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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
* * * *

Date of Decision: 28.08.92.

OA 680/90

SUNDER LAL

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant ... SHRI SANT LAL.

For the Respondents ... SHRI M.L. VERMA..

1. Whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporters or not ?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J)).

The applicant during the relevant period was in the LSG grade serving as Sub Postmaster in Karnal Postal Division and he was considered for promotion alongwith others to the next higher grade of Higher Selection Grade by the Memo dated 22.5.85 (Annexure A-3). In the meantime, there was certain disciplinary proceedings for a minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 and the applicant was not given this grade though juniors to him earned that benefit. The applicant made representation and by the Memo dated 16.2.89 the Asstt. Director General (SGP) wrote to the Post Master General, Haryana Circle, Ambala, that the

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decision to initiate the disciplinary proceedings was taken on a subsequent date and so that should not have bearing on the promotion of the applicant to HSG-II. It was also suggested that the pay of all arrears be made w.e.f. 22.5.85 onwards till the date of the promotion of the applicant to the next promotional post of PSG(B). The grievance of the applicant is that by a subsequent order dated 25.1.90 (Annexure A-1) ADG declined to accept the representation.

Subsequently by the communication dated 25.1.90 the earlier order of grant of arrears of pay as well as the order of promotion dated 22.5.85 for which the applicant was concerned has been withdrawn. It is against this that the applicant has filed this application and prayed for the relief that the order dated 25.1.90 be quashed and the respondents be directed to fix in the applicant in HSG-II w.e.f. 22.5.85 and all arrears of pay etc. be paid and consequential benefits of pay fixation be also given on account of subsequent promotion to Group-B cadre taking into account the pay fixed in HSG-II.

The facts of the case are that the applicant was promoted to HSG w.e.f. 22.5.85 vide Memo referred to above. The applicant was not relieved by the SPO, Kurukshetra Division to join to the new post as

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disciplinary/ vigilance case is pending against the applicant. It is further stated that in a minor penalty the applicant was imposed a punishment for recovery of Rs.500/- by the order dated 30.12.85. An another penalty for recovery of Rs.1500/- was imposed for recovery from the pay of the applicant by the order dated 30.12.85. The recovery was effected in 15 equal instalments. Appeal against the penalty was also rejected. The applicant was promoted in Group-B Postmaster service in the year 1987 and he joined Group-B post in May, 1988. Thus, objection of the respondents is, since there was a contemplated disciplinary proceedings which was concealed by the SPO, Kurukshetra and in oblivious of that fact the promotion was ordered so the impugned order was rightly passed withdrawing the promotion of the applicant to HSG-II w.e.f. 22.5.85.

The applicant filed rejoinder reiterating the same points taken in the application and contending that the applicant is not barred by limitation.

I have heard the learned counsel for the applicant as well as the respondents and perused the departmental file also. The short point involved in this case is whether a person who has been considered for promotion and actually has been promoted then a subsequent discovery of certain matter against the

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applicant that promotion has already effected and ordered as withdrawn. The undisputed fact is that the applicant has been duly considered for promotion and has been declared fit for promotion by the order dated 22.5.85 and he has also been ordered to be posted by virtue of this promotion to Head Postmaster, Sunder Nagar. The learned counsel for the respondents, however, stated that since there was a fraud case of Shahabad Markanda Post Office against the applicant and it had already been decided in February, 85 to draw disciplinary proceedings against the applicant so in fact there was contemplated disciplinary proceedings and as such the applicant cannot be rewarded by giving this promotion, having been considered as a delinquent employee. However, the fact remains that no charge-sheet was issued, what to say of service on the applicant, till 22.5.85. It appears that the charge-sheet was issued on 25.5.85 i.e. three days after this promotion and must have been served sometimes thereafter in a week or so. Though, misconduct may relate to period earlier to that but when there was no notice of the charge-sheet to the applicant he cannot be condemned in a act for which he is not responsible. The DPC has already been considered him fit for promotion and it was for the respondents to place the necessary material before DPC. The department has defaulted in not drawing proceedings against the applicant in a case like

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that of fraud then subsequently the applicant cannot be made to suffer for the fault of others. The learned counsel for the respondents has referred to the decision of C.O. Arunajam Vs. State of Tamil Nadu (1991 (17) ATC 402). In this case the Hon'ble Supreme Court has considered the matter of sealed cover whether the promotion of such a delinquent employee should not be effected till the conclusion of the inquiry. In the present case, however, the facts are different. Here, there is no sealed cover adopted and the applicant has already been considered and granted the promotion and even the posting. Serving a charge-sheet subsequently after the said promotion has been granted by competent body will not undo that act which has already been done. The matter has been considered at length in the case of K.C. Venkata Reddy Vs. UOI (1987 (1) ATR 513). In this case also the matter of sealed cover procedure of a delinquent employee facing departmental/ criminal proceedings was denied consideration. The Full Bench observed that unless and until the applicant has issued a charge-sheet the promotion cannot be withheld. The same view has been taken in the case of R.D. Madan Vs. UOI (1988 (1) SLJ 586). The Hon'ble Supreme Court has also considered the ratio of the case of the K.C. Venkata Reddy (supra) in the case of UOI Vs. K.V. Jankiraman (1992 (1) ATJ 371). Para 16 of the report is relevant and is reproduced below:-

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have

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commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. 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 experienced 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 the, 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. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows :

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld on the ground of pendency of a disciplinary or criminal proceedings against an official;

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(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;"

The learned counsel for the respondents contested the issue on the point that the applicant has

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also been punished in December, 85 by a penalty of recovery of Rs.500/-, Rs.1500/- and that recovery has been effected in instalments from the applicant. In such a situation giving promotion to the applicant from an anterior date with amount to rewarding a delinquent employee and that will undo the effect of punishment. His arguments on the fact of it sounds reasonable. However, if the department itself is sleeping and certain persons in the department are conniving then the applicant cannot be blamed for that. Firstly, if there was a fraud case of Shahabad Markanda Post Office, the criminal action by lodging FIR was mandatory under Postal Manual. The respondents for their agents did not adopt that procedure prescribed by themselves. Secondly, if the matter was contemplated of initiating disciplinary proceedings since February, 85 then why not a process of issuing and serving charge-sheet was not done before the meeting of the DPC and thirdly, why the DPC was not apprised of a pending fraud case against the applicant. In view of this fact, the arguments of the learned counsel cannot be accepted to undo the promotion given to the applicant by the DPC w.e.f. 22.5.85. The application is also well within limitation.

The learned counsel for the respondents has also argued that the promotion given to the applicant was only on adhoc basis. When the juniors to the applicant have already earned that benefit and the

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The application is allowed with the direction to the respondents to give effective promotion to the applicant in the grade of HSG-II w.e.f. 22.5.85. The applicant shall be paid arrears of pay till he was promoted to the next higher Group-B post i.e. till 30.5.88 because of this the pay of the applicant in Group-B shall also be refixed as per the pay fixed in HSG-II. The respondents to comply with the directions preferably within three months from the receipt of the copy of the order.

Following directions:

The case is fully covered by the judgement, referred to above. In view of the above facts, the present application is liable to be allowed with the following directions:

30.5.88 in Group-B post. The case is fully covered by the judgement, referred to above. In view of the above facts, the present application is liable to be allowed with the following directions:

applicant was prepared to work willing to discharge the duties of the promotional post, he cannot be denied on the principles of natural justice what his juniors have earned on adhoc promotion. The applicant though by direct recruitment has qualified and has come out successful in the selection for Group-B post, that will not mean that adhoc promotion would have been only for a limited period. As it is not stated in the reply that any junior to the applicant was reverted from that adhoc post during this period till the applicant joined on 30.5.88 in Group-B post.

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in the circumstances, the parties to bear
their own costs.

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(J.P. SHARMA)

MEMBER (J)

28.08.92

Postmaster, Sunder Nagar Head Office. In the meantime, the applicant was also issued another order of posting as Senior Postmaster, Rohtak but this time also the applicant was not relieved for his new appointment. The applicant thereafter was transferred to Delhi Circle sometimes in 1988 and he joined as Senior Post Master in Group-2 at Krishna Nagar Head Post Office in May, 1988. At that time the applicant made effective representation. In February, 89 by the Memo, referred to above, the applicant was given the arrears of pay etc. w.e.f. 22.5.85. However, by the impugned order that has been nullified. The perusal of the impugned order goes to show that SPO, Kurukshetra furnished incorrect information because the promotion to HSG would have been effective only when there was no disciplinary/vigilance case pending or contemplated against the applicant.

The respondents contested the application and stated that the present application is hit by limitation and that there was contemplated disciplinary proceedings against the applicant for which decision was taken in February, 85 as the applicant was involved in a fraud case in Shahabad Markanda Sub Post Office. The order of promotion dated 22.5.85 has been passed in involence because of the SPO, Kurukshetra furnished incorrect information stating that in such contemplating

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