

Central Administrative Tribunal
Allahabad Bench
Allahabad

Original Application No.897 of 1992

Allahabad this the 10th day of December 1999

Hon'ble Mr.S. Dayal, Member (A)
Hon'ble Mr.S.K.I. Naqvi, Member (J)

K.P. Srivastava S/o Late Sri Jagdeo Prasad, R/o
314, Old Katra, Allahabad.

Applicant

Inpersonate

Versus

1. Union of India through the Secretary(P), Ministry of Communication, Government of India, New Delhi.
2. The Postmaster General, Allahabad.
3. The Chief Post Master Gernal, U.P.Lucknow.
4. Sri C.B. Misra, Dy.Postmaster, Pratapgarh at present posted Sub Postmaster, HSG-I, City Post,Office, Allahabad.

Respondents

By Advocate Shri N.B. Singh

O R D E R (

By Hon'ble Mr.S.K.I. Naqvi, Member(J)

Through this O.A., the applicant
Shri K.P. Srivastava has sought for relief for
direction to respondent no.2 and 3 i.e. Postmaster
General, Allahabad and Chief Postmaster General,
U.P., Lucknow to promote the applicant in the

higher scale grade-II and higher scale grade-I cadre w.e.f. 13.7.1986 and 09.3.90 respectively the dates when Shri C.B. Mishra-the respondent no.4 had been promoted in these cadres. He has also prayed for order in respect of consequential benefits.

2. As per applicant's case, he was appointed as Postal Assistant in Allahabad division w.e.f. 10.10.1952 in time scale cadre and in view of the ^{Government} accompanying order, a new promotion avenue was introduced in the scale of Rs.425-640 to the extent of 20% of the number of time scale post in Circle/District/Unit conversion of the time scale as then existed. Accordingly, the case of the applicant's promotion from the time scale to the lower selection grade was considered but ^{DPC} decision was kept in sealed cover because of pending departmental inquiry. Subsequently, the applicant was promoted in lower selection grade ^{but} cadre w.e.f. 01.7.1982 in 2/3rd quota. The applicant preferred appeal before the higher authorities who allowed the appeal and the date of promotion was modified as 10.2.1982 instead of 01.7.1982. The applicant has mentioned that his promotion was denied at due time because of departmental inquiries and D.P.C. recommendations were kept under sealed cover but the shadow of clouds in his service were removed as per direction by the Tribunal Dated 21.7.1992 in T.A.No.1336 of 1987, in which it was directed to consider the case of the applicant for promotion who was by then retired, from retrospective effect

by opening the sealed cover and incase he has been selected for the same, he be given notional promotion and also consequential benefits as admissible to him. The respondents carried out the directions but did not allow the applicant to the benefit to which he claims to be entitled, for which he has come up through this O.A.

3. The respondents submitted their short counter-affidavit and thereafter supplementary counter affidavit and maintained that the directions of Hon'ble Tribunal have been complied with and the applicant has already been given the benefits to which he was entitled by the Hon'ble Tribunal. In the counter-reply, the criteria for the benefits to the applicant was determined taking basis of fixation and promotion as were allowed to Shri K.S. Srivastava taking him next eligible junior to the applicant. In para-6 of the supplementary C.A., it has been mentioned that the applicant retired on 31.1.1991 and no lower selection grade official junior to the applicant was promoted to H.S.G.II cadre upto 02.5.1991 and, therefore, the claim of the applicant for further promotion to L.S.G. IInd cadre was not found justified.

4. We gave anxious consideration to the arguments placed from the either side and perused the record.

5. In this matter, it is to be mentioned.

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that Shri C.B. Mishra-the respondent no.4 has not contested the case and has also not filed any Counter affidavit to the O.A.

6. The applicant has relied upon the decision reported in A.T.R.1990(1) Supreme Court page 435 and also (1990)1 S.C.J.page464, in which the Hon'ble Apex Court has observed that promotion may be deferred pending disciplinary proceedings but such persons must be considered for promotion if they are exonerated or acquitted in the proceedings against them, and also that in the service there can be one norm of confirmation or promotion in the same cadre and the junior cannot be confirmed or promoted without considering the case of his senior.

7. In the case 'Bal Kishan Vs. Delhi Administration and Anr.(1990) 1 S.C.J 464', the ratio laid down as under;

"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

And the view taken in C.O. Arumugam and Ors. Vs.State of Tamil Nadu & Ors.A.T.R.1990(1) S.C.435, the ratio runs as under;

"As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Art.14 and 16(1) of the Constitution. The

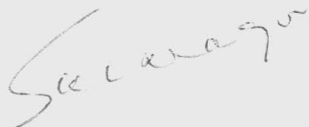
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consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness it would be better to follow certain uniform principle. The promotion of persons against ~~whom~~^{whose} charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

8. Under the service jurisprudence, it is accepted ^{principle} ~~plea~~ that the junior cannot be placed above his senior unless the senior is not found fit to be placed according to his seniority.

9. In the present matter, the applicant has very clearly mentioned in paras-4.5, 4.6, 4.7 and para-4.9(G) of the O.A. that the respondent no.4 Shri C.B. Mishra was junior to him who was appointed as Postal Assistant in the year 1962 and was promoted to lower selection grade on 01.3.1982 and subsequently he was given higher selection grade II on 13.7.1986 and again in H.S.G.-I on 09.3.1990. In reply to these facts in the supplementary C.A. in paras-12, 13 and 15, the respondents have not disputed this position in respect of promotion to Shri C.B. Mishra and, therefore, we cannot discard the submissions by applicant in paras-4.5, 4.6, 4.7 and 4.9(G).

10. In view of the above discussion, we find that it is a fit matter to direct the respondents to re-consider the matter and fix the seniority of the applicant above Shri C,B. Mishra-respondent no.4 and to allow the applicant consequential promotions on the dates when the promotions were allowed to also Shri C.B. Mishra and to give all consequential benefits to the applicant in the light of observations in T.A.No.1336 of 1987, decided on 21.7.1992. The O.A. is decided with the above observations and the respondents are directed to take the steps accordingly within 3 months from the date of communication of this order. No order as to costs.



Member (J)



Member (A)

/M.M./