

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2550 of 1992

New Delhi, this the 13th day of January, 1998

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. N. Sahu, Member (Admnv)

Shri Kanhaiya Lal Sharma son of Shri Kishan Narain employed as Telegraph Master (T) Channel Tester Fault Control-I, Central Telegraph Office (C.T.O.) New Delhi, r/o Delhi, address for service of notices C/o Shri Sant Lal Advocate, C-21(B), New Multan Nagar, Delhi - 110 056

(X)
-APPLICANT

(By Advocate - Shri Sant Lal)

Versus

1. Union of India, through the Secretary, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi - 110 001
2. The Chief General Manager (Maintenance), Northern Telecommunication Region, Kidwai Bhawan, New Delhi - 110 001

-RESPONDENTS

(By Advocate - Shri R.P. Aggarwal)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv) -

In this Original Application the applicant seeks modification of the impugned order dated 7.1.1992 directing the respondents to promote him to the grade of Rs.1600-2660 from the date his junior has been given promotion i.e. 30.11.1990 under the Biennial Cadre Review (in short 'BCR') Scheme purposely framed for granting second promotion to the Telecommunication staff to the next higher scale on completion of 26 years of service in the basic grade. The applicant's contention is that such a promotion does not involve transfer of post or change of duties. He contends that a minor penalty of stoppage of one increment for one year is all the punishment that was meted out to him by the appellate order dated 26.2.1990 which modified the order of the disciplinary authority

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dated 9.11.1990. He next contends that depriving him of the promotion from 30.11.1990, namely, the date of the promotion of his junior, is discriminatory and violative of Articles 14 and 16 of the Constitution of India and for this purpose he relies on two decisions of the Hon'ble Supreme Court in the cases of **Dhirendra Chamoli & Ors. Vs. State of UP**, 1986(1)ATR 172; and **Bhagwan Dass & Ors. Vs. State of Haryana & Others**, 1987(3)SLJ 93. A minor punishment without looking into the total record of service should not have come in the way of his promotion. For this purpose he relies on Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M. No.21.5.70-Ests(A) dated 15.5.71 and other instructions reproduced in CCS(CCA)Rules below Rule 11 as Govt. of India's instructions. The applicant himself cites instruction dated 16.2.1979 wherein it is categorically stated that in the case of employees who have been awarded the minor penalty of withholding of one increment promotion can be considered only after the expiry of the penalty. He states that these instructions have been struck down as violative of Articles 14 & 16 of the Constitution by the Chandigarh Bench of this Court in the case of **Parween Kumar Agarwal Vs. I.C.A.R. Krishi Bhawan**, 1988(2)ATLT 684 on the ground that this will amount to a double punishment.

2. After notice the respondents state that by the appellate order dated 9.11.1990 the punishment was reduced to withholding of one increment from 1.9.1990 to 31.8.1991 and, therefore, he was not considered by the DPCs held prior to 31.12.1991. The respondents also state that 165 officials were promoted to the higher scale under the BCR



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Scheme on the recommendation of the review committee which met on 14.12.1990 but before this date the enquiry under Rule 14 of CCS (CCA) Rules, 1965 was concluded and a penalty of withholding of one increment was already levied on the applicant.

3. We have carefully considered the rival submissions. The fact remains that when the DPC met for reviewing cases under the BCR Scheme on 14.12.1990 the applicant was under punishment as his first increment fell on 1.9.1990. It was, therefore, not a case of pending disciplinary proceeding but a case of concluded disciplinary proceedings before the DPC met. The Hon'ble Supreme Court in the case of **Union of India Vs. K.V. Jankiraman**, 1991(5)SLR 602 stated as under -

"When an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, 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, 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."



4. In view of the above decision of the Hon'ble Supreme Court the Division Bench decision of the Chandigarh Bench cited above can be held to be per incuriam and need not be followed.

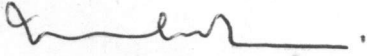
5. We have before us a decision of Jaipur Bench of this Court in the case of **Rang Lal Meena Vs. Union of India & others**, 404 Swamy's CL Digest 1995/2, on similar facts. In fact in Meena's case the DPC had already approved the name of that applicant for promotion under the BCR Scheme and yet the applicant was denied promotion on the ground that he was undergoing a penalty and also on the ground that disciplinary proceedings were pending against him. That was also a case where a minor penalty was imposed which was after modification was reduced to stoppage of one increment for one year. That was a case where on the date on which the applicant was due for promotion there was no order of penalty subsisting against the applicant but by the date on which the actual promotion order had to be issued a penalty had already been imposed on him. Following the law laid down by the Hon'ble Supreme Court in the case of K.V. Jankiraman (supra) the Jaipur Bench upheld the denial of promotion. One condition for the BCR Scheme was that the applicant should have completed 26 years of "satisfactory service". The levy of penalty, even minor penalty, itself shows that the service record was not satisfactory at least in respect of one year.

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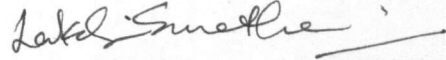
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6. In view of the above discussion, we do not find any valid reason for interfering with the impugned order dated 7.1.1992 (Annexure-A-1 to the O.A.). The O.A. is dismissed. No order as to costs.



(N. Sahu)
Member (Admnv)



(Mrs. Lakshmi Swaminathan)
Member (J)

rkv.