

CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH, JODHPUR

Original Application No. 290/**00309/2015**

Date of Reserve :16.02.2021

Date of Pronouncement:12.04.2021

CORAM :

HON'BLE MRS. JASMINE AHMED, MEMBER (Judicial)

HON'BLE MS. ARCHANA NIGAM, MEMBER (Administrative)

Jeth Mal Jingar S/o Shri Deva Ram Jingar aged about 56 years Resident of B-125, Shri Ramnagar, Behind PF Office, Chopasani Housing Board, Jodhpur, presently working on the post of Superintendent RMS, Jodhpur, Rajasthan.Applicant

By Advocate: Mr. S.K.Malik present through VC.

Versus

1. Union of India, through the Secretary, Ministry of Communication and IT, Department of Posts, Dak Bhawan, New Delhi.
2. The Assistant Director General (SGP), Ministry of Communication and IT, Department of Posts, Dak Bhawan, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Jaipur.

.....Respondents

By Advocate: Mr. K.S. Yadav present through VC.

O R D E R

Per Ms. Jasmine Ahmed :

The avalanche of the instant litigation, apparently, has happened at a miniature mole-hill. Applicant is praying promotion in Group 'A' Cadre of Indian Postal Services from a retrospective date particularly when the scrutiny under a charge sheet issued to him, is pending. Now, it will be fruitful to quote the reliefs prayed in the OA which in verbatim is quoted hereunder:

'(i) By an appropriate writ order or direction respondents may be directed to pre pone the date of promotion of the applicant on the post of Junior Time Scale of Indian Postal Services, Group A in the pay Band – 3 Rs. 15600-39100 _ GP Rs. 5400/- w.e.f. the date persons below him in order dated 25.5.2012 has been given promotion with all consequential benefits including arrears of pay and allowances along with 18% interest per annum.

(ii) An exemplary cost be imposed on the respondents for causing undue harassment to the applicant.

(iii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice."

2. Applicant, who is a postal employee, joined as Postal Assistant on 04.01.1980 and got two promotions firstly, as Inspector (IPO) on 28.05.1993 and as Superintendent of Posts on 17.11.2004. He was issued a Charge sheet dated 7th June, 2011 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [hereinafter referred to as 'the Rules'] alleging that while working as Deputy Superintendent of Post Offices, Jodhpur Division during 2006 to 2008, carried out Annual Inspection of Phalodi LSG SO on 11.10.2008 to 20.11.2008 but, did not verify the sum of amount shown in SO Account with the sum of entries in BO Summary with cash remittance shown in transit of BOs and disposal of funds and also did not check minimum 5 TD pass book and violated the provisions of Rule 3 (1), (ii) of the CCS (Conduct) Rules, 1964.

3. It is pleaded in the application that a DPC was convened on 17th May, 2012 for promotion in Group 'A' cadre pertaining to 2010-2011 vacancies wherein, applicant's name figured at Sl. No. 42 of the panel. Thereafter, the respondents issued order of promotion dated 25.05.2012 promoting several officers including the applicant in the

Junior Time Scale. It is submitted, to his utter surprise, he was not relieved to join the promotional post and thus filed a representation on 22.06.2012 stating that he had got nothing to do in the Phalodi fraud case as the inspection for the year 2008 was carried out by him from 11.10.2008 to 20.11.2008 and found no irregularity during the inspection period and further stated that the charge sheet issued to him was due to mala fide intention. He has emphasized that the DPC has thoroughly examined the entire aspect before declaring him fit for promotion. Still the order of promotion qua him, was kept in abeyance vide order dated 03.08.2012 vide Annex. A/5 in an illegal manner.

4. It is summarily pleaded that the respondents awarded a minor penalty reducing his pay by one stage for a period of two years without cumulative effect vide Memo dated 29.08.2013. He has now stated that at the time of convening the DPC in 2012 for the vacancies of 2011, no penalty or charge sheet was pending as on 31.03.2011 still the respondents have not acted relieving him to join at the place of posting. Since nothing was heard, applicant moved a representation on 04.06.2014 to respondent No. 3 which too was not responded, and thence, he made another representation on 05.02.2015 to extend him his due promotion as per order dated 25.05.2012 following which, several juniors had joined.

5. The respondents vide order dated 26.02.2015 promoted the applicant in the Junior Time Scale Group 'A' and allotted him Punjab

Circle. Being aggrieved of his delayed promotion, applicant has approached this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

A detailed reply has been filed by the respondents taking a preliminary objection that while applicant was posted as Dy. SPO, Jodhpur carried out annual inspection of Phalodi, LSG Sub PO on 11.10.2008 and 20.11.2008 during such inspection the work/record of such PO was not found up to the mark which the applicant himself made a mention in some of the paras of his inspection report, but failed to make sincere efforts in verifying the Post Office balance correctly as the cheques were shown in balance but the same were not physically verified thereby a fraud of Rs. 2 Crores was unveiled during June 2009 holding Sh. Arjun Ram, SPM and Sh. Pancha Ram, Treasurers as main offenders. Due to this, a Chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was served and ultimately, a penalty of reduction of pay in time scale by one stage for a period of two years w.e.f. 01.09.2013 without cumulative effect was imposed vide Memorandum dated 29.08.2013 which was operation till 31.08.2015.

6. Apparently, the name of the applicant had appeared at Sl. No. 23 in the panel of promotion dated 25.05.2012 of the Junior Time Scale Officers of Indian Postal Services Group 'A' but, in view of the Condition No. 3 of even order, the same could not be given effect to keeping in view the Charge sheet dated 07.06.2011, the effect of

which was over on August 2015. Respondents have categorically pleaded that the Directorate, New Delhi vide order dated 26.02.2015, further promoted 39 officers in the cadre of JTOs wherein, applicant's name was at Sl. No. 4 but due to currency of punishment till 31.08.2015 he was relieved only after the said date. It is stated that respondents did no mistake in keeping his promotion in abeyance till the effect of the penalty, hence, the department has rightly with-hold applicant's promotion.

Apart from above, the respondents pleaded that the OA was preferred in 2015 challenging his grievance of promotion w.e.f. 2012, therefore, by no stretch of imagination, this O.A. could be treated as within time as the original date of cause of action has to be entertained. Even the representations, submitted subsequently, with a view to cover the period of limitation, cannot make any distinction, therefore, it is prayed that the O.A. which was presented on 17.08.2015 by ill motive just before end of punishment in August, 2015, be dismissed having no legs to stand. Respondents at the cost of repetition emphatically mentioned that the challenge of applicant could have been over at the thresh-hold keeping in view the OM dated 14th September, 1992 which provides that a Government servant who is recommended for promotion by the DPC but if he is charge sheeted after the recommendations of the DPC but before the actual promotion, his promotion be kept in abeyance and accordingly the findings of the DPC could not be acted upon.

7. We have heard the learned counsel for both sides who practically reiterated the points as already highlighted in the OA and the reply statement as mentioned in the earlier paras. We have also carefully considered the facts of the case and submissions made by either side.

8. The only issue to be considered in this case is whether the applicant is entitled to get promotion as Group 'A' Officer in the vacancies of 2010-2011 of Junior Time Scale of Indian Postal Services while the Imputation of Charge sheet and inquiry and the decision as well, was under operation.

9. To understand the case and come to the conclusion, if we evaluate the case chronologically then we see that the vacancies to be filled up, were pertaining to the year 2010-2011 for which the cut off date was taken as 31.03.2011. A Chargesheet was issued to the applicant on 07.06.2011 and DPC was convened on 17.05.2012 and promotion order was issued on 25.05.2012. On the basis of the Chargesheet issued on 07.06.2011, the promotion order dated 25.05.2012 was kept in abeyance and a minor penalty of reduction of pay by one stage for a period of two years without cumulative effect, was issued vide Memorandum dated 29.08.2013. The applicant preferred his representation on 22.06.2012 against which an order dated 03.08.2012 was passed keeping the promotion order qua applicant in abeyance. The applicant preferred another representation on 06.05.2014 against the minor penalty and also gave representation

dated 05.02.2015 for grant of promotion from the due date. Ultimately, the applicant was granted promotion in the Junior Time Scale (Group 'A') from 26.02.2015 vide Annex. A/9. Now, as per the argument of the learned counsel for applicant as the vacancies to be filled up were of up to year 2011 and, on the basis of the service record as on 2011, there was nothing pending/adverse on that date in regard to the applicant. It is seen from the chronological events as stated above that the chargesheet was issued on the applicant on 07.06.2011 (Annex.A/1) and the DPC was convened on 17.05.2012 for promotion to the post of Junior Time Scale in the Indian Postal Service Group 'A'. Though, the DPC found him fit but finding him eligible in the DPC is not all for granting promotion to the applicant as already before convening of the DPC in the year 2012, a chargesheet was issued on 07.06.2011 and the outcome of the chargesheet was the award of minor punishment. Hence, the chargesheet which was issued before convening of DPC in the year 2012 resulted into punishment and the currency of the punishment was for two years, hence, the next promotion which was due to the applicant has been granted after the expiry of the currency of the punishment granted to him.

10. Learned counsel for applicant has relied upon judgment of Rajasthan High Court in ***Uma Shanker Kiradu Vs. State & Ors*** (SBC Writ Petition No. 926/2011) decided on 11.01.2012 and stated that there was nothing against the applicant on the cut off date of the vacancy year for which the DPC was to be held, hence not considering

the applicant for grant of promotion, is not only illegal but arbitrary also. We feel that the issue involved in the instant OA was only whether there is anything adverse against the applicant on the cut off date i.e. 31.3.2011. Here, in this case, Chargesheet was issued in June 2011 before the DPC was convened and the DPC found him fit based on the documents placed before them but as something came into knowledge before declaration of promotion, hence name of applicant was kept in abeyance. The cited judgment is thus not helpful to the applicant.

11. No statutory provision has also been brought to our notice by the counsel for the applicant which compels the Department to complete the DPC within the vacancies year itself. Here, we do not find any inordinate delay also in holding the DPC for the vacancies of 2011 as the DPC was convened in the year 2012 itself. We find when the promotion order was issued on the basis of the DPC and the applicant undisputedly, was already under the cloud.

12. Hon'ble the Supreme Court in ***UOI & Ors. Vs. A. N. Mohanan*** reported in (2007) 5 SCC 425 has held that where any penalty has been imposed, the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course. Though, in the present case sealed cover procedure was not adopted but the promotion order kept in abeyance qua the applicant.

Hence not granting promotion to the applicant though being found fit by the DPC during the currency of the punishment, cannot be termed as arbitrary or illegal or in colourable exercise of power. It is also not the case that respondents have not granted him promotion just after expiry of the currency of the punishment, hence, according to us, the respondents have not done anything which is illegal or violative of natural justice. We in the entirety of facts found that applicant has not been able to make out a case for interference by this Tribunal and the relief as prayed, cannot be granted. The O.A. is accordingly dismissed.

13. The parties are left to bear their own costs.

(ARCHANA NIGAM)
Member (A)

(JASMINE AHMED)
Member (J)

mehta.