

A. 2

(6)

Us.

Hon. Mr. K. Obayya, A.M.

.....2

A2
B 7

dated 4/6/86 he was reverted as Inspector, the reversion order was not given effect to and on his representation he was promoted as A.S.P. again on 14/8/86. But the applicant was not allowed to join the promoted post because of a disciplinary proceedings which resulted in punishment order dated 30/6/86 by which his increment was stopped for 1 year without cumulative effect. As a consequence of this he was reverted as S.D.I. on 30/10/86. The impugned orders are assailed on several grounds, that penalty was imposed in violation of Rules 124, 155 of P & T Manual Vol.III and that the powers of review were exercised without justification only to deny promotion to the applicant after 6 months of the order of Disciplinary Authority, and that the order of enhancing punishment is not supported by reasons as required under law; and the appeal of the applicant was not decided even after more than 6 months of preference.

3. The respondents have opposed the application and it is pointed out in their counter, that the applicant's promotion to the cadre of A.S.P. on 17/12/85 was on adhoc basis, and not against clear vacancy and he was reverted vide order dt. 4/6/86, due to non-availability of vacancies, as certain Group 'B' Officers allotted to U.P.Circle had to be given postings and being the Junior-most in the cadre of A.S.Ps. the applicant had to give way, and this resulted in his posting on 10/6/86 as Complaint Inspector, Agra. But subsequently when one vacancy arose, he was again given promotion as A.S.P. on 14/8/86. But this promotion could not be given effect to as the applicant was undergoing punishment of stoppage of increment at that time. It is also stated that applicant's promotion was on adhoc basis, and not on

le

regular basis and that on reversion he has joined as S.D.I. at Jalaun. The respondents have denied that the promotion was approved by D.P.C. Regarding punishment it is stated that the applicant while working as Inspector of Post Offices, Unnao, during 1977-78, committed serious irregularities in not verifying the balances in Pass Books at the time of annual verification for which he was proceeded under rule 16 of CCS(CCA) rules 1965 and he was given a severe warning by Supdt. of Post Offices. The penalty was reviewed, after observing formalities and punishment of stoppage of increment for 1 year without cumulative effect was passed by the appellate authority i.e. Director of Post Offices exercising powers of revision as laid down under CCS(CCA) Rules. It is also stated that the case of the applicant for promotion will be considered, in accordance with rules, after the punishment period and that no Junior to the applicant has been promoted.

4. The case of the applicant gives rise to two inter-related questions. One is with regard to the punishment, whether the punishment order can be sustained, and the other is what follows from this, whether the punishment was an impediment to his promotion which the respondents say it was. The submissions of the learned Counsel for the applicant were two-fold. Firstly, the penalty of "warning" imposed by disciplinary authority had become final since no orders in review were passed within 6 months time as provided in the rules, hence the second punishment order is not maintainable as it was not an order passed in accordance with law. Secondly since the applicant's promotion was on regular basis, his reversion could be only by way of punishment in a disciplinary proceedings, that was not done in the case of the applicant. The learned Counsel for respondents countered the contentions, by pointing out

A.P.
B (A)

-4-

that though 'warning' is not one of the punishments enumerated in the rules, it was only after due notice and opportunity of representation, the appellate authority passed the order enhancing the punishment. The learned Counsel for the respondents referred to Rule 29(1) V and VI(b) of the CCS Rules, to substantiate his contention that the powers of revision were exercised by the appellate authority, in accordance with the provisions of law. The above rule lays down that the appellate authority may call for records either on his own motion or otherwise within 6 months of the date of the order proposed to be revised, and confirm or enhance or set aside the penalty. The disciplinary proceedings against the applicant was for a minor penalty, for dereliction of duties while he was working as Inspector Unnao East Sub Division, during 1977-78, that while inspecting Akhwarabad B.O. he did not contact the S.B. Account depositors to check their Pass Books and verify with S.B. Journal with the result large sums of fraudulent withdrawals went undetected, causing avoidable loss to Government. The applicant denied the charges in his statement; The superintendent of Post Offices, considered the matter and passed order awarding severe warning to the applicant. There-upon, the Director of Postal Services, after issue of notice for enhancement of punishment, and considering the reply of the applicant passed orders levying a penalty of stoppage of increment for 1 year without cumulative effect. The order of the disciplinary authority is dated 14/8/85 and the memo. of appellate authority dated 8-1-86 containing his proposal to enhance the punishment was acknowledged by the applicant on 4/2/86. From this it cannot be said that the appellate authority moved in the matter belatedly, i.e. after lapse of six months. The exercise of power under rule 29 was well within time and the contention that it

was not so is without substance.

5. So far as the punishment is concerned, it is a minor penalty wherein no elaborate enquiry is called for, even then notice for enhancement of punishment was given to the applicant, and the applicant was given opportunity to make representation against it. It was only after considering the representation, the punishment order was passed. It was well within the competence of the appellate authority to pass orders in revision, exercising powers under rule 29 of CCS(CCA) rules. The exercise of powers was in accordance with law and the punishment order is a reasoned order. In Union of India Vs. Paramanda (1989 S.C.C (C & S) P.503 the Supreme Court held that no interference can be made on the punishment awarded by competent authority, if it is based on evidence and is not arbitrary, mala fide or perverse. We do not find any ground made out for our interference in the punishment order imposed in revision.

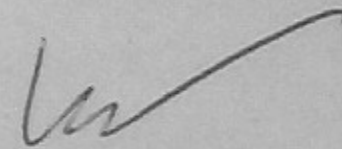
6. The next question for consideration is regarding the promotion of the applicant to the post of A.S.P. The applicant was given promotion in the year 1985 on adhoc basis. Thereafter he was reverted for want of vacancy as some Group 'B' Officers were allotted to the Circle and the applicant being the Junior most was to give way to others. However, he was again promoted on 14/8/86. A copy of this order is kept on record which clearly indicates that the promotions so made were on adhoc basis. These promotions were also subject to several conditions such as there being no disciplinary proceedings, or punishment of stoppage of increments or reduction in rank etc. In such cases the matter was to be reported to the Head Office and the concerned promotees

AP
D
(11)

were not to be relieved. Since the applicant was undergoing punishment of stoppage of increment, he was not given the benefit of promotion. A reference was made to the Rule 157 of the P & T Manual, Vol. III. In this rule it is provided that a person who has been punished with stoppage of increment should not be considered for regular promotion during the currency of the punishment and that a person whose pay has been reduced to lower level should not be considered for promotion till the expiry of the punishment period. However, the suitability of such officers should be assessed. In this case there is no complaint that the applicant was not assessed. His case was considered and he was also included in the list of promotees. The only obstacle was the currency of the punishment order. The respondents also stated that no Juniors to the applicant were promoted and that he will also be promoted if any vacancy arises in future. May be no vacancy in the cadre of A.S.P. has occurred subsequently. As the bar against promotion is not a permanent bar, the applicant is entitled for promotion in the vacancies that exist or likely to occur in future. Respondents are directed to consider the case of the applicant for promotion and give him promotion to A.S.P. cadre in accordance with law.

7. The application is disposed of with the directions as above, with no order as to costs.


Member (A)


Vice-Chairman.

1st March 1993
Dated: 15th Feb. 1993, Allahabad.

(tgk)