

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 1328 rf 1992

T.A. No: of 199

DATE OF DECISION: 11/2/94

Chandrika Prasad Singh PETITIONER.

Sri K.P. Srivastava ADVOCATE FOR THE
PETITIONER

V E R S U S

V.O.I. & others RESPONDENTS

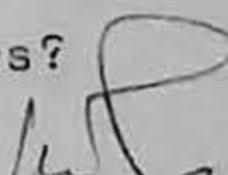
Sri C.S. Singh ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. S. Das Gupta, Member 'A'

The Hon'ble Mr. T. L. Verma, Member 'J'

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. Whether to be circulated to all other Benches?


SIGNATURE,

JAYANTI/

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1328 of 1992

Chandrika Prasad Singh :::::

Applicant

Versus

Union of India & :::::

Respondents

Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

(By Hon'ble Mr. S. Das Gupta, Member 'A')

The relief prayed for by the applicant in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is that the respondents be directed to allow time bound promotion to the applicant w.e.f. 20.5.1988 instead of 30.6.90 with all consequential benefits.

2. The applicant in this case was appointed as Postal Assistant in Allahabad Division w.e.f - 25.9.1972 and has been working in that post since then. He completed 16 years of uninterrupted service on 25.9.1988 and was thus eligible for consideration for the time bound promotion to lower selection grade w.e.f. 25.9.1988.

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In view of the provisions contained in the Director General, Post & Telegraph, New Delhi orders dated - 16.12.1983 and 17.12.1983. A copy of these orders has been placed at Annexure A-2 to this application. The grievance of the petitioner is that he was denied this time bound promotion on his completion of 16 years of service and the said promotion was given to him only w.e.f. 30.6.1990. The applicant preferred a representation to the Director, Postal Services, Allahabad on ~~on~~ 10.1.1989 and sent reminders but, to no avail. Hence this petition.

3. In their Counter-reply the respondents have averred that the applicant was not found fit for time bound promotion on completion of 16 years service as his services were not satisfactory. They have also averred that the applicant was given a charge memo under rule 16 of the C.C.S.(C.C.A) Rules 1965 on 12.2.1990 and was eventually awarded the penalty of Censure on 29.6.1990. The applicant was given time bound promotion w.e.f. 30.6.1990.

4. We have heard the learned counsel for both the parties and carefully perused the records.

5. A ^{re} reference to the orders dated 16.12.83 and 17.12.83 reproduced in Annexure (A-2) reveals

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that the Post and Telegraph department evolved a scheme for giving a time bound promotion to all officials belonging to basic Grade in Group 'C' and 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres and who have completed 16 years of service in that grade. The scheme was to come into effect from 13.11.1983. As regards the postal department ~~is concerned~~, the Head of Circles/Divisional Superintendents/Heads of other functional units were directed that w.e.f. 01.4.1984 they would identify the officials belonging to the cadres covered under the scheme, who will complete 16 years of service upto 31st March of the next year. The Departmental Promotion Committee meeting will be convened before 30th June to consider fitness of the officials completing 16 years of service in the grade during the year.

6. The applicant had admittedly completed 16 years of service in the grade of Postal Assistant on 30.5.1988. In terms of instructions contained in the aforesaid orders of the department of Post and Telegraph, the D.P.C. to promote the applicant along with the others ^{should} have been held before 30th June, 1988 and the criteria ^{to be} adopted by the D.P.C. was "fitness" of the officials for promotion. It is revealed from the facts of the case that the D.P.C. was actually held in September, 1988 and based on its recommendations an order dated 19.9.1988 (Ann.A-3) was issued by the Senior Superintendent of Post offices

Allahabad Division in which it was indicated that the applicant among others was not found fit for promotion to the next higher scale on the basis of his records. If, the D.P.C. had actually considered the records of service of the applicant ^{and} found him unfit for promotion, the applicant obviously has no case. Let us therefore examine what records the D.P.C. relied upon to find the applicant unfit for promotion.

7. The applicant has very specifically stated in para 4.5 of the application that no adverse entry in his C.R. was ever communicated to him. The respondents have not specifically denied this contention but have stated that the applicant was involved in the case of misconduct/misbehaviour and the action against him was pending. From this averment as well as the averment made in the para 3 of the Counter-reply it becomes clear that the basis for finding the applicant unfit for promotion was the fact that he was involved in the case of misconduct/misbehaviour for which action against him was pending. But, was this action pending at the time when the D.P.C. considered the case of the applicant for promotion? The answer obviously is in the negative, since by their own averment, the charge memo under Rule 16 of the CCS(CCA) Rules 1965 was issued only on 29.6.90 whereas the D.P.C. meeting was convened in September, 1988. Since no charge were framed against the applicant at the time when the D.P.C. meeting was convened, it

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it cannot be said that disciplinary action was pending against the applicant at that point of time.

8. In the case of State of Madhya Pradesh Versus Bani Singh and Another (A.T.R.1990(1) S.C. 581) which was referred ^{to} by the learned counsel for the applicant during the course of arguments, it was held by the Supreme Court;

"Normally pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached a stage of framing of the charge after prima facie case is established the consideration for the promotion to higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings."

9. In the instant case also it is obvious that the departmental enquiry for alleged misconduct/mis-behaviour against the applicant had not reached ^{to} the stage of framing of charges and nor were the charges actually framed until much after the date of meeting of the D.P.C.

The D.P.C. therefore clearly erred in finding the applicant unfit for promotion merely on the basis of certain allegations against the applicant of misconduct/misbehaviour for which no charge-sheet had yet been issued.

10. In view of the foregoing, the petition is allowed. The respondents are directed to promote the applicant w.e.f the date following which he completed 16 years of service with all consequential benefits including arrears of salary in the higher scale of pay and seniority.

11. We however, do not pass any order as to costs.

V.J. Khan

Member (J)

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Member (A)

Allahabad, Dated 11 February, 1994

/M.M./