

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

6

O.A. NO. 1310/92

DECIDED ON : February 9, 1993

Lachhman Dass Gandhi

... Applicant

Vs.

Union of India & Others

... Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

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

Shri Sant Lal, Counsel for the Applicant

Ms. Jasvinder Kaur, Proxy Counsel for Shri
Jog Singh, Counsel for Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant who is employed as Sub Post Master (HSG-I), Defence Headquarters Post Office, New Delhi is aggrieved by non-consideration of his case for promotion to Postal Service Group (B) from the date juniors to him were considered and promoted on ad-hoc basis vide memo dated 13.7.1990 (Annexure A-1). He has prayed for a direction to the respondents to consider him for promotion to Postal Service Group (B) from the date his juniors were considered and promoted vide order dated 13.7. 1990 and grant of consequential benefits of pay and allowances of the higher post from the date his juniors were promoted on actual basis with full arrears.

2. The respondents have contested the O.A. by filing their reply to which a rejoinder has also been filed by the applicant. As the pleadings in this case are complete, it is being finally disposed of at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

C.

6

3. The facts relevant to the case may be briefly stated. The applicant joined service as a Post Office Clerk in Delhi Circle on 17.3.1960, and after passing the departmental examination held in 1972, he was promoted as Inspector of Post Offices w.e.f. 23.4.1973 in Delhi Postal Circle. He was again promoted as Assistant Superintendent of Post Offices w.e.f. 5.9.1980. He is said to have become due for consideration for further promotion to HSG-I in June-July, 1989, promotion being on the basis of seniority-cum-fitness. However, he was not considered allegedly on the ground that a case against him was pending inquiry with the CBI and his juniors S/Shri J. M. Chhabra and R. S. Tokas were promoted to HSG-I vide memo dated 12.6.1989 on an ad-hoc basis. The applicant assailed the same in O.A. No. 1622/89 and by judgment delivered on 19.9.1991 the respondents were directed to consider him for promotion to the post of HSG-I from the date when his juniors were promoted and in an ad-hoc capacity. It was also directed in the judgment that in case the respondent decides to commence the disciplinary proceedings under Rule 14 of the C.C.S. (C.C.A.) Rules against the applicant by issuing a chargesheet, then in that event, he will not be confirmed, and in case he is penalised, he could be reverted also. It was further held in the judgment that the question of making any direction for payment of backwages did not arise as the applicant was yet to be promoted. In pursuance of this judgment the office of the Chief Post Master General, Delhi Circle, New Delhi vide memo dated 2.12.1991 (Annexure A-3) ordered the officiation of the applicant in HSG-I cadre notionally on ad-hoc basis w.e.f. 4.7.1989, the date from which his junior was promoted on ad-hoc basis. Having thus been promoted to

C.

7

officiate in HSG-I, he has now assailed his non-consideration for promotion to Postal Service Group (B) on ad-hoc basis while his juniors S/Shri J. M. Chhabra, S. R. Verma and R. S. Tokas have been so promoted.

4. The respondents in their reply have raised some preliminary objections. First objection is that the O.A. is barred under Section 21 of the Administrative Tribunals Act. Section 21 deals with limitation. As the applicant could have been considered for promotion to Postal Service Group (B) only after his promotion to HSG-I which promotion was given to him by memo dated 2.12.1991, this O.A. filed on 13.7.1992 cannot be said to be barred by limitation and as such this preliminary objection is misconceived. The second preliminary objection is that the O.A. is bad for non-joinder of the affected persons. This objection is also misconceived as the applicant has not sought any relief against the promotion of his juniors on ad-hoc basis; he is only aggrieved by his non-consideration for promotion. Another preliminary objection is that the applicant has not availed of the departmental remedies before filing this O.A. This objection is also without any basis as the applicant made a representation dated 10.12.1991 (Annexure A-4). This has neither been denied by the respondents nor the same is said to have been disposed of. The applicant approached the Tribunal after waiting for six months as prescribed in the Act. The last preliminary objection is that the O.A. is premature in view of the judgment dated 19.9.1991 in O.A.1622/89 (supra). Apart from the fact that this objection is contrary to the preliminary objection of the O.A. being barred by limitation, it has no basis whatsoever. It is after the judgment in

C.

8

O.A. 1622/89 that the applicant was considered for promotion to HSG-I and thereafter addressed his grievance to the authorities in connection with his promotion to Postal Service Group (B).

5. The reply of the respondents shows beyond any doubt that the applicant was not considered for promotion to Postal Service Group (B) on account of some allegations of misconduct against the applicant being inquired into by the CBI. It is not their case that he was considered by the DPC and found unfit. The applicant has stated in the O.A. that it was only on 3.12.1991 a memorandum containing articles of charge etc. was issued against him which was received by him on 5.12.1991. Thus, the only point which needs to be considered is whether the respondents were justified in not considering the applicant for ad-hoc promotion to Postal Service Group (B) and promoting his juniors without such consideration, by memo dated 13.7.1990.

6. The respondents have placed reliance on the provisions of rule 156 of P & T Manual Volume 3 (extract at Annexure R-1) and have contended that an official under suspension or whose conduct is under investigation is not to be considered for promotion in short term vacancies till the termination of suspension on conclusion of disciplinary proceedings. It is not in dispute that the applicant was not under suspension when the juniors to him were promoted to Postal Service Group (B) by memo dated 13.7.1990. It also cannot be disputed that no memorandum of chargesheet had been issued to the applicant on or before 13.7.1990. In such a situation, the respondents were not justified in not considering the

Ct.

9

case of the applicant for promotion to Group (B) on the relevant date in the light of the proposition of law laid down by a Full Bench of the Tribunal in the case of K. Ch. Venkata Reddy & Ors. vs. Union of India & Ors. : 1987 (1) ATR 547 in which it was held that consideration for promotion, selection grade, crossing of efficiency bar could not be withheld merely on the ground of pending disciplinary or criminal proceedings. This view was upheld by the Hon'ble Supreme Court in the case of Union of India vs. K. V. Janki-raman : 1992 (1) ATJ 371 SC. In view of the law laid down as above, reliance by the respondents on rule 156 of the Manual (supra) is misplaced and legally not sustainable. It is only when that a Government servant is under suspension or he has been challaned in a criminal case or a memorandum of chargesheet has been issued to him under the relevant discipline and appeal rules, that he can be denied promotion. Even in these circumstances, his case has to be considered and placed in sealed cover; consideration itself cannot be denied if the Government servant is otherwise eligible for consideration in accordance with the relevant rules.

7. In the light of the foregoing discussion, this O.A. is partly allowed in terms of the direction to the respondents to consider the case of the applicant for promotion to Postal Service Group (B) with reference to the date from which the juniors to him were considered and allowed such promotion though only on an ad-hoc basis. The question of making any direction for payment of backwages does not arise as the applicant is yet to be considered for promotion and as was held in his case, O.A. No. 1622/89 in regard to his consideration for promotion to HSG-I. No costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

P. C. Jain
(P. C. Jain)
Member (A)