

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

Dated : Allahabad this the 14th day of October 1996

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 1498 of 1993.

Bharat Singh Chaudhary,
son of late Shri Baldeo Prasad,
Postal Assistant, S.B.C.O. Head Post Office, Mainpuri
B-183, A.V. Colony, Civil Lines, Etawah.
.....applicant.

(THROUGH COUNSEL SRI R. K. TEWARI)

Versus

1. Supdt. Post Mainpuri
2. Director Postal Services, Office of P.M.G. Agra-1.
3. Union of India, through Secretary
Ministry of Communications, New Delhi-1.

..... Respondents.

(THROUGH COUNSEL SRI S.C. TRIPATHI)

O R D E R (M)
(By Hon. Mr. T.L. Verma, JM)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks a direction to the respondents to allow him promotion in L.S.G. cadre with effect from 1.2.1992.

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2. The facts giving rise to this application in short are that the applicant entered the department of Posts and Telecommunications as Postal Assistant on 26.7.1970. He was promoted as U.D.C./

H.B.C.O. from 15.1.1989. He was approved for promotion to L.S.G. Cadre from 1.2.1992 the date on which he completed 20 years of service and his pay was fixed at Rs.1660/-. The grievance of the applicant is that despite approval of his promotion, the promotion was with-held on the ground that the disciplinary proceeding was pending against him. It is contended that the respondents could not ~~withhold~~^{promote} as the disciplinary proceeding was initiated w.e.f. 20.5.92 and 1.6.1992, the dates on which two charge-sheets were served on the applicant. The action of the respondents in with-holding applicant's promotion, it is stated, is arbitrary, illegal and without jurisdiction. Hence this application for the relief mentioned above. The respondents have contested the claim of the applicant. In the counter-affidavit, filed on behalf of the respondents, it has been stated that although the applicant was approved for promotion under time bound promotion Scheme vide order dated 6.4.1992, the promotion was not given effect ^{to} because in the meantime two punishments of with-holding of his increments for a period of 6 months was imposed on him by orders dated 19.6.1992 and 18.11.1992, as he could not have been promoted during the currency of the penalty.

3. We have heard the learned counsel for the parties and perused the record. The learned counsel for the applicant submits that once the applicant was found fit for promotion, he could not have been denied the same on the basis of the disciplinary

proceeding which was initiated subsequent to the date of the approval of the promotion. We have considered the entire issue and we are of the opinion that there is no merit in the aforesaid argument. In this connection, reference may be had to the provisions of Rule 157 of the Post and Telegraph Manual Volume-III which inter-alia, provides that even where the competent authority considers the candidate fit for promotion inspite of punishment ~~for~~ in a departmental proceeding, the promotion shall not be given effect to during the currency of the penalty. In this view of the matter, the decision of the respondents not to implement the decision to promote the applicant cannot be said to be unjustified.

4. Similar question came up for consideration before the Hon'ble ~~Can~~ Supreme Court in Union of India & others Vs. K. Krishnan, reported in 1992 (S.C.) page 1898. The respondent in the aforesaid case was a postman. He appeared at the requisite test for the purposes of promotion to the Postal Assistant cadre. He was successful at the test but before the order for promotion could be issued, he was found guilty in a disciplinary proceeding and was punished by with-holding of increment in salary for the period of one year and six months. As a result of this penalty, the decision to promote him was not implemented. He challenged the aforesaid decision by filing an application before the Central Administrative Tribunal for direction to the appellants to promote him. The O.A. was allowed

and the appellants were directed to promote him with all consequential benefits. The aforesaid order in appeal has been reversed by the Hon'ble Supreme Court. While allowing the appeal, Hon'ble Supreme Court has observed that :-


" We do not find any merit in the argument that there is no justification or rationale behind the policy ; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory. The impugned judgment is, therefore, set-aside."

5. In view of the ratio of the decision of Hon'ble Supreme Court referred to above, the applicant could not have been promoted during the currency of the punishment imposed on the applicant in the departmental proceeding.

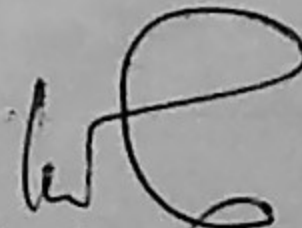
6. In view of the conclusions recorded above, the next question that arises for consideration is whether the applicant is entitled to be promoted on the basis of the recommendation of the earlier D.P.C. It is a settled principle of law that an employee has no right to promotion. He has only a right to be considered for promotion. Promotion of an employee to a higher post depends upon several circumstances. The employee has to satisfy many conditions before qualifying for promotion. One of such conditions is that he has to ^{have a} ~~satisfy~~ ^{maintain} ~~then~~ ^{have a} clean record of service. ~~and~~ ^{the} employee found guilty of misconduct therefore, cannot be placed at par with other employees. The applicant,

who was found guilty of misconduct and ~~was~~ punished ~~with~~ withholding of increment for 6 months, ~~was increased~~, cannot claim promotion on the basis of the recommendation of the D.P.C. which was made prior to imposition of this penalty. After the expiry of the period of with-holding of increment, in our opinion, the applicant will have to face fresh D.P.C. ~~and~~ The D.P.C. may take ~~into~~ into account the whole record of service, of the applicant for determining his eligibility for further promotion. We are fortified in our view by the decision of the Apex Court in State of Tamil Nadu Vs. K.S. Murgesan reported in 1995 (29) A.T.C. page 555. In that view of the matter, we are of the considered view that the applicant can not claim promotion on the basis of the recommendation of the earlier D.P.C. from the date on which currency of punishment expired.

7. For the reasons stated above, we see no merit in this application and dismiss the same. There will be no order as to costs.


Member-J

(Pandey)


Member-A