

THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No.1719 of 1992

A.B.Khare

... Applicant

Versus

Union of India & Others.

... Respondents

HON'BLE MR. MAHARAJ DIN-MEMBER(J)
HON'BLE MISS USHA SEN-MEMBER(A)

(By Hon'ble Miss Usha Sen- A.M.)

This application has been filed seeking the relief of quashing the impunged orders dated 9-3-92 and 10-9-92 which reveals that the applicant was not promoted to HSG II (Rs.1600-2660) w.e.f. 1-10-91 because "he was awarded penalty of withholding of next increment for three months in 1990-91 due to which his record of service was not considered satisfactory by the D.P.C". He has also sought the relief of quashing the order dated 25-11-92 transferring the applicant to Sub-Post Office, Jhansi, which he thinks was as a result of his non-promotion w.e.f. 1-10-91.

2- The facts of the case show that the D.P.C. which met in December, 1991 for considering promotion to the HSG-II under the B.R.C. Scheme, introduced vide the Department of Posts communication of 11-10-91, did not find the applicant fit for promotion due to the imposition of the penalty of stoppage of the next increment for three months awarded vide a memo of

Senior Superintendent of Post Offices dated 21-1-91, ^{which is} ^{This} apparent, inter alia, from the wordings of the impunged order

dated 10-9-92 (Annexure CA-II) which have been reproduced in para-1 above. The D.P.C. which met in December, 1992 approved the applicant for promotion w.e.f. 1-1-92 and the promotion order dated 20-1-93 (Annexure CA-III) was issued to this effect.

3- The applicant has stated that in accordance with the Department of Personnel No.21/5/70/S/(A) dated 15-5-71 promotion ~~of the~~ ^{an} official cannot be withheld on account of imposition of the penalty of stoppage of increment. We observe that in this Govt. letter the following statements have been made;

^{The}
"As in ~~case~~ of promotion of a Govt servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of the loss caused by him to Govt. or of with-holding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty. While, therefore, the fact of the imposition of such a penalty does not by itself debar the Govt servants concerned from being considered for promotion, it is also taken into account by the Departmental Promotion Committee, or the competent authority, as the case may be, in the overall assessment of his service record for judging his suitability or otherwise for promotion."

4- We find from the record that applicant seems to have been found unfit for promotion merely on account of the imposition of the penalty of stoppage of his next increment for 3 months. This is very clear from the impugned order dated 10-9-93 (Annexure-CA 2) which states that the applicant "was awarded the penalty of with-holding of next increment for 3 months in 1990-91 due to which his record of service was not considered satisfactory by the D.P.C."

~~not~~
It has been stated in this letter that his overall performance was considered unsatisfactory based on his general record as reflected in his Annual Confidential Reports (A.C.R.s) and the circumstances of the case leading to the imposition of the said penalty were such that the D.P.C. could not find him fit for promotion. The D.P.C. seems to have found him unfit merely on the basis of the fact ~~of~~ event of the award of the said penalty. In accordance with the Government's instructions quoted in para 3 above the single fact of the award of the said penalty cannot make an official unfit for promotion though no promotion can be given effect to during the currency of the penalty. The penalty was imposed vide the memo dated 21-1-91 mentioned above. It is not clear as to ~~why~~ when the applicant's next increment was due. Normally it should have been due sometime during the period between 21-1-91 (date of the memo ibid) and 21-1-92. The promotion could not have been given effect to for 3 months from the date of its accrual during this period. It has been stated in para 27 of the Rejoinder Affidavit that the increment was actually withheld from July 1992 to September 1992.

5- ^{Our} examination of the case reveals that there is no evidence to show that the D.P.C. which met in December 1991 did not find him fit for promotion considering his overall performance as reflected in his A.C.R.s and the gravity of the circumstances of the case leading to the imposition of the stoppage of penalty of the next increment for three months.

On the other hand it is seen from the Senior Superintendent of Post Offices, Jhansi Division order of 1-5-92 (Annexure -CA 1) that one Shri N.D. Srivastava has been recommended for promotion w.e.f. 1-10-91 with the proviso that he would not be promoted till the punishment of stoppage of increment for 3 months vide memo No.CR3/493/90 dated 15-11-91 is over. " As such we find it appropriate to direct which we hereby do, that the applicant's case for promotion to HSG-II (1600-2660) should be reviewed by the appropriate D.P.C. and the adjudication of his fitness for promotion w.e.f. 1-10-91 be considered on the basis of the overall assessment of his service record, ~~as~~ as provided in the Government instructions of 15-5-91 ibid. This review should be done within four months from the date of communication of this order. With this direction the application is disposed of. No order as to cost.

Usha Sen
MEMBER(A)

W.W.
MEMBER (J)

DATED: Allahabad March 24, 1994.

(IS PS)
