

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.1387 of 93

(A)

New Delhi, dated this 19th day of October, 1994.

HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Lachman Dass Gandhi
S/o Shri Daulat Ram,
employed as Dy. Postmaster (Gazetted),
Indraprastha Head Post Office New Delhi
R/o Delhi
C/o Shri Sant Lal Advocate,
C-21(B) New Multan Nagar,
New Delhi-110056.

... Applicant.

By Advocate: Shri Sant Lal.

Versus

1. The Union of India,
through the Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-110001.

... Respondents.

By Advocate: Shri M.K. Gupta.

ORDER

Hon'ble Mr. B.K. Singh.

This OA 1387/93 has been filed against Memorandum No. Staff/BB-8 dated 2.12.1991 issued by the D.P.S. Delhi Circle New Delhi (Annexure A-1) and Letter No.B-2/1/1 dated 27.8.92 issued by the SGPUs Delhi Postal Division, South East New Delhi conveying decision of the C.P.M.G. Delhi Circle, New Delhi via letter No. Staff/BB-8/L.D. Gandhi dated 17.8.92 (Annexure A-2). The applicant claims arrears of pay and allowances for the period from 4.7.1989 to 4.12.1991 on account of the applicant's



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promotion to HSG-I with effect from 4.7.89, the date from which his immediate junior was promoted. (8)

2. The admitted facts are that the applicant was appointed as a Clerk, who passed the IPO's Examination held in 1972. While working as ASPOS in Delhi East Division, he had reported existence and nature of business of certain firms running mail order business as genuine. These firms were found fake and were cheating public, as a result of checking carried out by the Departmental Squad. The disciplinary authority considered it an act of mis-conduct and handed over the case to the CBI for enquiry. The CBI conducted detailed enquiries and recommended departmental action as back as 1989. As a result of the recommendation, a departmental enquiry proceedings were initiated against him and it is admitted by both the parties that the I.O. has finalised the report in July 1994 and is likely to submit his report shortly to the disciplinary authority, who will take final decision in the matter and the applicant will have the liberty to file an appeal before the appellate authority, if the orders are adverse to him, and he also will have the liberty to assail the final order in the tribunal in case it is adverse and the appellate authority does not set aside the order of the disciplinary authority.

3. The learned counsel for the applicant drew the attention of the court to the order passed by this Tribunal on September 1991. The operative part of that order is as follows:

"However, we are satisfied that a direction must be issued to the respondent to consider the

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applicant for promotion to the post of H.S.G.-I from the date when his juniors were promoted and in an ad-hoc capacity. In case the respondent decides to commence disciplinary proceedings under Rule 14 of the CCS (CCA) Rules against the applicant by issuing a chargesheet, then in that event, he will not be confirmed. In case he is penalised, he can be reverted also. We order accordingly. The question of making any direction for payment of back wages does not arise as the applicant is yet to be promoted. This O.A. is disposed of as per the directions given above. Parties are directed to bear their own costs."

4. A perusal of this order of the Hon'ble Tribunal will indicate that the Tribunal never issued a direction to promote the applicant but only to consider the question of his promotion to the post of HSG-I on adhoc basis from the date his immediate junior was promoted. It was further made clear that if the respondents decide to commence disciplinary proceedings under Rule 14 of the CCS(CCA) Rules 1965 against the applicant by issuing a charge sheet then in that event, he will not be confirmed. In case ~~he is~~ he is penalised, he can be reverted also and the tribunal ordered accordingly. No direction was made regarding payment of back wages. Since The Tribunal had only ordered for considering the case of the applicant for promotion, they had not issued any positive direction to promote him. The question of back wages according to the Tribunal could arise only if he was so promoted. Thus the short question that is involved in this case is that juniors to the applicant were promoted w.e.f. 4.7.89 in HSG-I ^{the} Scale of pay Rs.700-900.

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5. The relief claimed by the applicant is arrears of payment of pay from 4.7.89 to 4.12.91.xxxxxxxxxxxxxx during the course of his argument today i.e. 11.10.94, the learned counsel for the applicant referred to the decision in OA 1622/1989 wherein reliance has been placed on the case of Union of India, etc. vs. K.V. Jankiraman, etc. (JT 1991 (3) SC 527). The Hon'ble Mr. J.P. Sharma on 8.6.94 has referred to certain other judgements in case of Delhi Development Authority vs. HC Khurana and Union of India Vs. Kewal Ram reported in 1993 Judgement Today (3) at Page 697 and 705 respectively and time was granted to both the learned counsels S/Shri Sant Lal and M.K. Gupta to study and argue the case after going through the latest judgements on this subject.

5. The learned counsel for the applicant argued that since the sealed cover procedure was not adopted in the case of the applicant and he was promoted on adhoc basis like similarly situated persons and at the time of promotion no prima facie case has been made out by CBI and no disciplinary proceedings had started against him, he was entitled to arrears of pay from the date his juniors got it and that respondents are not justified in denying him back wages. It is admitted that in the light of the direction of the court, the applicant was given adhoc promotion with effect from 4.7.89, but back wages were not paid.

6. I scrutinised the record of the CBI enquiry conducted against the applicant and this enquiry report was submitted in June 1989 recommending that a disciplinary enquiry should be initiated against the applicant. It is abundantly abundantly clear

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clear that prima facie ~~Max~~ case has been made out against the applicant by the CBI as back as June 1989 and the respondents could have started departmental proceedings just after the receipt of recommendation of the CBI. But, it seems that due to some administrative lapse on the part of the respondent, it took time for them to initiate departmental proceedings against him. In the case of KV Jankiraman (Supra), the learned counsel for the applicant relied on para 34. Para 34 deals with promotion by the DPC and the adoption of sealed cover procedure, where ~~xx~~ ~~xx~~ disciplinary proceedings are pending against the delinquent employee. The operative portion of the judgement is that if an employee is exonerated of charges, the sealed cover procedure would be opened and he would be eligible to get all the consequential benefits and if the findings of the disciplinary/appellate authority ~~xx~~ go against him, then the question of opening sealed cover will not arise and he will not be entitled to any benefit granted to his juniors. The learned counsel for the respondents referred to para 29 wherein it has been observed that 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 even when the penalty imparted is for a reduction in rank. On principle, for the same reasons, the officer cannot be

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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. This was presumably the intention of the Hon'ble Tribunal which passed the judgement on 19.9.91 in the OA referred to above. It had only wanted the respondents to consider promotion and it had not given any positive direction to promote him. It seems, the respondents misunderstood the spirit of that order and gave him promotion from 4.7.89, although they had received recommendation of the CBI in June 89 itself that a prima facie case for a departmental enquiry out has been made against the applicant and this recommendation, if implemented, would have restrained the respondents from giving effect to the direction given by the Hon'ble Tribunal on 19.9.91. This then would have become a case of sealed cover procedure and the applicant and the respondents would have been required to wait till the final orders were passed in the enquiry, which was launched as a result of the recommendation of the CBI, which had established prima facie case against the applicant. The belated enquiry also started only on the basis of the report sent by CBI in June 89. Thus there is a clear nexus between the report of the CBI ~~xxx~~ and the departmental proceedings started against the applicant. If action had been initiated in June 89, when the report was submitted, there would have been no question of promoting the applicant even on an adhoc basis because this would have amounted to rewarding the applicant by promoting him, when he was not entitled to be promoted, as a result of prima facie case established against him and the disciplinary proceeding the being in ^{the} offing. The delay in starting the disciplinary proceedings when the enquiry report was

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received from CBI is mysterious and speaks volumes about the conduct of the respondents. ~~the xxxxx giving~~ further promotion to him when the enquiry was on, throws light on the ignorance and manipulations indulged in by the respondents.

7. After hearing the arguments of both the parties and going through various judgements on the subject, I perused the one referred to by the Bench itself i.e. Delhi Development Authority vs. B.C. Khurana. In this case also the Hon'ble Supreme Court has referred to OM dated 12.1.1988, which is ^{the} guideline applicable in regard to government servants in whose case sealed cover procedure could be adopted. The Hon'ble Supreme Court has referred to Clause (ii) of Para 2 which inter-alia provides: "Govt. Servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings", OM dated September 14, 1992 substituted a new clause (ii) thus: "(ii) Government servants in respect of whom charge-sheet has been issued and the disciplinary proceedings are pending; the Hon'ble Supreme Court has referred to para 2 of OM No.22011/2/86-Estt. (A) dated January 12, 1988 issued by the Department of personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India on the subject of procedure and guidelines to be followed in such cases indicating situation in which sealed cover procedure is to be followed. Clause (i) specifies another category. It relates to government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise. Once the CBI takes up the investigation and the report is received from the CBI for initiating departmental

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action and the decision is taken to that effect to initiate disciplinary proceedings for imposition of a major penalty, these will also fall within the category of servants against whom sealed cover procedure has to be adopted. The instant case was a fit case for adoption of sealed cover procedure, since CBI had submitted the report to initiate departmental proceedings against the applicant, before the question of his promotion was taken up. Thus in Khurana's case also, the applicant is not entitled to payment of back wages or arrears till he is exonerated of the charges. The learned counsel for the respondents also referred to a bunch of cases decided by the 3 Member Bench comprising of Mr. Justice R.S. Pathak, CJ, and L.M. Sharma and N.D. Ojha, JJ in Writ Petitions (Civil) Nos.530, 3632, 3637, 3812-19, 8748-49 and 9522-27 of 1983 and Civil Miscellaneous Petition Nos.9356-57 of 1983 and 3325 of 1987 decided on March 28, 1989. In this judgement it has been clearly held that back wages for the period for which a person actually did not work in the promotion ^{al} post is not payable. This is contained in para 19 of the judgement. The learned counsel for the respondents further placed before the Bench a Supreme Court Case Page 541 1994 in the case of Management of Reserve Bank of India, New Delhi vs. Bhopal Singh Panchal as respondents. In this case, it was held that it is only when an employee is acquitted of all blame and he is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. The learned counsel for the applicant

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(Signature)

citation
argued that this rule is not applicable to the case of
the applicant because he was never placed under suspension.
The ratio of the judgement is that ~~in~~ in case of a suspended
employee under proceeding only when final orders are
passed by the competent authorities regarding treatment
of period of suspension as on duty or not will depend
upon his exoneration of the charges or otherwise.
The power is vested only in the disciplinary/appellate
authority to determine whether the arrears should be
paid or not only when they pass the final orders on
the report of the I.O. Thus the applicant will have to
wait till the proceedings are concluded and final orders
are passed. In case if he is exonerated of charges
levelled against him, he will be entitled to all the
consequential benefits as established in the case of
K.V. Jankiraman vs. Union of India. If the findings
go against him, he may as well be reverted to his
substantive post which he was holding prior to his
promotion as HSG-I and in that eventuality, he will not
be entitled to any back wages at all. Taking a synoptic view
of the facts and ^{circumstances} ~~substances~~ of the case and various
rulings of the Hon'ble Supreme Court, I am convinced that
there is no justification for grant of arrears of pay
to the applicant with effect from 4.7.89 till 4.12.91
and accordingly the application is dismissed as devoid
of any merit or substance leaving the parties to bear
their own costs.


B.K. SINGH
MEMBER (A)
19/1/94