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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 152 of 1987

Ram Swaroop Srivastava Applicant

Versus

Post Master General, U.P.
Circle, Lucknow & another Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

The applicant in this application filed under Section 19 of the Administrative Tribunals Act XIII of 1985 has prayed for a direction to be issued to the respondents to provide him substantively in I.P.S. Group 'A' from the date of issue of the order dated 24.12.1983 promoting him from Group 'B' to Junior Time Scale of Group 'A' and for regularising his pay and allowances accordingly and the cost of the suit.

2. The facts of the case, which are not in dispute, are that the Departmental Promotion Committee cleared him for promotion to the Group 'A' cadre of the Indian Postal Service from Group 'B' in February, 1983. The promotion orders issued on 24.12.1983 were subject to clearance from vigilance and disciplinary angle. A vigilance case was pending against the applicant at the time the Departmental Promotion Committee met but it was not advised to the Committee. Hence the Sealed Cover Procedure could not be followed. As a matter of fact in/^{that disciplinary} case he was imposed a punishment of censure in March, 1983. On account of the imposition

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of the punishment the recommendations of the Departmental Promotion Committee were not implemented. According to respondents this could be done if he was exonerated. Hence the promotion ordered to be given to him under the Director Staff Postal's letter of 24.12.1983 was incorrect and could not be given. He was ultimately promoted on 8.1.1985. But the 4.7.1986 letter of the Director of Accounts Postal has refixed his pay and he is being paid as a Group 'B' officer. His representation of 20.7.1986 on his pay fixation has remained unrepplied.

3. We have heard the learned counsel for the parties. The submission made by the learned counsel for the applicant was that the punishment of 'censure' could not stop the promotion* and the applicant had been wrongly withheld from his due promotion in terms of the order of 24.12.1983. The stand taken by the learned counsel for the respondents was that since a punishment of censure was imposed the applicant could not be immediately promoted and the promotion was made in 1985 when the punishment expired.

3/ ^{as this lies}
4. The point for adjudication ~~has~~ within a narrow compass. It is whether a punishment of 'censure' can result in the withholding of promotion.

5. The applicant has, in his rejoinder, referred to the Government of India's Department of Personnel and A & R's O.M. No.21/5/70-Est., dated 15.5.1971 appearing at page 47 of Swamy's Compilation of C.C.S.(C.C.&A.) Rules, 1965 which says that 'censure' is no bar on promotion.

6. Promotions are made on the basis of selection

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or on the basis of scrutiny of the service records. There is a specific penalty of withholding of promotion for a specified period in the list of minor penalties. 'Censure' conveys that the person concerned has been held guilty of some act for which it is necessary to award him a formal punishment. It is also entered in the persons Character Roll. It can have a bearing on the assessment of merit or of suitability for promotion. But then promotion depends on a variety of factors and considerations and it is the overall effect of all such factors which is taken into consideration. Even if the disciplinary case that led to the imposition of the punishment of 'censure' would have been in the knowledge of the D.P.C. this would have perhaps not materially changed the decision. In 'Sealed Cover Procedure' the result is kept in sealed cover till the finalization of proceedings. The fact that the applicant had been considered suitable for promotion would not have suffered any change.

7. Under Rule 11 of the C.C.S.(C.C.&A.) Rules, 1965 'censure' is one of the minor penalties. The Government of India's instructions on 'promotion of employees on whom penalty has been imposed' have been clarified under Government of India's O.M. No.21/5/70-Est., dated 15.5.1971, which has been referred to by the applicant in his rejoinder affidavit. This O.M. says that 'censure' is not a bar to eligibility to sit for a departmental/promotional examination or for promotion. Every person eligible for promotion and in the field of choice has to be considered for promotion. The fact of the imposition of a minor penalty of censure on a

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Government servant does not by itself stand against the consideration of such person for promotion, as his fitness for promotion has to be judged, in the case of promotion by seniority, on the basis of an overall assessment of his service record, and in the case of promotion by selection, on the basis of his merit categorisation which is again based upon an overall assessment of his service record. Thus merely because a penalty of censure has been imposed can an employee be deprived from appearing at any examination? The fitness of a eligible candidate who has been awarded the penalty has to be considered on the basis of an overall assessment. This O.M., therefore, clearly spells out the instructions of the Government and the procedure to be adopted in cases like that of the applicant. The contention of the learned counsel for the respondents as well as the averments made in the reply to the application are not in accordance with the Government of India's instructions. Even though a penalty of censure was imposed unless a positive decision is taken against the recommendation of the Departmental Promotion Committee the applicant could not have been stopped from his due promotion.

8. 'Censure' literally means reprimanding a person for a specified conduct. It is an expression of disapproval for certain acts committed by him. Once the disapproval or reprimand is communicated to the person the event which ^{by law} ~~lead~~ to the imposition of the censure comes to an end. It cannot be said that if a censure has been given as a punishment to a person it will have unlimited effect or that its effects will

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last over a period of months or years as has been concluded by the respondents in saying that since the applicant was given the punishment of censure the recommendation of the Departmental Promotion Committee made on 24.12.1983 could not be implemented till 1985. It is sufficiently clear from the Government of India's instructions and from the very meaning of the word 'censure' that it cannot be a bar for promotion of an employee on whom it is imposed.

9. Under the above circumstances the action of the respondents in not considering the applicant for promotion when it became due by the order dated 24.12.1983 (Annexure 'A-1' to the application) was not correct. The applicant should have been promoted after the case had been finalised and the punishment of censure imposed on him in March, 1983.

10. We, therefore, direct the respondents to consider the case of promotion of the applicant to I.P.S. Group 'A' in accordance with the recommendations of the Departmental Promotion Committee and the orders of the Director Staff Postal dated 24.12.1983 from the date it became due immediately after March, 1983 and restore him to his normal position in the gradation list. He will be considered to have been promoted on his own turn. The applicant will also be entitled to the consequential benefits. The application is allowed in the above terms. Parties will bear their own costs.

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Member (A).

Dated: November 6th, 1987.

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Member (J).