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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 25th day of April, 2000

Original Application no. 79 of 1995.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member
Hon'ble Mr. M.P. Singh, Administrative Member.

S.C. Mishra,

S/o Bate Ram Sunder,

Sub-Postmaster,

Karwi, P.O. Distt. Banda.

... Applicant

C/A Shri K.P. Srivastava

Versus

1. Union of India, through the Secretary (P)
Ministry of Communication,
Govt. of India,
New Delhi.

2. The CPMG, U.P. Circle, Lucknow.

3. The Superintendent of Post Offices,
Banda.

... Respondents.

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C/Rs

Km. Sadhana Srivastava

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ORDER

Hon'ble Mr. M.P. Singh, Member-A.

The applicant is aggrieved by non promotion under the provision of second time bound grade promotion scheme.

2. Brief facts of the case are that the applicant was appointed as Postal Clerk w.e.f. 16.8.65 and was promoted into Lower Section Cadre w.e.f. 30.11.83. The Govt. of India introduced BCR scheme as second bound promotion scheme w.e.f. 1.10.91. The condition of eligibility of promotion was to complete 26 years of service in time scale cadres. Respondent no. 2, forwarded the name of the applicant for consideration by the DPC held in the circle office at Lucknow on 9.3.92. According to the recommendation of the DPC, the Director Postal Services, office of the CPMG Lucknow, issued the promotion order dated 9.3.92. The name of the applicant is at sl. no. 5 in the list of officials promoted in HSG-II Cadre w.e.f. 1.10.91. The promotion of the applicant was kept in abeyance by the respondents and a memo was issued dated 3.9.92. The applicant gave the representation on 16.9.92, 14.10.92 & 28.12.92 but no decision was taken on his representation and charge sheet was issued to him on 14.10.92. The applicant awaited for his promotion to be considered by the next DPC, but unfortunately it also appeared futile. The penalty of recovery of Rs. 15,300/- was

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imposed on the applicant. Thereafter, the applicant submitted a number of representations but they have not been considered by the respondents. Hence he has filed this OA, seeking direction to the respondents to release the promotion orders issued by the CPMG dated 9.3.92 w.e.f. 1.10.91 with all consequential benefits and to pay @ 20% annual interest on the arrears till the date of actual payment.

3. The respondents in their CA have stated that the applicant was initially appointed as Postal Clerk in Banda Division on 16.8.65 and promoted to LSG in Cadre w.e.f. 30.11.83. A Benign Cadre Review Scheme was introduced w.e.f. 1.10.91 by the Department of Posts and the applicant was approved for promotion in the scale of Rs. 1600-2660 vide CPMG, Lucknow memo dated 9.3.92. with the instructions that if there was any vigilance/disciplinary case pending against any of the officials, the matter should be immediately be reported to him. The applicant was involved in an offence in Markundi fraud case and, therefore, his promotion was withheld. A charge sheet dated 14.10.92 was issued against the applicant. Subsequently his case was again considered by the DPC held on 13.4.92, 25.4.94 and 10.11.94, but his name was not considered due to unsatisfactory record and conduct. Again on 30.1.95, the name of the applicant was considered for promotion, but he was not found fit. The applicant was informed accordingly on 27.4.95. On completion of disciplinary proceeding the applicant was awarded punishment of recovery of Rs. 15,300/-. While other representation of the applicant were being processed

in this office

for consideration of CPMG the applicant filed this O.A. 79/95 in the Tribunal. Therefore, the consideration of his representation has been deferred.

4. From the above fact, it is clear that the applicant was approved for promotion on 9.3.92 from retrospective date of 1.10.91. A charge sheet against the applicant was served much later i.e. on 14.10.92. According to the law laid down by the Hon'ble Apex Court, the promotion of the officer can not be withheld on the ground of pendency of disciplinary case, if no charge sheet has been served on him. Hon'ble Supreme Court in AIR (1991) SC 2010 in the case of Union of India & Others Versus K.V. Jankiraman & others has held as follows :-

"The promotion etc can not be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee."

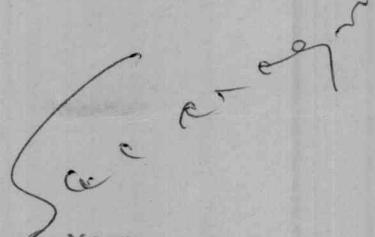
5. It is an admitted fact that on the date on which his promotion was approved by the CPMG, no charge-sheet was served on the applicant. Therefore, his promotion w.e.f. 1.10.91 vide order dated 9.3.92 issued by CPMG, Lucknow, can not be withheld. The O.A. is allowed. The respondents are directed to consider the promotion of

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the applicant w.e.f. 1.10.91 as approved by
order dated 9.3.92 with all consequential benefits
within a period of 3 months from the date of
communication of this order.

6. No order as to costs.


Member-A


Member-J

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