

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No.456 of 2019

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C. V. Sankar, Member (A)

1. Sri P. Ramakrishnan, aged about 56 years Gr. A, Son of late M.K. Poduval a permanent resident of Sreerangam, Pallikunnu, Kannur, PIN – 670004 at present working as Deputy Divisional Manager (PLI), Office of the Chief Postmaster General, Odisha Circle, Bhubaneswar, PIN – 751 001

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary to Government of India, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. The Director General of Posts, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
3. The Assistant Director General (SPG), Government of India, Ministry of Communications, Department of Posts (Personnel Division), Dak Bhawan, Sansad Marg, New Delhi – 110 001.

4. The Chief Post Master General, Odisha Circle,
Bhubaneswar, PIN – 751 001.

.....Respondents.

For the applicant : Mr. J. M. Pattnaik, Advocate.

For the respondents: Mr. S. B. Mohanty, Advocate.

Heard & reserved on : 29.01.2021

Order on : 19.03.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To quash the rejection order No. 11-2/2019-SPG dated 20.05.2019 (Annexure A/2) and to direct the Respondents to promote the applicant to Junior Administrative Grade (JAG) of the Indian Postal Service, Gr. A, in Pay Matrix Level – 12 with effect from the date of his juniors were promoted vide order dated 3rd July, 2018 with all consequential service and financial benefits retrospectively;*
- (ii) *To pass any other order/orders as deemed fit and proper, under the circumstances.*

2. The case of the applicants in brief as inter alia averred in the OA is that while working as Senior Superintendent of Post Offices at Palakkad in the year 2014 the applicant

had went on deputation as Passport Officer and while continuing as such he was arrested on 20.07.2015 on an FIR dated 20.07.2015. He was subsequently released but for his detention in judicial custody the applicant was allowed to continue under deemed suspension which was revoked vide order dated 07.12.2015. The applicant after repatriation was posted as Deputy Divisional Manager (PLI) at Bhubaneswar vide order dated 11.02.2016 where he reported on 06.02.2017. The applicant had approached this Tribunal earlier by filing OA No. 439/2018 which he had filed with a prayer to direct the respondents to promote him to said grade from the date when his juniors were promoted vide order dated 3rd July, 2018 in the light of order of Hon'ble High Court of Orissa dated 09.06.2009 in WP(C) No. 8440 of 2009 (Susanta Nanda v Union of India and others). The said OA was disposed on 04.12.2018 (Annexure A/1) directing the respondents to consider the representation of the applicant for promotion to JAG taking into consideration the decision of the Hon'ble High Court referred above within two months. The applicant submitted that since the order was not complied within the said period he had file one Misc. Case but however during the pendency of the MA, Respondent No. 1 vide order dated 20.05.2019 (Annexure A/2) rejected the claim of the applicant

without taking into consideration the law of Hon'ble High Court of Orissa. Hence this OA.

3. The respondents in their counter inter alia averred that this Tribunal vide order dated 04.12.2018 (Annexure R/1) in OA No. 439/2018 without expressing any opinion on the merit of the case had directed the respondents to consider the representation of the applicant for promotion to JAG taking into consideration the decision of the Hon'ble High Court in W.P. (C) No. 8440/2009. The respondents considered the representation and since the decision of the Hon'ble High Court was not applicable to the case of the applicant the representation was rejected vide order dated 20.05.2019. The respondents submitted that the applicant while working as passport officer on deputation was arrested on criminal charges by CBI Cochin on 20.07.2015 and remained in judicial custody and he was released on bail on 18.08.2015. The applicant was on deemed suspension w.e.f. 20.07.2015 under Rule 10(2) of CCS(CCA) Rules, 1965 vide order dated 29.07.2015 (Annexure R/2). The applicant's suspension was revoked vide order dated 07.12.2015 not because he was found free from the charges levelled against him but only for facilitating his repatriation to his parent department so that prosecution procedure as requested by CBI and also any suitable departmental proceedings can be initiated against him. The

respondents submitted that vigilance division had intimated that CBI Cochin had registered two cases i.e - (i) RC 16(A)/2015- KER for alleged conspiracy and demanding/taking bribe of Rs. 50,000/- and (ii) RC 19(A)/2015-KER for violation of Rule 18(4) of CCS (Conduct)Rules, 1964 - against the applicant. The respondents submitted that the applicant was not promoted to JAG on ad-hoc basis and findings of appointing authority i.e. Hon'ble MOSC(I/C) kept in sealed cover as the applicant was covered under para 2 of DoP&T O.M. dated 14.09.1992 (Annexure R/4). The respondents submitted that other eligible Senior Time scale officers including his juniors who were considered were free from vigilance angle hence promoted to ad-hoc JAG vide order dated 03.07.2018 (Annexure R/5). The respondents further submitted that as per DOPT OM dated 23.02.1999 (Annexure R/6) sealed cover procedure prescribed in DOPT OM dated 14.09.1992 is to be followed at the time of consideration for ad-hoc promotion in the case of Govt. Servants i) who are under suspension; ii) in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and iii) in respect of whom prosecution for a criminal charge is pending. Since the applicant was covered under (ii) above sealed cover procedure was applied in the case of the applicant. The respondents

submitted that the case of the applicant was considered as per DOPT Om dated 02.11.2012 (Annexure R/8) based on DOPT OM dated 14.09.1992 issued in pursuant to the judgment of Hon'ble Supreme Court in the case of Union of India vs K. V. Janakiraman which makes it clear that it is legally tenable to withhold vigilance clearance to a govt servant who is under suspension or a charge sheet has been issued and the disciplinary proceedings are pending or against whom prosecution for criminal charge is pending. The respondents further submitted that ad-hoc promotion being a temporary arrangement cannot be made effective from a retrospective date and the service rendered on ad-hoc basis in JAG would not count for the purpose of seniority in that grade or for promotion to the next higher grade hence promoting a junior on ad-hoc basis by superseding a senior is pointless and should not be subject of argument.

4. The applicant in his rejoinder reiterated more or less the same points submitted by him in the OA.
5. Learned counsel for the applicant relied on few citations including the following:

- a) Decision of Principal Bench, CAT, New Delhi in OA No. 392 of 2010 (Mrs. Sumthi Ravichandran, IPS vs UOI and others)
- b) This Tribunal in OA No. 573/2013 (Kumar Raghvendra Singh vs UOI) upheld by Hon'ble High Court of Orissa in WP (C) No. 19066 of 2015 dated 05.01.2016.

6. Heard learned counsels for both the sides and have carefully gone through their pleadings, material available on records and citations relied upon by them.
7. It is seen that the applicant was arrested on 20.07.2015. After revoking of suspension, the applicant joined in his duty on 06.02.2017. The CBI had registered two cases against the applicant. In the circumstances as narrated in the pleadings of the respondents in the counter, this Tribunal is satisfied that no irregularity or illegality has been committed by the respondents in not giving promotion to the applicant in post of JAG on ad-hoc basis and the matter was rightly kept in sealed cover as per the DOPT circular dated 14.09.1992 vide Annexure R/4. Since officers junior to the applicant were free from vigilance angle, therefore this Tribunal does not find illegality or irregularity in the action of the respondents in giving ad-hoc promotion to JAG post to them as per order vide Annexure R/5. The respondents have rightly followed sealed cover procedure as per DOPT circular dated 23.02.1999 vide Annexure R/6 & dated 14.09.1992 vide Annexure R/4. They have also rightly followed the circular vide Annexure R/8 dated 02.11.2012. The action of the respondents is also in accordance with the decision of Hon'ble Supreme Court reported in Union of India vrs K. V. Jankairaman and the decision of Hon'ble Supreme Court in Union of India vrs Kewal Kumar (1993)

3 SCC 204. Besides that the ad-hoc promotion being a temporary arrangement cannot be made effective from retrospective date. The service rendered on ad-hoc basis in JAG post cannot count for the purpose of seniority in that grade or for promotion to next higher grade. Therefore, the applicant has in no way been prejudiced or affected due to giving promotion to other juniors to the post of JAG.

8. The citations relied upon by the applicant are not applicable to the facts and circumstances of this case. Applicant has not shown any rules or citation in his favour for claiming ad hoc promotion while CBI case is still pending against him. It cannot be said that there has been violation of Article 14 of the Constitution, since the applicant cannot claim that he is equal with other persons who have been given ad-hoc promotion as there is no material to show similar criminal cases are pending with other persons who have been given ad hoc promotion. The administration has also to take care of the public interest while giving ad hoc promotion.
9. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(C. V. SANKAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)