

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

(13)

OA NO.1336/88

DATE OF DECISION:30.1.92

SHRI PRITAM SINGH

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

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

HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT SHRI K.L. MOHINDRU, COUNSEL.

FOR THE RESPONDENTS SHRI J.C. MADAN, COUNSEL

JUDGEMENT (ORAL)

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

Heard.

The applicant herein was appointed as Section Officer w.e.f. 25.10.1971. While holding that post he was served a memorandum on 20.3.1979, asking him to explain certain discrepancies which resulted in excessive consumption of P.O.L. in the Motor Vehicles, resulting in an estimated loss of Rs.28,000/-. The applicant submitted his reply explaining the various points raised vide his letter dated 6.4.1979. Some additional points were raised by the respondents in their memorandum dated 9.5.1979 for the explanation of the applicant which too were explained by him vide his letter dated 19.5.1979. Ultimately a chargesheet was served on the applicant on 29.1.83. In the meantime he had become due to cross the Efficiency Bar (EB) on 1.9.1978 (Annexure R, page 95 of the paper book). The respondents, however, did not allow him to cross the EB, keeping in view the contemplated proceedings as reflected in the memorandum issued on 23.9.1979. The case

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even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated with differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground,

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of the applicant, however, is that the EB is allowed to be crossed on the basis of the record preceding the date on which the EB falls due. It is further stressed by the learned counsel for the applicant that as no charges were framed against the applicant his increment at the EB stage could not have been withheld unless his confidential record prior to 1.1.1976 justifies such annexure and there is no material to indicate that the service of the applicant was not satisfactory prior to that date.

The next point raised by the learned counsel for the applicant is that consequent to the withholding of the EB the applicant was also not confirmed as Section Officer although the officer next junior to him was confirmed w.e.f. 1.2.1983 and thereby the applicant lost his seniority by 21 places. Further on the basis of the chargesheet which was ultimately served on him on 29.1.1983 the applicant was awarded the penalty of censure on 6.5.1986. His juniors, as mentioned earlier were confirmed in February, 1983. The applicant could not have been confirmed when disciplinary proceedings were pending against him. His confirmation could only follow the conclusion of the disciplinary proceedings. **In UOI etc. etc. v. K.V. Jankiraman etc. etc. 1991 (3) JT SC 527.** The law on this point has been clearly articulated in paragraph 29 of the **Jankiraman** (supra) case, which is reproduced below:-

"29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date

it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

The law has been lucidly laid down by the Hon'ble Supreme Court that the officer cannot be rewarded by promotion as a matter of course when he is undergoing penalty. We also observe that the applicant was confirmed w.e.f. 7.5.1986 after the conclusion of the disciplinary proceedings.

In the circumstances of the case, the application partly succeeds inasmuch as that the respondents shall allow the applicant to cross the EB on the due date, i.e. 1.9.1978 in the pre-revised scale of Rs.650-1200. He shall further be entitled to the arrears of pay on that account from that date onwards. We order accordingly. As far as his confirmation is concerned, we are not persuaded to accept the plea that he should be confirmed from the date his junior was confirmed and the prayer in that regard is rejected. We further direct that the above orders shall be implemented by the respondents most expeditiously but preferably within 8 weeks from the date of communication of this order. No costs.

J.P. SHARMA
(J.P. SHARMA)
MEMBER (J)

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

January 30, 1992.