

(A.P.) (u)
Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No. 880 of 1987

Mangla Prasad Applicant
Vs.

Post Master General U.P.
Circle Lucknow and others Respondents.

Hon. G.S.Sharma, JM
Hon. K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the applicant has prayed that he be allowed to get his legitimate promotion to L.S.G. cadre w.e.f. 30.11.1983 under One Time Bound Scheme with arrears of pay and other allowances and his period of suspension from 17.9.1980 to 2.11.1981 be treated on duty.

2. The case of the applicant in brief is that he had joined the Postal Department on 17.1.1966 as Postal Assistant and while posted at Varanasi, he was placed under suspension on 17.9.1980 as a case in respect of a criminal offence was stated to be under investigation against him. The suspension was, however, revoked on 2.11.1981 by the Superintendent of Post Offices Varanasi. The applicant, however, did not receive any charge sheet in respect of any offence and as such, after completing his 16 years service on 17.1.1982, he became entitled to promotion to L.S.G. cadre under One Time Bound Scheme introduced by the Director General Posts, New Delhi w.e.f. 30.11.1983. The respondents, however, did not promote him on the plea that a disciplinary proceeding is pending against him while there is no such proceeding against the applicant and the promotion

has been wrongly denied to him. On the basis of the investigation the Police had charge sheeted three other persons, namely, Vashistha Narain Lal, Raj Bali and Tajamul Khan u/s.409 I.P.C. They were discharged by the V Addl. Munsif Magistrate Varanasi on 29.5.1984 and by the same order the applicant was ordered to be summoned u/s.319 Cr.P.C. as an accused in that case. The applicant challenged the correctness and validity of the said order by filing Criminal Revision No.192 of 1984 which was allowed by the III Addl. Sessions Judge, Varanasi on 12.12.1986 and the order dated 29.5.1984 of the Magistrate summoning the applicant as an accused was set aside. There is, thus, now no departmental or criminal case against the applicant and he is entitled to the promotion claimed by him as well as to treat the period of suspension made in connection with this case on duty with full pay.

3. The respondents have contested the petition and in the reply filed on their behalf by the Superintendent of the Post Offices, West Division, Varanasi, it has been stated that the applicant was put under suspension on 17.9.1980 in respect of misappropriation of an insured parcel ~~of~~ the approximate value of Rs.55,000 and the case was reported to the Police which had registered a case u/s.409 IPC. He did not dispute the fact that the applicant completed his 16 years service on 17.1.1982 and the first Departmental Promotion Committee meeting thereafter did not recommend for his promotion on account of the pendency of the case in the Court of law. The DP C again met on 31.7.87 and the applicant was again not promoted due to the pendency of the disciplinary case against him. It was further stated that the disciplinary proceeding is still pending

against the applicant and the criminal case against the applicant has also not been finally concluded and the applicant is not entitled to the reliefs claimed.

4. We have very carefully considered the contentions raised on behalf of the parties before us and are of the view that there is some misunderstanding on the part of the respondents regarding the pendency of the disciplinary or Court proceedings against the applicant and the ground for denying or delaying the promotion of the applicant is not justified. It is the established law that the criminal or disciplinary proceedings are initiated against an employee only on the serving of the charge sheet on him and not from any earlier date. If an authority is needed, we will like to quote the Full Bench decision of the Tribunal in K.Ch. Venkata Reddy Vs. Union of India (1987)3 A.T.C. - 174).

In the instant case, on the Police report made by the departmental authorities only 3 persons were served with the charge sheet and were sent up for trial before the Munsif Magistrate. Even the said 3 persons named above were discharged by the learned Magistrate on 29.5.1984 vide copy of order annexure 1 to the reply filed by the respondents. The learned Magistrate, however, suspected the hand of the applicant in that crime and he accordingly summoned the applicant as an accused u/s.319 Cr.P.C. The said order was, however, not found in accordance with law by the learned Addl. Sessions Judge and the same was set aside in revision filed by the applicant on 12.12.1986 vide copy of judgment annexure 2 to the reply. There is nothing on record to show that after this order, the applicant was ever served with a charge sheet of the criminal case regarding the misappropriation of the insured parcel. We are, therefore, of the view that as the applicant has not yet been

served with any charge sheet of a criminal case and the order summoning him as an accused passed by the Magistrate has also been set aside, it is not correct to say that any criminal case is pending against him; and he could not be denied the promotion on this ground.

5. Regarding the disciplinary proceedings too, we are of the view that the respondents have not been able to show that the applicant was ever served with the charge sheet for causing the misappropriation of the insured parcel in question and unless the same is served on him, it cannot be said that any disciplinary proceeding is pending against him and on this ground too, his promotion cannot be denied or delayed by the respondents. In case the respondents are serious to pursue the matter further even after the passing of the orders in favour of the applicant by the Courts, they should make up their mind and serve the applicant with the requisite charge sheet without undue delay and at present, there is no justification to delay the promotion of the applicant which has already become overdue.

6. Regarding the relief claimed by the applicant for the period of suspension, we are of the view that the period of suspension can be regularised only after the disciplinary proceedings are concluded or the respondents decide that no disciplinary action is called for against the applicant. As no disciplinary case has been initiated against the applicant so far, we direct that in case the applicant is not served with a charge sheet within a period of one month from the date of the receipt of this order, they shall pass suitable orders for regularising the period of suspension of the applicant from 17.9.1980 to 2.11.1981 within a period of 3 months from the date of this order. In any case, so far as his

served with any charge sheet of a criminal case and the order summoning him as an accused passed by the Magistrate has also been set aside, it is not correct to say that any criminal case is pending against him; and he could not be denied the promotion on this ground.

5. Regarding the disciplinary proceedings too, we are of the view that the respondents have not been able to show that the applicant was ever served with the charge sheet for causing the misappropriation of the insured parcel in question and unless the same is served on him, it cannot be said that any disciplinary proceeding is pending against him and on this ground too, his promotion cannot be denied or delayed by the respondents. In case the respondents are serious to pursue the matter further even after the passing of the orders in favour of the applicant by the Courts, they should make up their mind and serve the applicant with the requisite charge sheet without undue delay and at present, there is no justification to delay the promotion of the applicant which has already become overdue.

6. Regarding the relief claimed by the applicant for the period of suspension, we are of the view that the period of suspension can be regularised only after the disciplinary proceedings are concluded or the respondents decide that no disciplinary action is called for against the applicant. As no disciplinary case has been initiated against the applicant so far, we direct that in case the applicant is not served with a charge sheet within a period of one month from the date of the receipt of this order, they shall pass suitable orders for regularising the period of suspension of the applicant from 17.9.1980 to 2.11.1981 within a period of 3 months from the date of this order. In any case, so far as his

•5.

promotion to L.S.G.cadre under One Time Bound Scheme is concerned, we direct the respondents to consider his case from the due date as no disciplinary or Court proceeding was pending against him in the eye of law at that time and on being found entitled to promotion, he shall also be paid the difference in arrears of pay. The respondents shall do the necessary exercise within a period of one month from the date of the receipt of this order.

7. The petition is disposed of accordingly without any order as to costs.

K. Ramamurthy

MEMBER (A)

S. Narayana

MEMBER (J)

Dated: 31.1.1989
KKB