

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 20th DAY OF May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr.D. C. Lakha, Member (A)

Original Application No.52 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

N.S.Mishra,
S/o Late. Roop Narayan Mishra,
R/o Village – Gher Shambhoo Khan,
Shiv Nagar Colony, Farrukhabad.


.....Applicant

Present for Applicant: Shri J. M. Sinha, Advocate

Vs.

1. Union of India, through it's Secretary, Ministry of Communication, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director Postal Services (Head Quarter) Office of Chief Post Master General, U.P. Circle, Lucknow.
4. Director Postal Services Office of Post Master General Kanpur Region, Kanpur.
5. Superintendent of Post Offices & Fatehgarh Division, Fatehgarh.

.....Respondents

 Present for Respondents : Shri Saurabh Srivastav, Advocate

ORDER


(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

Mr. A. Tripathi, holding brief of Mr. J.M. Sinha, learned counsel for the applicant and Mr. Dharmendra Tiwari holding brief of Mr. Saurabh Srivastava, learned counsel for the respondents who have been heard.

2. The applicant joined to Postal Department as a Postal Clerk in 1969 and had one time bound promotion w.e.f. 1983. on completion of 16 years of service. He was due for further promotion under BCR scheme after completion of 26 years of service.

3. According to the applicant, his promotion was due to him from 1995. He was however, not so promoted and it is only in the year 2001 that the applicant was promoted. The applicant has made representation in this regard and requested for promotion with retrospective effect. However, the same was rejected vide order dated 22.7.2004. Hence, this O.A.

4. Respondents have contested the OA. They have stated that on account of unsatisfactory record of service the applicant was not found fit for promotion for 1995 onwards but subsequently in the year 2001 he was found fit for promotion and was accordingly promoted. The respondents itemized various penalties imposed upon the applicant on various dates. The applicant has filed his rejoinder,



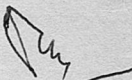
reiterating his contention as in the OA. He has also raised one legal issue stating as under:-

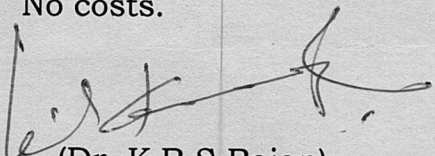
"if the promotion was not allowed due to pendency of disciplinary proceedings and sealed cover was not open on conclusion of proceedings in punishment, the case ought to be presented to review D.P.C. on setting aside of the punishment by the Appellate authority as such the review D.P.C. had to be limit is consideration on records as would be available up to 31.3.1995"

5. With the consent of the parties written submissions were permitted to be filed and accordingly counsel for the respondents furnished his written arguments. No written argument was forthcoming from the applicant side. In the written argument the counsel for the respondents has furnished in detail as many as seven penalties imposed upon the applicant. These pertain the period between 1991 to 1996. The claim of the applicant is that the applicant should have been considered for promotion w.e.f. 1.7.1995. It is observed that the respondents have considered the applicant's case and on account of various penalties imposed during the past years preceding 1995 the applicant was not considered fit for promotion w.e.f. 01.7.1995. It is observed the penalty imposed in 1991 was set aside. The penalty awarded in 1994 for recovery of Rs.2,000/- ended in May, 1996. Penalty of censure was imposed in April 1995. In May 1995, the applicant was visited with a penalty of recovery Rs. 6,000/- which lasted upto February, 1997. Again in December, 1998 he was slapped with another penalty of reduction by two stages. In the year 2000 also some penalty was imposed. Thus,

the respondents have taken into account various penalties under currency at the time of considering the case of the applicant for promotion under the BCR Scheme and due to such currency of penalties, the applicant could not be promoted. Thus, they have prayed for dismissal of the OA.

6. We do not find any illegality in the order passed by the respondents since there is no question of awarding any promotion till the expiry of currency of penalty. And the applicant has been rightly promoted in 2001 when there was no currency of penalty. Hence, the OA lacks merits and is, therefore, dismissed. No costs.


(D.C. Lakha)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

Shashi