

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 27th day of May, 2002.

Original Application No.1042 of 1994.

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Mr. C.S. Chadha, A.M.

Madho Ram Garg,

S/o Sri Jagdish Prasad Garg,

64, Gangarampura, Muzaffarnagar.

(Sri KP Srivastava, Advocate)

. Applicant

Versus

1. Union of India, through the
Secretary (Postal) Ministry of
Communication, Government of India,
New Delhi.
2. The C.P.M.G. UP Circle, Lucknow.
3. The Postmaster General, Dehradun.
(Sri GR Gupta, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. C.S. Chadha, A.M.

This OA has been filed challenging the validity of the communication communicated to the applicant vide a letter dated 7-4-1992 (Annexure-A-1) by which the applicant was informed that pursuant to the DPC held on 9-3-1992 his case for promotion under the BCR scheme to the grade of Rs.1600-2000 has been kept in a sealed cover because there were disciplinary proceedings pending against him. The brief facts of the case are that the applicant was working as an Assistant Post-Master in Head Post Office, Muzaffarnagar, and had become

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due for being considered for promotion under the BCR scheme, having completed 26 years of service before 1-10-1991, but due to a charge sheet issued to him on 1-11-1991 the recommendations of the DPC regarding him were kept in a sealed cover. The contention of the applicant is that the cut off date for consideration to the said grade was 1-10-1991 and any disciplinary proceedings initiated after that date should not come in his way for promotion and the procedure of keeping the recommendations of the DPC in a sealed cover could not be adopted. He has relied upon the judgement delivered by the Ernakulam Bench in a similar case (OA No.986 of 1991) delivered on 30-1-1992, in which the Bench of CAT held that for cases of promotion in consideration of the scheme for Biennial Cadre Review could not be withheld on the ground that disciplinary proceedings were pending against such persons. The issue in question was similar i.e. that the applicant in that case had completed 26 years of service before the notice of disciplinary proceedings was issued.

2. In their counter affidavit the respondents have merely repeated the rule that if disciplinary proceedings in respect of a candidate for promotion are pending on the date of the DPC, the recommendations of the DPC should be kept in a sealed cover. Nothing has been mentioned about the fact that the disciplinary proceedings had been initiated after the cut-off date. Although the applicant has contented that under the BCR Scheme he was entitled to promotion automatically on completion of 26 years of service, even without holding a DPC, we cannot agree that the promotion should have been given even without considering his record of his 26 years service prior to 1-10-1991. However, we are convinced in our mind that

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the DPC had to judge the candidature for promotion of the applicant as on 1-10-1991. Any incidents that took place after that date could not be allowed to colour the judgement of the DPC. It is a mere chance that these events took place in quick succession i.e. the cut-off date was 1-10-1991, the charge sheet was issued on 1-11-1991 and the DPC was held on 9-3-1992. The DPC, therefore, felt justified in keeping the recommendations in relation to the applicant in a sealed cover. Normally this is done because vacancies upto the date of holding of the DPC are to be considered, however, in this case the DPC was not to consider the fitness for promotion of the applicant as on 9-3-1992, the date of holding the DPC but, in fact, was to consider the fitness as on 1-10-1991. For arguments' sake let us assume that the DPC were to be held several years after the cut-off date and during those intervening years a disciplinary proceeding had been initiated against the applicant, the question is whether the DPC would be justified in keeping the recommendation relating to him in a sealed cover? The obvious answer is in the negative, for the DPC was to consider eligibility for promotion as on 1-10-1991 and not on a much later date. Therefore, merely because the incident relating to initiation of disciplinary proceedings with respect to the applicant took place within one month of the cut-off date it should not prejudice or change the procedure. To repeat, the DPC was merely to judge the applicant's fitness for promotion as on 1-10-1991. We, therefore, come to the conclusion that the procedure adopted by the DPC on 9-3-1992 cannot be sustained and deserves to be quashed.

3. Another important issue relating to this case has been raised by the respondents in a supplementary counter

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affidavit filed on 14-5-1997. The respondents have averred that this OA is barred by the principles of Res Judicata because on a similar issue the applicant filed yet another O.A. (No.667 of 1994) in which the applicant has been granted the relief being asked for on 30-10-1996. Further the OA has also become infructuous because directions had been issued ^{in that O.A.} to give promotion to the petitioner under the BCR Scheme w.e.f. 1-10-1991.

4. We cannot agree that this OA is barred by the principle of res judicata because that principle can only be applied if a fresh litigation is filed by a person who is already a party to an earlier litigation on the same issues ⁱⁿ and the issues ⁱⁿ having been already adjudicated by a court of law between the same parties. We find that the OA No.667/1994, although filed by the same person against the same parties, was not on the same issue. While in this OA the applicant challenged the procedure of ^{or sealed} ~~sealed~~ cover adopted in his case by the DPC held on 9-3-1992, in that OA the applicant had challenged the validity of the punishment awarded to him as a result of the disciplinary proceedings which were initiated on 1-11-1992 and which had been decided by the order of the disciplinary authority dated 31-12-1991 ordering the recovery of a sum of Rs.3780/- from the applicant. The two OAs having been filed for different reliefs and moreover this OA having been filed more than two years before the outcome of the OA No.667/94 does not permit the principle of res judicata to be applied in this case. We also cannot agree that this OA has become infructuous, because despite the averment by the respondents that they had issued direction to grant promotion to the applicant under the BCR Scheme w.e.f. 1-10-1991, the applicant has denied having been granted that benefit in his supplementary rejoinder.

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In OA No.667 of 1994 a Division Bench of this Tribunal at Allahabad granted the applicant the following relief:-

"The application is, therefore, allowed. Order no.4-3/4/90-91/M.R. Garg dated 31-12-91 of the disciplinary authority, no.Vig/D-113/92/6 dated 16-7-1992 of the appellate authority and no.2/12/93-V.P. dated 15-10-93 of the revisional authority are set aside and the respondents are directed to refund the amount recovered from the applicant with interest of 12% for the period the amount remained with the respondent and consider the applicant for promotion by means of a review DPC from 1-10-1991. The respondent shall have 4 months for compliance of this order from the date of its communication to them by the applicant".

5. From this order it is evident that the Bench while setting aside the punishment orders against the applicant, also ordered consideration of his promotion by a review DPC w.e.f. 1-10-1991, perhaps oblivious of the fact that such a DPC had been held and its recommendations kept in a sealed cover. Since a DPC had been held on 9-3-1992 and its recommendations kept in a sealed cover, the said cover should have been opened to decide the case of the applicant. The Department had taken a view that the recommendations kept in a sealed cover could not be opened because the applicant had not been exonerated in the said disciplinary proceedings. Since the disciplinary proceedings and the punishment awarded have been quashed by the decision in OA No.667/1994 on 30-10-1996 this plea cannot now be taken. However, we are amazed at the procedure adopted by the respondents after the DPC of 6-3-1992, because their recommendations in respect of the applicant were kept in a sealed cover purportedly because proceedings were pending against the applicant, whereas a plain reading of the opening paragraphs of the order of this Bench in OA No.667/1994 shows that the applicant had already been punished long before the DPC was held, i.e. on 31-12-1991. Therefore, strictly speaking no disciplinary proceedings were pending against the

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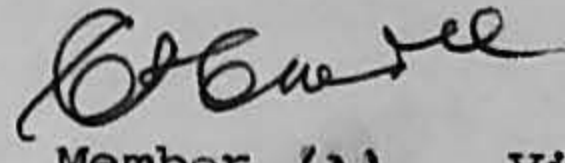

applicant on 6-3-1992. The applicant had already been punished and only his appeal and revision were to ensue. We are afraid that the decision regarding the applicant, by the DPC, could have been also prejudiced by the fact that he had been punished. Under normal circumstances, in view of the fact that we have come to the conclusion above that procedure of sealed cover could not have been adopted in the applicant's case and further in view of the punishment orders having been set aside, we would have simply ordered that the sealed cover relating to the applicant of the DPC of 6-3-1992 should be opened and if he was found fit he should be promoted with effect from 1-10-1991. However, it is likely that the DPC was prejudiced by the said proceedings which had actually been closed by punishment of the applicant of 31-12-1991. Therefore, it would be in the interest of justice to direct not only the opening of the sealed cover with respect to the applicant relating to the DPC of 6-3-1992, but also to issue directions to the respondents to ensure that the case for promotion of the applicant to the grade of Rs.1600-2660 w.e.f. 1-10-1992 is considered as if the disciplinary proceedings did not exist at all.

6. In the circumstances discussed above the OA is allowed. The impugned decision communicated to the applicant on 7-4-1992 is quashed and the respondents are directed to open the sealed cover relating to the recommendations of the DPC held on 9-3-1992, while ensuring that the disciplinary proceedings initiated against the applicant on 1-11-1991 had not been allowed to prejudice the case of the applicant. If the applicant had been found fit or is now found fit by ignoring the decision of the said disciplinary proceedings he should be promoted w.e.f. 1-10-1991, to the grade of Rs.1600-

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2660, with all consequential benefits of seniority,
back wages, and further promotions as if the said sealed
cover process had never been adopted.

There shall be no order as to costs.

 
Member (A) Vice Chairman

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