

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD
Original Application No.565 of 2017
With
M.A.No.508 of 2017

Dated this the 15th day of June, 2021

Reserved on: 18.03.2021
Pronounced on: 15.06.2021

CORAM :
HON'BLE SHRI JAYESH V BHAIKAVIA, MEMBER (J)
HON'BLE SHRI DR A K DUBEY, MEMBER (A)

Shri Hasmukhlal Ramanlal Vakharia,
DOB:02.09.1956 Aged 61 years,
Son of Shri Ramanlal Kalidas Vakharia,
Sr.Superintendent of Post-Offices (Retd.),
Bhavnagar Division, Bhavnagar – 364 001.
Residing At 202, Hemil Apartment,
Patidar Society, Old Vadaj,
Ahmedabad – 380 013

Applicant

(By Advocate Shri A.D.Vankar)

Vs.

1. The Union of India & Others,
Notice to be served through
Secretary to the Govt. of India,
Ministry of Communication & I.T.,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
 2. Director General,
(Personnel Division)
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
 3. Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad – 380 001.
 4. Shri S.V.Rao,
Director (DE),
O/o The Director General,
Department of Posts, New Delhi 110 001.
-Respondents

(By Advocate Ms.R.R.Patel)

ORDER

Per Dr. A. K. Dubey, Member (A)

1. Aggrieved by omission of his name from the list of officers ordered to be promoted to JAG (PB3 +GP 7600/-) vide impugned order dated 02.02.2016 of the Respondents (Annexure A1), the applicant has approached this Tribunal through this OA No.565/2017 seeking following reliefs:-

- “ i) May be pleased to admit and allow this original application.*
- ii) May be pleased to direct the respondents to reconsider the case of the applicant for promotion of Junior Administrative Grade on adhoc basis.*
- iii) May be pleased to direct the respondents to grant promotion on adhoc basis to the applicant in Junior Administrative Grade from the date on which Shri S.V.Rao, immediate junior to the applicant was promoted in the cadre of Junior Administrative Grade.*
- iv) May be pleased to direct the respondents to grant all the consequential benefits of salary, Seniority, Pensionary benefits etc. to the applicant.*
- v) May be pleased to direct the respondents to effect payment of arrears of less paid salary from the date from his deemed promotion from the date of promotion of his immediate junior Administrative Grade and*
- vi) May be pleased to grant such other and further reliefs as deemed appropriate.”*

2. Main contentions of the applicant are given in brief as under:-

2.1 The applicant, an officer in Senior Time Scale (STS) of Indian Postal service (Group A), was not considered by the DPC for promotion to the Junior Administrative Grade (JAG) despite having unblemished record fulfilling the criteria for promotion and having achieved the grade: ‘very good’, the benchmark in the ACRs/APARs for the preceding five years. The applicant superannuated on 30.09.2016. He submits that he should be promoted to the JAG w.e.f the date his immediate junior Shri S.V.Rao was promoted. He represented before the authorities vide his representation dated 31.01.2017 (Annex.A/3) making the request for his promotion to JAG mainly on the plea that in a recent judgment of Hon’ble Gujarat High Court, mere pendency of FIR against an officer would not debar his

promotion. His representation had not been considered or acted upon even after a lapse of 10 months and hence this OA. He has averred that neither the disciplinary proceeding nor the criminal proceeding had reached the stage of issuance of charge sheet till the date of DPC meeting or till the impugned order was issued. It is further submitted that sealed cover procedure was not adopted.

2.2 The applicant contends that after the promotion order dated 02.02.2016, (Annex.A1), he was served with charge sheet under Rule 14 of CCS (CCA) Rules, 1965 vide memorandum dated 16.03.2016 (Annex.A/2). Further, a criminal case in connection with fraud at Ahmedabad GPO was filed by police on 18.12.2013 without obtaining the prosecution sanction. He contends that on the date of impugned order, he was neither undergoing any disciplinary action nor facing any criminal charge and hence not considering his name by the DPC was not in order. There are several judicial pronouncements suggesting that if no criminal or disciplinary charges had been framed, DPC should not exclude from considering one's candidature for promotion. The impugned order was not sustainable because the DPC procedure prescribed as per 2.1 & 2.2 of DoPT OM dated 14.09.1992 (Annex.A/4) requires that the case of officials under suspension or who have been issued with charge sheet and disciplinary proceedings were pending or against whom criminal case was prosecuting should be brought to the notice of DPC and in that case, sealed cover procedure should be adopted. The applicant submits that he did not fall in any of these categories, and hence, his case should have been considered by the DPC.

2.3 The applicant also maintains that for promotion to JAG, ACRs/APARs of last 5 years with the benchmark grading of "Very Good" are required to be considered which, he was possessing consistently, in all the preceding 5 years. Besides, he had no adverse entry or nothing adverse was communicated to him in those 5 years. Hence, he was entitled to be considered for promotion to JAG. Although the applicant faced criminal inquiry into alleged fraud by SAS agent in Ahmedabad GPO, where he was Chief Postmaster at that time,

no formal criminal charges were framed by the Court till the date of DPC. Thus, in the light of Hon'ble Apex Court judgment in Union of India vs. K.V. Janakiraman reported in [AIR 1991 SC 2010/(1991) 4 SCC 109], he should have been considered for promotion. It is in this context that the applicant relies on OM dated 14.09.1972 (Annex.A/4). The applicant also places reliance on V.A. Savant v. Municipal Corporation of Greater Bombay reported in [AIR 1994 SC 2408] and on State of MP v. Bani Sing and Another reported in [AIR 1990 SC 1308/1990 (2) SCR 798].

- 2.4 The applicant's submission is that he was erroneously superseded and he is entitled to promotion w.e.f the date his junior Shri S V Rao was promoted to JAG, with full salary of the promotional post. For this, he has placed reliance on the judgment of Hon'ble Punjab & Haryana Reported in 1972 SCR 58; this Tribunal's Mumbai Bench order in Smt. Surekha M.Chari v. C.C. & Central Excise, Panaji Goa, reported in [(2004) 1 ATJ 333 (Mumbai)] and Hon'ble Delhi High Court's order in S.K.Verma v. Chairman, Airport Authority of India reported in [(2004) 2 ATJ 633]. The applicant seeks to rely on Hon'ble Apex Courts' judgment in Coal India Ltd. & Others v. Saroj Kumar Mishra (AIR 2007 SC 1706) and in Chairman-cum-Managing Director, Coal India Ltd. & Ors. v. Ananta Saha & Ors. [(2011) 5 SCC 142)] on the issue of consideration for promotion in view of criminal proceedings/disciplinary proceedings.
3. The applicant has also filed MA No.508/2017 for condonation of delay on the ground that he was waiting for the response of respondents upon his representation dated 31.01.2017.
4. Respondents filed their reply, after their repeated failure in appearing or filing their reply for over a year due to which this bench had closed the stage of filing the reply. However, later, on their request, the respondents were permitted to file their reply. Respondents' main contentions are as under:-

- 4.1 The impugned order was issued on 02.02.2016. He filed belated representation in January, 2017, almost after a year. Meanwhile, he had retired on 30.09.2016.
- 4.2 Ministry had contemplated disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 and his case was referred to CVC for first stage advice. Respondents contend that the case had reached the stage of issuance of charge sheet. Eventually the charge sheet was issued against the applicant on 16.03.2016.
- 4.3 A criminal case was filed by the police authority on 18.12.2013 in connection with a 'fraud' case of GPO, Ahmedabad where the applicant was posted at that time. This case was already pending when the DPC considered eligible officers' their candidature for promotion, and also when the promotions were notified vide the impugned office order dated 2.2.2016 (Annex.A1).
- 4.4 Respondents have contended that at the moment, actually no STS officer was fulfilling the criteria for promotion to JAG as per the recruitment rules. But taking the huge number of JAG vacancies into account, a proposal of relaxation in eligible length of service of 10 STS officers including the applicant herein, was sought from DoP&T for ad hoc promotion and DoP&T had acceded to the request. The department, after observing due process, promoted 9 out of these 10 officers on adhoc basis, vide the impugned order; the applicant was not promoted since the charge sheet was about to be issued, and the criminal proceedings was pending against him.
- 4.5 Ad hoc promotion cannot be the basis to claim benefits of the promotion. The applicant was not promoted on ad hoc basis because of the pending criminal case and charge memo was about to be issued. Respondents have also contended that the charge sheet which was contemplated to be issued at the time of consideration by DPC was issued on 16.03.2016 for major penalty. The inquiry into the charges was completed and charges against the applicant had been substantiated. Thereafter, on consultation, UPSC advised withholding of 25% of monthly pension for 3 years. Respondents' averment is that DoP&T OM dated 2.11.2012 stipulates that no promotion can be withheld mainly on suspicion or

when the matter is under preliminary investigation and has not reached the stage of issuance of charge sheet. Quite contrary to this stipulation, the applicant was found *prima facie* involved in the case and for initiation of disciplinary proceeding, the matter was referred to CVC for advice.

4.6 Respondents opposed the COD also, vide their reply to MA.

5. Learned counsel for the applicant argued that at the time of consideration by DPC, charge sheet was not issued even though it was contemplated and hence, in view of the DoP&T OM dated 14.09.1992 (Annex.A/4) as also in view of Hon'ble Apex Court's order in Janakiraman case (*supra*), his case ought to have been considered by the DPC and he should get the promotion w.e.f the date of his junior Shri S.V.Rao got. Learned counsel for the applicant reiterated most of the contentions in the application and the cases relied upon has mentioned in the preceding paragraphs.

5.1 Learned Standing Counsel for the respondents reiterated the averments of their reply which mainly contended that in his case, the stage of issuance of charge sheet had reached and the criminal proceedings in which the applicant was involved, was already pending. The learned counsel submitted that though STS Officers were not eligible for regular promotion, the respondents proposed relaxation in the eligibility clause for 10 officers of STS including the applicant which was granted by DoP&T and thus far, the applicant's name too figured. But when criminal proceeding was already pending and disciplinary proceedings of major penalty was at the stage of seeking CVC's advice, the applicant could not be taken as clear from vigilance angle as procedurally required and due to this, it was not possible to consider his name by DPC for ad hoc promotion. And the proceeding did result in imposition of major penalty as submitted above. She contended that even for argument sake, if sealed cover procedure would have been adopted, the cover would not have been opened in view of the award of major penalty. She also submitted that even though the charge sheet of major penalty was issued on 16.03.2016 i.e., after more than a month of the ad hoc promotion order, the proceedings of criminal charge was

very much pending at the time of DPC which could not be ignored at all.

6. Heard the counsel for the parties and perused the documents and records produced before us. The main grievance of the applicant is that his exclusion from the list of ad hoc promotion in the impugned order was not in order since on the date of DPC, there was no disciplinary proceedings pending against him and even the criminal proceedings had not reached the stage of framing criminal charges. Per contra, the respondents have contended that apart from a criminal proceeding against the applicant, the disciplinary proceedings against him had reached the stage where CVC's first stage advice was requested for, thereby taking the matter to the stage of issuance of charge memorandum under rule 14 of CCS (CCA) Rules, 1964.
7. The facts that emerge from what documents and records brought before us may be summarised as under:-
 - (i) There was a criminal proceeding pending since December, 2013 in which the applicant was involved;
 - (ii) Due to vacant positions in JAG which could not have been left unfulfilled, but no STS officer was eligible as per RRs, the respondent moved for and got DoPT's approval for the relaxed eligibility criteria for promotion from STS to JAG. This included the applicant's name too.
 - (iii) The disciplinary proceeding was contemplated against the applicant and in that course, CVC's advice was sought. Respondents have contended that the matter had reached the stage of issuing charge memorandum, when DPC was to meet.
 - (iv) Charge memo was issued on 16.03.2016. The applicant retired on 30.09.2016. Till then or even immediately after his superannuation, the applicant subscribed to the departmental proceedings without any grievance or protest. He filed his representation against the impugned order after over ten months. Again after over ten months of representation, he filed this OA, against the impugned order and demanding benefits from the date his junior (who is the fourth respondent here) got promotion.
8. After going through the documents and records present before us and hearing the argument of respective parties, we find that the applicant has

mainly relied on DoP&T OM dated 14.09.1992 and the provision of sealed cover procedure issued vide DoP&T OM dated 25.10.2004 which has taken after Hon'ble Apex Court's judgment in Janakiraman's case (*supra*). As per the extant provision, the sealed cover procedure is to be adopted if any of the following situation obtains:-

"At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee.

- i) Government servants under suspension.*
- ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and*
- iii) Government servants in respect of whom prosecution for criminal charge is pending."*

9. Respondents have been able to make out a case that a criminal proceeding was pending and the departmental proceeding had reached the stage of issuance of charge memo. The respondents' counsel argued that in accordance with Hon'ble Apex Courts' judgment in Janakiraman Case (*supra*), no one has a right to promotion; are only has right to be considered.

The relevant portion read as under:-

"An employee has no right to promotion. He has only right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination in the matter of promotion, when he is treated differently."

Besides, the impugned promotions were on ad hoc basis.

10. The relaxation in eligibility for promotion that was obtained from DoP&T for the applicant and 9 others, makes it clear that the respondents had not acted in a discriminatory or biased manner. They followed the procedure and obtained CVC's first stage advice before issuing charge memo. And the disciplinary proceedings concluded in due course with an award of 25% cut in pension for three years, and this award is not challenged or agitated against. When the applicant moved a representation against his exclusion from promotion, the disciplinary proceedings were on, and it is nobody's case that the applicant did not co-operate with the disciplinary proceedings. These make it obvious that the applicant had not questioned

the disciplinary proceedings per se or its findings. Then he is estopped from questioning later on, a decision taken in course of these proceedings. On the other hand, the criminal proceeding was pending on the eve of DPC. It is in this context that in our opinion the Janakiraman case (*supra*) and other cases relied upon by the applicant for consideration by DPC are not helpful to him at this particular stage. On the contrary, what Hon'ble Apex Court had observed in the Janakiraman case (*supra*) quoted in para 9 above, confirms that treating the applicant differently in this case did not amount to discrimination against him in the matter of promotion.

Keeping the factual matrix and foregoing discussions in view, we are of the opinion that the applicant has not been able to make out a case for himself as also he has not been able to establish any infirmity or procedural omission, much less the discrimination in the action of the respondents. The OA is dismissed accordingly and MA is also disposed off.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member