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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated this the 18th day of May 1999.

Coram:- Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agarwal, J.M.

Original Application No. 733 of 1993.

Thakur Prasad s/o Late Sri Jawahar Lal,
Aged about 59 years resident of Mohalla
Bhaisaya Tola (Ganeshganj) , Mirzapur.

. . . Applicant.

Counsel for the Applicant Sri K.P. Srivastava, Adv.

Versus

1. Union of India through the
Secretary (P.) Ministry of
Communication, Government of
India, New Delhi.
2. The Regional Director Postal Service,
Civil Lines, Allahabad-211001.
3. The Superintendent of Post Offices,
Mirzapur, U.P.
4. The Post Master, Mirzapur, U.P.

. . . Respondents.

Counsel for the Respondents:- Sri N.B. Singh, Adv.

Order

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

In this Original Application under section

19 of the Central Administrative Tribunal Act 1985, the applicant has sought the setting aside^{of} punishment order dated 20.12.91 and the Appellate Order dated 19.9.92. Another relief sought is for setting aside the orders of respondents for reversion and reduction in cadre in grade of the applicant from H.S.G.-ii to L.S.G. cadre reducing him from basic salary from Rs.1900/- to Rs.1800/-. The applicant has sought direction to respondent to treat his promotion continuous with effect from initial date i.e. 1.11.90 till his date of retirement upto 30.9.92.

2. The facts as mentioned by the applicant are that the applicant was promoted in lower selection grade with effect from 1.8.82 and was allowed to officiate against vacancies in higher selection grade-ii in the years 1985, 1986, 1987, 1988, 1989 and 1990. The post of H.S.G. -ii was created by respondent by conversion of a post on lower selection grade and was vacant during period of 1988 to October 1990. The applicant was promoted by order dated 31.10.90 and assumed charge of the post of Deputy Post Master in H.S.G.-ii on 1.11.90. His salary was fixed at Rs.1900/-. The applicant had taken over the charge of Post Master in Mirzapur in May 1991 as the regular incumbent and had proceeded on leave. The applicant claims that he was forced into paying the price of shoes and chappals by Union Leaders by means of "Gherao" for the year 1990 and 1991 as the order from Government was received for cash payment in February 1991. A detailed report of this event was sent by him to the Superintendent, Post Offices on 13.5.91. The respondent No.3 got the entire material enquired into and ordered

recovery of advance paid and chargesheeted the Union Leaders as well as the applicant. The applicant was awarded the penalty of withholding the promotion. The applicant claims ^{double jeopardy in} the withholding of promotion from H.S.G.-ii to H.S.G.I for six months as ~~that~~ ^{to} he was subjected to the punishment one of reversion to L.S.G. Cadre and the other of non-promotion to H.S.G.I. The appeal of the applicant was also rejected by the Appellate Authority. The applicant was not allowed promotion under B.C.R. Scheme with effect from 1.10.91 and 21.7.92 when his juniors were promoted.

3. The arguments of Sri K.P. Srivastava for the applicant and Sri S.K. Anwar, Addl. Standing counsel appearing for Sri N.B. Singh, senior standing counsel were heard. The pleadings on record have been considered.

4. The main contention of the applicant is that he was not afforded any opportunity before the major penalty of reduction in rank was imposed on him by demoting from a rank of Dy. Post Master in H.S.G.-ii cadre to the rank of Asstt. Post Master in L.S.G. Cadre. The documents annexed by the applicant to his O.A. contain the letter of promotion dated 14.3.93 which shows that the applicant was promoted on purely temporary and adhoc basis from time scale postal assistant to lower selection grade cadre. By another order dated 31.10.90, the applicant was ordered to work in H.S.G.-ii cadre with effect from 1.11.90 on purely temporary and adhoc basis till regular arrangement was made by the office. Thus the promotion of the applicant to a post in H.S.G.-ii cadre was fortuitous in

nature. The promotion was conditional and was liable to be terminated when regular arrangement was made or some approved official was posted. The respondents have mentioned in their counter reply that the applicant was reverted to his original post in lower selection grade when Shri Ram Raj Singh an approved official by Post Master General, Allahabad assumed duties on the post of Deputy Post Master Mirzapur. They have mentioned that the applicant was not reverted as a consequence of order imposing penalty ^{of} withholding of promotion. It is mentioned that the order imposing penalty of withholding promotion was passed on 20.12.91 while the applicant was already reverted on 23.9.91. Thus case of the applicant that he was reverted as a consequence of the order of penalty is not made out and the applicant has produced no order to this effect in support of this contention.

5. The applicant has sought the setting aside of order of punishment as well as the appellate order. The order of the disciplinary authority clearly mentions that Circular dated 12.12.90 of Director General of Posts ~~xxxxxx~~ stipulated that the employees should furnish a cash memo in the name of the purchaser of having purchased shoes/Chappalls for themselves before being reimbursed in cash. The applicant did not observe this condition in reimbursing 52 employees to the tune of Rs. 11440/-. The show cause notice given to the applicant mentions that while the applicant was working as Post Master Mirzapur, he made a payment of Rs. 11440/- to 52 persons without obtaining the prior approval of Head of Office who was Superintendent of Post Offices which was a requirement in Circular of Director

General of Post Offices dated 12.12.90. The applicant in his representation against the order of punishment has contended that the term Head of Office has been wrongly interpreted in the Show Cause Notice given to him and that a number of other Sub Post Offices had also paid cash to their employees in the months of April and May 1991 yet no action was taken against them. He has also contended that the main culprits who were the Union Leaders have been issued notices for major punishment were dealt with leniently while he has been awarded a very severe punishment. The applicant has not brought on record the authority under which he disbursed the advance for purchase of shoes and chappals. He has not produced any order of the respondents to show that he was conferred the authority of Head of Office which could authorise him to permit payment of advance for purchase of shoes and chappals. The circular of Director General of Post Offices dated 12.12.90 was not for payment of advance but payment of cash equivalent in lieu of supply of Chapplas and shoes was to have been done and it is clear from the Circular dated 12.12.90 that it was to have been done on the ^{employee} ~~the~~ purchasing shoes/chappals and produced cash memo for the same for which he was claiming reimbursement. Hence the show cause notice and the punishment awarded after giving show cause notice to the applicant by the disciplinary authority can not be considered to be unjust or arbitrary.

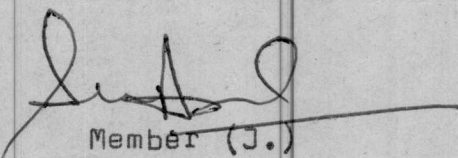
6. The applicant has challenged the order of appellate authority. The appellate authority had considered the appeal of the applicant and has considered the punishment awarded to the

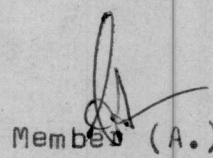
applicant as justified and has confirmed the same. Thus the applicant has not given any valid ground for setting aside the order of punishment or the order passed in appeal. We, however, find that the order of disciplinary authority was passed on 20.12.91 and was to have been effective for six months. The applicant has claimed that persons junior to him were considered for promotion under V.C.R. Scheme with effect from 1.10.91 and 21.7.92. The applicant has claimed that he should also have been considered and allowed promotion. The respondents have contested his claim for promotion and mentioned that although he was considered for promotion but was not found fit by D.P.C. due to unsatisfactory work and conduct. This reply contradicts what the respondents have stated earlier regarding reversion of the applicant. By the respondent's own admission, the applicant was ordered to work against the newly upgraded post in H.S.G.-ii with effect from 1.11.90 and he continued to work till 23.9.91 when official approved by Post Master General for appointment in H.S.G.-ii is stated to have replaced the applicant. We, therefore, direct that the respondents should operate sealed cover recommendations if the applicant was within the zone of consideration and ^{and recommended} considered/for promotion on 1.10.91. If the applicant was within zone of consideration and was not ^{and recommended} considered/ on 1.10.91, a review D.P.C. should be held and the promotion of the applicant considered in that and further action taken based on the recommendation of review D.P.C.

7. We further direct that in case the applicant is not found fit for promotion by

D.P.C. on 1.10.91 or review D.P.C for that date, the applicant should be considered for promotion by means of a review D.P.C. with effect from 21.7.92 and if the applicant is found eligible for promotion on that day he should be allowed promotion to H.S.G. ~~II~~ grade on notional basis with effect from 21.7.92. In ^{that case the} applicant's retirement benefits should be computed on that basis and if any difference is found in the amount payable and amount paid in favour of the applicant, the same shall be paid to him. This order shall be complied with within three months from the date of communication.

There shall be no order as to costs.


Member (J.)


Member (A.)

Nafees.