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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 260 of 1986.

Jamuna Ram

... applicant.

Versus

Director Postal Services (HQ)   
Office of the Post Master General, U.P.   
Circle Lucknow. ... Opp. party.

Hon'ble D.S.Misra-Member (A)

Hon'ble G.S.Sharma-Member (J)

( By Hon'ble D.S.Misra-Member)

This is an application under section 19 of the Administrative Tribunals Act 13 of 1985 against the order dated 30.4.1986 of Assistant Post Master General (Staff) cancelling the order of promotion of the applicant to the post of Deputy Office Superintendent (II) in the higher selection grade (II) in the scale of Rs. 550-750.

The applicant has challenged the impugned order on the ground that it has been issued under the signature of an incompetent authority without assigning any reason or giving opportunity to the applicant to safeguard his interest. The applicant apprehends that his promotion was withheld on account of the issue of a chargesheet by the Senior Deputy Director General (Vigilance) and contends that the pendency of disciplinary proceedings can not be a ground for overlooking the claim for the promotion of the applicant, who had been found suitable for promotion by the Departmental

Promotion Committee. He has cited the following table giving the inter se seniority of the officials in the office of the applicant.

(As per gradation list of October 15, 84)

Name of the officials	Post held	Date of retirement.
1. D.N.Kanojia	Office Supdt. HSG-I	31.5.1986
2. V.N.P.Nigam	Dy. Office Supdt. -I HSG-II	30.4.1986
3. R.K.Misra	Dy. Office Supdt. II HSG-II	30.11.1991
4. Applicant	Dy. Office Supdt. III LSG	31.5.1990
5. S.N.Ram	Selection Supervisor LSG	31.1.1989
6. Bhikhu Ram	" " " " LSG	30.6.1987
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Sri D.N.Kanojia, Office Superintendent proceeded on 21 days' commuted leave from 10.3.1986 to 4.4.1986. Since Sri V.N.P.Nigam, who was Deputy Office Superintendent (I) was also on leave, Sri R.K.Misra Deputy Office Superintendent grade (II) was given the chance to work as Office Superintendent, P.M.G, Office Lucknow and the applicant who was working as Deputy Office Superintendent (III) was ordered to officiate as Deputy Office Superintendent (II) in place of Sri R.K.Misra. The above mentioned arrangement was terminated after the joining of Sri D.N.Kanojia as Office Superintendent in the afternoon of 7.4.1986. On 14.4.1986 Sri D.N.Kanojia again proceeded on commuted leave for three weeks, i.e., upto 4.5.1986. This time Sri V.N.P.Nigam who was working as Deputy Office Superintendent (I) was ordered to work on the post of Office Superintendent in the leave vacancy of Sri Kanojia and Sri R.K.Misra was posted as Deputy

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Office Superintendent (I). The applicant was asked to work on the post of Dy. Office Superintendent (II) in place of Sri R.K. Misra. Both the posts of Deputy Office Superintendent I and II are in the higher selection grade while the post of Deputy Office Superintendent III is in the lower selection grade. Sri V.N.P.Nigam, who was holding the post of Deputy Office Superintendent (I), was due to retire in the afternoon of 30.4.1986. An order was issued on 23.4.1986 by the Director Postal Services H.Q., U.P., Circle Lucknow by which Sri R.K. Misra was to be promoted and posted as Deputy Office Superintendent (I) on the retirement of Sri V.N.P.Nigam, w.e.f. from the afternoon of 30.4.1986. By the same order the applicant (Jamuna Ram) Dy. Office Superintendent (III) ~~was to be promoted as Dy. Office Superintendent - II~~ in the higher selection grade w.e.f. from the afternoon of 30.4.1986. The order also stated that the promotion of the two officials Sarva-Sri R.K. Misra and Sri Jamuna Ram, to the higher selection grade was purely temporary and would not confer any right for continued officiation or regular absorption in the cadre. Sri D.N.K. Kojia resumed duty in the afternoon of 30.4.1986 curtailing his remaining leave and leave arrangements made earlier were terminated. By an order dated 30.4.1986 the order of promotion of the applicant was cancelled. He has challenged this order and sought its cancellation.

In reply the respondents have stated that on 30.4.1986 at about 12 hours a letter was issued from the vigilance section of the office stating therein that <sup>a</sup> disciplinary case under rule 14 had been received from the Director General Posts, New Delhi and the vigilance clearance given earlier

on 21.4.1986 in respect of the applicant, which was obtained in connection with holding the D.P.C. for the selection of Office Superintendent, was cancelled. On receipt of the aforesaid vigilance report in respect of the applicant, the orders of his working on the Post of Deputy Office Superintendent (II) in the higher selection grade were cancelled by the Director of Postal Services H.Q. on 30.4.1986. The respondents have alleged that the applicant had filled in the charge report in an irregular manner. It is further stated that the applicant represented his case to the Post Master General, U.P. (respondent no. 2) on 12.5.1986 but it was rejected by him on 29.5.1986. The applicant did not avail further remedy by making a representation to the Director General of Posts New Delhi and therefore, the application filed by the applicant was liable to be rejected on this ground alone.

The applicant filed a rejoinder affidavit in which he reiterated the same arguments as were contained in his application under section 19 of the Administrative Tribunals Act and claimed that he should be deemed to be working on the post of Deputy Office Superintendent (II) in the higher selection grade.

At the time of arguments, learned counsel for the applicant emphasised that since the applicant had been found suitable for promotion to the higher selection grade by the D.P.C. and was promoted w.e.f. from the afternoon of 30.4.1986 he could not be reverted to a lower post without following disciplinary proceedings. Alternatively, it was argued that the promotion of the applicant could not be

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with-held on the ground that some disciplinary proceedings were pending or contemplated against him. In support of this contention reliance was placed on V-Jagdishwara Rao vs. Post Master General Adhra Circle (1958 All India Service Law Journal, 101) In this case the Hon'ble Judge of A.P. High Court had held that pendency of disciplinary proceedings can not be a ground for overlooking promotion if the person has been otherwise found suitable for promotion by the Departmental Promotion Committee. The respondents have conceded that the applicant was found suitable for promotion to the higher grade in respect of vacancies arising during the year 1986. The respondents' contention, <sup>however,</sup> is that in view of the withdrawal of the vigilance clearance given earlier, the applicant could not be promoted to a higher post and also that these promotions were in the nature of only temporary arrangement and did not confer any right of promotion on the applicant.

Learned counsel for the applicant has also contended that the order dated 30th April, 1986 <sup>her</sup> having passed by Sri B.C.Joshi, Assistant Post Master General (Staff), was not passed by a competent authority. Learned Counsel for the respondents has pointed out that this order was passed by Sri Joshi on behalf of the Post Master General and not on his own behalf. It was pointed out that the order dated 23.4.1986 by which the earlier promotion orders, which were to be effective from the afternoon of 30.4.1986, had also been issued under the signature of Sri B.C.Joshi on behalf of Director Postal Services and not on his own behalf and therefore the order dated 30.4.1986 passed by Sri Joshi on

behalf of the Post Master General was valid.

we have considered the matter in all respects. The first contention of the applicant is that the order dated 30.4.1986 cancelling the order dated 23.4.1986 amounted to reversion. The order dated 23.4.1986 was to fill up a leave vacancy in a purely temporary capacity and it clearly stated that it did not confer any right for regular promotion or continued officiation. However, in the circumstance of the case, it is found that a vacancy in the higher selection grade was available against which the applicant could have been accommodated.

The other contention of the applicant is that he should be deemed to have assumed charge of the post of Deputy Office Superintendent (II) in the higher selection grade on the afternoon of 30.4.1986 by virtue of having filled in the charge assumption report. The contention of the applicant is that he had taken charge of the post before the receipt of the order dated 30.4.1986 cancelling the order dated 23.4.1986. According to the practice prevalent in the Government Departments where-ever a government servant takes charge of a post which is already occupied by another government servant, the person handing over charge has also to sign the charge-report before the person taking over charge signs as relieving officer. In this case a copy of the charge assumption report filed by the applicant (annexure F to his application) does not show that the relieved officer had handed over the charge to him. The applicant himself has filed as Annexure-Z to his rejoinder affidavit, one other

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charge assumption report, dated 14.4.1986, in which besides the signature of the relieving officer, the signature of the relieved officer is also available. In these circumstances, we are of the opinion that this contention of the applicant is not valid.

However, the reasons given by the respondents for the cancellation of the order of promotion of the applicant, which was effective from the afternoon of 30.4.1986, that it was due to the cancellation of vigilance clearance given by the Director General Postal Services leads us to the conclusion that this was in the nature of denying promotion to the applicant who was otherwise senior and fit for promotion as Deputy Office Superintendent II in the higher Selection Grade. The case law cited by the learned counsel for the applicant has laid down a principle on this point, which appears to be quite sound. The respondents have failed to point out the circumstances leading to the cancellation of the vigilance clearance and the gravity of the complaint or charges against the applicant. In the absence of such material we come to the conclusion that the denial of promotion of the applicant to the post of Deputy Office Superintendent II in the higher selection grade was against the principle of natural justice. This is particularly so as the promotion was in the nature of a temporary promotion and not a regular promotion. We are, therefore, of the opinion that the rejection of the request of the applicant for promotion to

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the higher selection grade is not in accordance with the principles of natural justice. The applicant is entitled to be promoted to the higher selection grade according to his seniority in the cadre.w.e.from the date of vacancy arising on the promotion of his senior Sri K.K.Misra.

The application is disposed of accordingly, but we make no order as to costs.

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29/8/86  
MEMBER (A)

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29/8/86  
MEMBER (J)

J.Singh/29 8.1986.