion of his

two junior colleagues. What is significant to be noticed here is that neither any chargesheet had been framed nor disciplinary proceedings commenced against the applicant under Rule 14 of the C.C.S.(CCA) Rules.

In a recent decision dated 27.8.1991 UNION OF INDIA ETC. ETC. Vs. K.V. JANKIRAMAN ETC. ETC. (JT 1991 (3) SC 527) while considering the Full Bench decision of the Central Administrative Tribunal in the case of K.CH.VENKATA REDDY & OTHERS Vs. UNION OF INDIA AND OTHERS their Lordships observed:

"...The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy."

In view of the above, the mere existence of a preliminary investigation against the applicant is not enough ground to withhold his promotion even on ad hoc basis.

Further, making a reference to the C.B.I. to conduct an inquiry against an employee is not a proceeding under the C.C.S.(CCA) Rules and cannot, therefore, be treated as a disqualification against the applicant.

In the case of THE STATE OF MADHYA PRADESH V BANI SINGH & ANR. (JT 1990 (2)S.C. 54) their Lordships were considering the question of inordinate delay (12 years) in issuing the charge memo and held:

"If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings."

It is a fact that Shri J.M.Chhabra and Shri R.S. Tokas have been promoted although on ad hoc basis, the applicant was also entitled to be so promoted regardless of the pendency of the C.B.I. inquiry provided there was nothing else against him. We are, therefore, of the view that we must interfere in this case. We are unable to accept the contention of the learned counsel of the applicant to quash the order dated 12.6.1989 passed in favour of Shri J.M.Chhabra and Shri R.S.Tokas. They have not been made parties in this O.A. Thus, it is not possible to make an order against them without having made them a party in this O.A.

However, we are satisfied that a direction must be issued to the respondent to consider the applicant for

promotion to the post of H.S.G.-I from the date when his juniors were promoted and in an ad-hoc capacity. In case the respondent decides to commence disciplinary proceedings under Rule 14 of the CCS(CCA) Rules against the applicant by issuing a chargesheet, then in that event, he will not be confirmed. In case he is penalised, he can be reverted also. We order accordingly. The question of making any direction for payment of back wages does not arise as the applicant is yet to be promoted. This O.A. is disposed of as per the directions given above. Parties are directed to bear their own costs.

*Sukanya*  
(I.K.RASGOTRA)  
MEMBER (A)

19.9.1991.

*Amitav*  
(AMITAV BANERJEE)  
CHAIRMAN

19.9.1991.

SKS