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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 119 OF 2006

ALLAHABAD, THIS THE 22<sup>nd</sup> DAY OF FEBRUARY, 2007

**CORAM :**

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE MR. P. K. CHATTERJI, ADMINISTRATIVE MEMBER**

Mahendra Pal Singh,  
Aged about 42 years,  
Son of Sri Satya Pal Singh,  
Resident of Village and Post Mandawali,  
District-Bijnor.

..... Applicant  
By Advocate : Sri B.N. Singh

**Versus**

1. Union of India,  
through its Secretary,  
Ministry of Communication (P&T) Dak Bhawan,  
Sansad Marg, New Delhi.
2. The Postmaster General,  
Bareilly Region, Bareilly.
3. The Superintendent of Post Offices,  
Bijnor Division, Bijnor.

..... Respondents.

By Advocate : Sri S. Singh

**ORDER  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

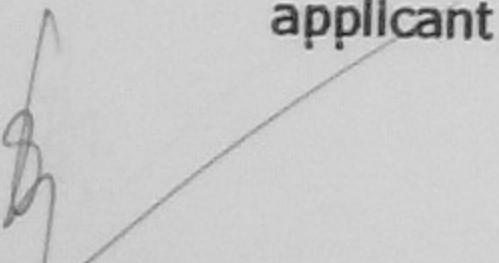
*6/* Certain dates and law point on the issue and precedents would suffice  
to adjudicate this case.

2. The applicant is serving in the postal department, having entered the services on 08-02-1987. Under the extant rules, one time bound promotion is admissible to those who have completed 16 years of service in the basic cadre and the applicant completed 16 years of service as on 07-02-2003 and as such, according to him, he was to be considered for promotion to the higher grade from 08-02-2003. The respondents had considered various candidates who had completed 16 years of service and issued Annexure A-2 order dated 11-10-2004 in which the name of the applicant did not appear. In respect of two individuals, Shri Babu Ram and Balbir Singh, the DPC did not consider their cases for OTBP promotion due to pendency of disciplinary/criminal cases against them. The DPC met again in the next year and by Annexure A-3 order dated 14-03-2005 while one individual was promoted, the names of the afore said Babu Ram and Balbir Singh and that of the applicant were found in the list of those in whose cases, the findings of the DPC were kept in sealed cover due to '**contemplated disciplinary proceedings/criminal proceedings**'. The applicant represented but the same was rejected by the impugned Annexure A-1 order. Hence this O.A. The applicant had contended that when he became eligible in February, 2003 to be considered for promotion under the OTBP scheme on his completion of 16 years, the respondents ought to have considered his case in the very same year and his performances upto then considered and if there were no proceedings pending (i.e. no Charge sheet stood issued), and if he was

*[Handwritten signature]*

otherwise found fit, promotion ought to have been ordered w.e.f. 08.02.2003. This was not done. There was no charge sheet issued against the applicant at the material point of time. Even in March, 2005 the same situation prevailed. Under the extant rules, sealed cover procedure could be adopted only when disciplinary proceedings were initiated i.e. charge sheet issued and in the case of the applicant since such a situation did not exist, he claims consideration of his case as of 08-02-2003 and if found fit to be promoted from that date.

3. Respondents have contested the O.A. According to them, as the applicant participated in a strike during the period from 07-12-1993 to 10.12.1993 and from 05-12-2000 to 16-12-2000 the applicant completed 16 years of service only on 25-02-2003. At Bijnore, DPC did not meet in 2003. **And when the DPC met on 22-09-2004 the case of the applicant could not be put up before the DPC for consideration due to the fact that his name had not been included in the list sent by the Postmaster, Bijnore HO in the wrong notion that criminal case has been contemplated against him.** When again the DPC met on 11.03.2005, he was not promoted, on account of the fact that the applicant was involved in a criminal case in which charge sheet stood submitted in the Hon'ble Court. Again the DPC meeting was held on 29-12-2005 in Bijnore Postal Division and at the time of holding of that DPC in so far as the applicant was concerned, sealed cover could not be opened as the



proceedings were still on. In the letter dated 15-03-2004 of the Investigation Department the name of the applicant has figured in as having been involved in a criminal case.

4. Applicant has filed his Rejoinder in which he had reiterated the contentions and averments as stated in the O.A.

5. Counsel for the applicant argued that the law on the subject is clear. When on the date DPC met, if there be no proceedings pending, then there is no question of non consideration of the case for promotion or keeping the findings of the DPC in sealed cover. The decision of the Apex Court in the case of Union of India vs K.V. Jankiraman (1991) 4 SCC 109 followed by the issue of Government letter dated 14<sup>th</sup> September, 1992 has been cited by the applicant. In the said decision it has been held, "**the promotion etc. cannot 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**" In the written arguments filed by the applicant, availing of the liberty granted to the parties, the applicant has relied upon certain other authorities as under:-

(i) 1996 (1) ATJ CAT (Bombay) 514, V.P. Dhaneshwar vs. Union and Others.

- (ii) ATJ 1997 (2) CAT (PB) 184, A.N. Gupta vs. U.O.I. And Ors.
- (iii) ATJ 1999 (3) H.C. (P&H) 40, Darshan Singh vs. State of Punjab
- (iv) ATJ 2001 (3) CAT (Mumbai) 80, Daulat Marotrao Wuik vs. The Telecom District Manager, Jalgaon & Others.
- (v) Union of India vs. K.V. Janki Raman, (1991) 4 SCC 109
- (vi) ATJ 2005 (2) 196, U.C. Mishra vs. Union of India
- (vii) ATJ 2003 (3) 594, K.G. Patil vs. Union of India & Ors.
- (viii) ATJ 1997 CAT (PB) 184, A.N. Gupta vs. Union of India & Ors.

6. Per contra, the counsel for the respondents submitted that since the Criminal matter is pending, the respondents are not incorrect in their adopting the sealed cover procedure.

7. Arguments were heard and documents perused. Admittedly, if found suitable, promotion is effective from the date of completion of 16 years, as is evident from Annexure A-2. Thus, when the DPC met in 2004, vide Annexure A-2, the name of the applicant did not figure in either in the promotion list or in the list of those in which proceedings were pending. In the counter, the respondents have fairly conceded that non inclusion of the name of the applicant for consideration by the DPC when it met on 22.09.2004 was on a wrong notion that some criminal case was contemplated against the applicant. According to the respondents, even if the name were referred to the DPC, all that could have happened was that the DPC would have adopted the sealed cover procedure and as such, there was no question of the applicant being promoted w.e.f. Feb., 2003. Here exactly lie the twin mistakes committed by the respondents. Just because



there shall only be a sealed cover that would have been adopted cannot be the ground for non consideration of the case of the applicant for promotion. Right to be considered for promotion is a fundamental right as held by the Apex Court in the following cases:-

(a) *M. Nagaraj v. Union of India, (2006) 8 SCC 212, (citing (1999) 7 SCC 209 – Ajit Singh (II) vs union of India)*

"It was further held that Article 16(1) flows from Article 14. It was held that the word employment in Article 16(1) is wide enough to include promotions to posts at the stage of initial level of recruitment. It was observed that Article 16(1) provides to every employee otherwise eligible for promotion fundamental right to be considered for promotion. It was held that equal opportunity means the right to be considered for promotion. The right to be considered for promotion was not a statutory right."

(b) *Dwarka Prasad v. Union of India, (2003) 6 SCC 535, observing,*

"It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 and 16 of the Constitution but chances of promotion as such cannot be claimed as of right."

(c) *Badrinath v. Govt. of T. N., (2000) 8 SCC 395, wherein it has been held -*

"47. Every officer has a right to be considered for promotion under Article 16 to a higher post subject to eligibility, provided he is within the zone of consideration."

(d) *Sarabjit Singh v. Ex-Major B.D. Gupta, (2000) 7 SCC 67, at page 70 stating:*

"8. In our view, the respondent writ-petitioner is no doubt right in contending that he has a fundamental right to be considered for promotion"

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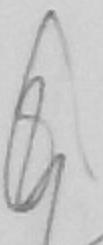
**(e) Director, Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295, wherein it has been held:**

"There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with the relevant rules."

8. The contention of the respondent is that even if the applicant had been considered, his case would have been kept in sealed cover and hence no consideration in 2004 DPC cannot be faulted with. This contention is totally untenable. The respondents have committed a serious mistake in not having considered at all the applicant for promotion when the DPC met in 2004. This was the first mistake.

9. As regards the other mistake, the contention of the respondents that the applicant was under cloud inasmuch as it was contemplated to level criminal proceedings against him as could be evident from the letter dated 25-03-2004 and as such, his case would be kept only in sealed cover and no promotion could be made, is also totally wrong. For, as per the decisions of the Apex Court in the case of Union of India vs K.V. Jankiraman (*supra*), sealed cover procedure could be adopted only when the charge sheet stood issued. In the instant case, even when the DPC met on 14-03-2005, the reason given by the respondents in their resorting to sealed cover procedure was '**contemplated disciplinary proceedings/criminal proceedings**'.

Thus, the contention of the respondents goes diagonally against the



judgment of the Apex Court in the case of K.V. Jankiraman (*supra*). Thus, no disciplinary proceedings could be said to be pending in the eye of law as of 22-09-2004 when the DPC met. As such, as held by the Apex Court in the case of **Badrinath v. Govt. of T. N., (2000) 8 SCC 395**, "In fact, if no disciplinary case could be said to be pending in the eye of the law, the question of following the sealed cover procedure would not arise", in this case also there is no question of adopting sealed cover procedure.

10. Yet another decision in support of the applicant is that of **Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762**, . In that case, the respondent was, earlier in 1983, involved in a criminal proceeding, The DPC met in 1987 and found him fit but he was informed that the findings of the DPC were not being given effect to on account of the pending criminal proceedings. The criminal proceedings resulted in his acquittal by August, 1988. However, the order of promotion was not issued. Later on it was in 1991 that the Department initiated Departmental proceedings against the respondent. The Apex Court has held,

"In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at

the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."

11. In view of the above dictum of the Apex Court, we have no hesitation to hold that the applicant's fundamental rights were infringed by not considering the applicant for promotion under the OTBP on completion of 16 years of service which fell due from 25-02-2003. That subsequently there had been a charge sheet filed in the criminal Court (after the next DPC meeting was held after one year) cannot be a ground to deny the applicant his right to be considered or deny promotion once he is found fit to be promoted.

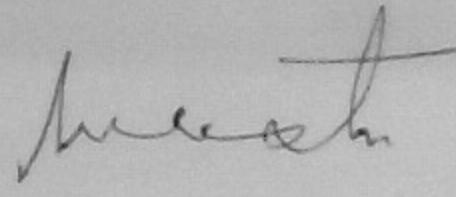
12. The OA thus succeeds. The respondents are directed to arrange a review DPC to consider the case of the applicant for promotion under the OTBP Scheme on his completing 16 years of Service and if he is found suitable as per the records upto that period, he be granted necessary promotion in the higher grade in accordance with the Scheme. The applicant would be eligible for pay and allowances in case he is promoted and for further usual annual increments. Arrears on account of such promotion shall also be payable to the applicant. This order shall be complied with, within a period of four months from the date of receipt of certified copy of this Order.

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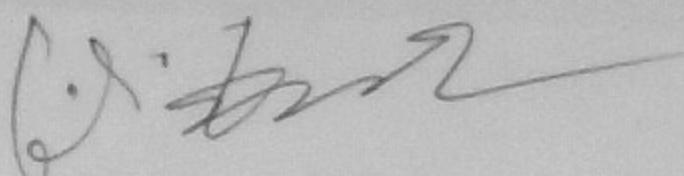
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13. Under the circumstances, there shall be no order as to costs.



P.K. CHATTERJI

ADMINISTRATIVE MEMBER



K B S RAJAN

JUDICIAL MEMBER