

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 24th day of March 2007

Original Application No. 03 of 2004 (u)

Hon'ble Mr. P.K. Chatterji, Member (A)

Hon'ble Mr. S.K. Dhal, Member (J)

Jagdamba Prasad Joshi, S/o late K.D. Joshi,
R/o Kartikeya Colony, Phase No. I, Post Haripura
Nayak Kusum Khera, Haldwani, Distt: Nainital.

. . . Applicant

By Adv: Sri A. Tripathi.

V E R S U S

1. The Union of India through Secretary,
Department of Post, Ministry of Communication,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General, Uttranchal Circle,
Dehradun.
3. Post Master General, Uttranchal Circle,
Dehradun.
4. Superintendent of Post Offices, Pauri Division,
Pauri.
5. J.C. Bisht, Supervisor, SBCO, Nainital, posted
as Chief Supervisor Haldwani, Head Office.

. . . Respondents

By Adv: Sri S. Singh

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

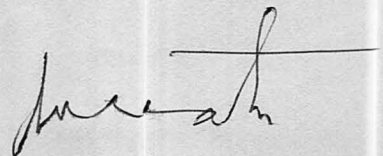
The dispute in this OA is whether the action of the respondents in not giving promotion to the applicant to Higher Selection Grade-I is justified or not. The applicant has been denied promotion and his junior was promoted as Supervisor (SBCO) in

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the Higher Selection Grade-I for the reason that a disciplinary case against the applicant was under process for his alleged involvement in a Savings Bank related fraud in which the Govt. lost a huge sum.

2. The applicant was working a Supervisor (SBCO) Haldwani in the Department of Post from 01.06.2001. On 31.10.2002 the applicant was ordered to work on ad-hoc basis as the Chief Supervisor of SBCO, Haldwani Post Office. The order was issued by the Competent Authority on 02.02.2002.

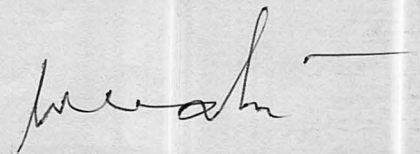
3. On 03.06.2003 the applicant was transferred from the post of Supervisory SBCO, Haldwani Head Post Office to Supervisor SBCO, Kotdwar and the applicant was relieved on 07.07.2003. On 11.07.2003 an order was issued by the APMG, Office of the CPMG, Uttranchal Circle promoting the Sri J.S. Bhist as Chief Supervisory HSG-I, Haldwani HO. The applicant is aggrieved that Sri Bhist was promoted ignoring his claim for promotion as Sri Bhist was junior to the applicant as per the gradation list issued by respondent No. 2. In the said gradation list the applicant was at Sl. No. 2 while Sri Bhist (respondent No. 5) was at Sl. No. 3. The applicant says that this act of the respondents in promoting Sri Bhist superceding him is illegal and arbitrary as he had an unblamshed record of



service for the last 30 years during which period no disciplinary action was ever taken against him. As on the date of issue of the promotion order no disciplinary case was initiated against him. By submitting the aforementioned fact the applicant has requested the Tribunal to quash the impugned order dated 11.07.2003 (Annexure 1). He has sought further direction to promote him to the post of Chief Supervisor, Haldwani Post Office, in which he was working since 01.11.2002.

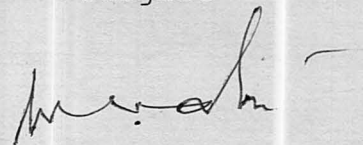
4. The applicant says that his competence to work as the Chief Supervisor was never questioned as could be evident from the fact that the Competent Authority directed him officiate in the same post in November 2002. Not only that this arrangement was approved at the appropriate level i.e. by the CPMG, Uttranchal Circle. While the respondents had not issued any disciplinary action against the applicant between his adhoc appointment and the issue of the impugned order, the action of the respondents were totally unreasonable and arbitrary.

5. The respondents have refuted strongly the contentions of the applicant and says that the applicant was considered for adhoc promotion as HSG-I, but he was not approved as the requisite vigilance clearance was not available for the applicant. The respondents have also explained the



reason for not issuing the vigilance clearance in favour of the applicant by saying that a very high value fraud was detected in the HPO in which serious negligence on the part of the SBCO officials including the applicant was noticed. The fraud involved double payment from several accounts which was facilitated by lack of care by the SBCO officials, the applicant in particular. If they had checked the warrants of payments correctly and duly such fraud should not have taken place.

6. As to the delay in issuing the charge sheet the respondents have stated that the fraud involved huge amount for which a large volume of document had to be verified and produced as evidence. Framing of charges against the applicant also required consultation with the vigilance wing for which a certain time was necessary. The processing however was done with utmost speed and there was no avoidable delay in issuing the same. The respondents have also stated with regard to the point made by the applicant that his officiating as HSG-I was approved by the CPMG, that it was a routine approval. If the enquiry into the fraud had already revealed the involvement of the applicant, even such officiating appointment would have been avoided. In any case such adhoc appointment does not guarantee promotion on a regular basis which is always subject

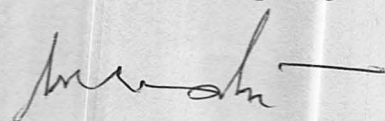


to the relevant rules of the matter. By stating the aforementioned facts from their side the respondents have refuted strongly the claim made by the applicant and the relief sought.

6. The sole ground on which the applicant has placed his claim is the Apex Court decision in the case of **K V. Jankiraman and Ors Vs. U.O.I. & Ors, 1993 SCC (L&S) 387**. It was pronounced by the Apex Court that sealed cover procedure can be adopted only after the date of issue of the Charge memo/chargesheet, that being the date from which disciplinary/criminal proceedings can be taken to have been initiated. The relevant promotion of the judgment is reproduced as below:

"i. It is only when a charge-memo in a disciplinary proceedings or a charge-sheet 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. To deny promotion the disciplinary/criminal proceedings must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. Further, if the charges are that serious, the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. This finding of the Full Bench of the Tribunal is therefore, acceptable.

In the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not

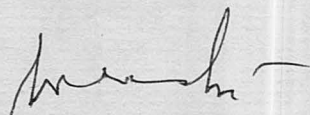


be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis of applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo is served on the official and the charge-sheet is filed before the Court."

8. The applicant has sought the relief further on the basis of the Full Bench Judgment of the Tribunal of Ernakulam Bench in OA No. 37 Of 1991 decided on 10.06.2002. The dispute involved was the same i.e. whether a person against whom disciplinary case was merely been contemplated and not instituted, could be debarred from promotion and sealed cover proceeding could be adopted. In this case the Tribunal directed that the claim of the applicant be considered on the date of DPC if no disciplinary case was initiated against him.

We, however, observed that in this case the charges were minor in nature leading to punishment of censure only.

9. The law however, in this respect has been laid down by the well known case of K.V. Jankiraman's case (supra) relevant portion of which has been quoted above. It has been stated by the respondents that there were serious charges against the applicant as his lapse contributed to commission of a fraud involving a huge amount. It was under process and, therefore, it was not expedient from the vigilance angle to give him promotion.



10. Let us now see to what extent the above judgment would be applicable in this case. It has been clarified by the respondents that this was an adhoc promotion consequent upon two posts of HSG-I Supervisor falling vacant. This was not a regular promotion. The applicant has also stated in his paragraph 4.6 of the OA that when the impugned order was issued he came to know that he was not given adhoc promotion, but his junior Sri Bhist was given the promotion. The applicant has stated that when he received the order he found that his case was not considered and even if it was considered what was the result. The respondents could take anyone of the following actions namely promote him, pass over for want of ACR, keep the decision in sealed cover. It was not clear from the impugned order what was the fate of the applicant. In other words, according to the statement of the applicant himself he was not aware whether his case was kept in a sealed cover.

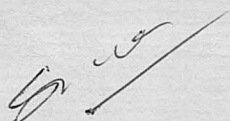
11. Let us now see what the reply of the respondents are against this paragraph. In Page 4 para 20 of the counter affidavit it has been stated by the respondents that it was a case of adhoc promotion and as no vigilance clearance was received against the applicant and as disciplinary proceedings were contemplated against him, It has

he was not given the promotion
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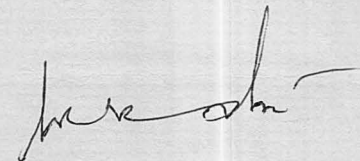
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been further stated that the process of sealed cover ^{was} ~~has~~ not resorted to as it was merely an adhoc promotion and, therefore, it was not required to follow the procedure of sealed cover in this case. By clarifying this factual position the respondents ~~are~~ stated that the claim of the applicant is not at all tenable because it is grounded on a position which does not apply in his case.

12. We accept the clarification given by the respondents and are of the view that the ratio~~x~~ of the judgment in the case of KV Jankiraman (supra) is not applicable in this case. We, therefore do not find any merit in this OA which is accordingly dismissed. No cost.



Member (J)



Member (A)

/pc/