

(7)  
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 20<sup>th</sup> day of December 2007.

Original Application No. 842 of 2007

Hon'ble Mr. G. George Paracken, Member (J)  
Hon'ble Mr. K.S. Menon, Member (A)

Jawahar Lal, S/o Sri Bal Dev, R/o SS-29, Rapti Nagar,  
First phase, Arogya Mandir, Gorakhpur. Presently  
working as Section Enigneer.

... Applicant

By Adv: Sri S.K. Om

V E R S U S

1. Union of India through Provident Fund Commissioner, Employees Provident Fund Organization, Bhavishya Nidhi Bhawan, 14, Bikaji Kama Place, New Delhi.
2. Regional Provident Fund Commissioner, Employees Provident Fund Organization, Bhavishya Nidhi Bhawan, 14, Bikaji Kama Place, New Delhi.
3. Asstt. Regional Provident Fund Commissioner, Opposite Carmel Girls School, Labour Camp Employees Provident Fund Organization, Gorakhpur.

... Respondents

By Adv: Sri N.P. Singh

O R D E R

By G. George Paracken, Member (J)

The main relief sought by the applicant in this OA are to issue a direction to the respondents (i) to quash the impugned order dated 13.08.2007 (Annexure 8) passed by respondent No. 3 and (ii) to direct the respondents to promote him to the post of Section Supervisor with retrospective effect from 08.12.2006 and also to grant him all consequential benefits including arrears of pay and allowances. By the said

(8)

order dated 13.08.2007, the respondents have reverted the applicant from the post of Section Supervisor which he was holding on adhoc basis to the post of SSSA (TBP) earlier known as UDC (SG). The significance of the order dated 09.08.2006 in the second prayer is that it is the date from which his juniors have been promoted to the aforesaid post.

2. The brief facts of the case are that the applicant has been working as Upper Division Clerk (UDC for short) and he was eligible to be considered for promotion to the post of Head Clerk/Assistant, which was later on redesigned as a Section Supervisor. The respondents had conducted a departmental examination for promotion to the post of Head Clerk/Assistant exclusively for Scheduled Caste category employees in March 1999 after inviting application by annexure A-1 notification dated 07.01.1999. The applicant alongwith three others were declared successful in the examination vide annexure A-2 letter dated 19.07.1999 and their details are as under:

Sl. No.	Roll No.	Name	Category	Rank	Posted at
1.	UP/HC/13	Sh. Ramesh Chandra	SC	1 SRO	Bareilly
2.	UP/HC/19	Sh. Jawahar Lal	SC	2 SRO	Gorakhpur
3.	UP/HC/32	Sh. Kehar Singh	SC	3 SRO	Meerut
4.	UP/HC/21	Sh. Vishwa Nath Prasad	SC	4 SRO	Gorakhpur

The successful candidates were also informed that they would be eligible for promotion to the post of Head

*[Handwritten signature]*

(9)

Clerk/Assistant in the region strictly in the order of their merits against the vacancies falling under the department examination quota.

3. Thereafter, the Applicant was promoted to the post of Section Supervisor vide office order dated 15.09.2004 on temporary/adhoc basis but the general category candidates, namely, Vijay Kumar Srivastava and Ravi Shanker were promoted to the said post on regular basis vide order dated 26.04.2005. Consequently, the applicant and two others who qualified the aforesaid departmental test (Sri Kehar Singh and Sri Vishwa Nath Prasad) earlier approached this Tribunal vide OA 605/05 on the plea that since they belong to SC category and they had passed the departmental examination held in July 1999, they should have be promoted first to the post of Section Supervisor (formally known as Head Clerk) before the general category candidates, (respondents No. 4 and 5 of in the said OA) who were junior to them have been promoted to that post on regular basis. During the pendency of the aforesaid OA, vide office order No. 182/2005 dated 07.07.2005, the respondents reverted the applicant to the post of UDC (SG) re-designated as SSSA (TBP). The applicant brought the above facts before the Tribunal in the said pending OA and obtained a stay against the said order dated 07.07.2005. The said OA was finally dismissed vide Annexure 3 order dated 24.11.2006 on the ground that

2

(16)

it was no body's case that on the date the applicants appeared for examination i.e. in March 1999, the general category candidates had also appeared or there were uniform standards of the examination/ evaluation. Immediately thereafter, the respondents issued the impugned letter dated 13.08.2007 implementing their aforesaid letter 7.7.2005 thereby reverting him from the post of Section Supervisor to the post of SSSA (TBP) earlier known as UDC (SG) with immediate effect. However, the other two applicants in the aforesaid OA 605/05 and the 05 others were promoted as Section Supervisor in the pay scale of Rs. 5000-8000 on regular basis against examination quota vide Annexure A-4 order dated 8.12.2006. The contention of the applicant is that he was senior to those who have been promoted by the aforesaid Annexure 4 order and he should have been promoted before them. Hence he prayed in this OA to direct the Respondents to promote him also atleast from 08.12.2006, the date from which his juniors have been promoted.

4. The respondents have contested the case both on preliminary grounds as well as on merits. As preliminary objection, first of all they have submitted that the applicant has not exhausted the alternate remedy of making a representation against the impugned orders to the competent authority and therefore, the OA has been filed in violation of Rule 20 of the CAT (Procedure) Rules 1987. The other

✓

(11)

contention is that the applicant has filed the OA without making an appeal against the impugned order dated 13.8.2007 and therefore, the OA is contrary to Rule 23 Sub clause (ii) of CCA (Conduct) Rules. The other preliminary objection is that the applicant had already filed a Writ Petit No. 35988/07 against the order of this Tribunal dated 24.11.2006 in OA 605/05 and the same is pending. Lastly, they have submitted that the OA is hit by the Principals of constructive res-judicata as the issue involved in this case has already been adjudicated by this Tribunal in the aforesaid OA.

5. On merits the main submission of the respondents is that the applicant was issued with a Memorandum under Rule 12 of the EPF Staff (Classification Control and Appeal) Rules 1971 and persons facing departmental proceedings cannot be considered for promotion until the conclusion of such proceedings and the expiry period of penalty, if any penalty has been awarded. In this regard they have referred to the annexure A-5 order dated 22.6.2007 by which the applicant was imposed with the minor penalty of "Censure" and also the annexure A-6 written "Warning" dated 29/12/2006 asking him to remain more careful in future. Their other contention was that the applicant was holding the post of Section Supervisor w.e.f. 15.09.2004 purely on temporary, adhoc and stop-gap arrangement basis and he was reverted from that post on 07.07.2005

*[Handwritten signature]*

(12)

but he was allowed to continue in that post in the same capacity in view of the stay against the reversion granted the Tribunal on 13.07.2005 in OA 605/2005 and finally when the said OA was dismissed, his earlier order of reversion was implemented by the annexure 8 order dated 13.08.2007.

6. We have heard the counsel for the applicant Sri S.K. Om and the counsel for the respondents Sri N.P. Singh. Admittedly, the applicant and two others who had filed the OA 605/05 were amongst the four candidates declared successful in the departmental examination held in March 1999 for the promotion to the post of Head Clerk/Assistant (redesigned as Section Supervisor). The said OA was against the promotion of the general category employees before such promotion was granted to the applicants therein who were SC/ST employees and were senior to them. Before filing the aforesaid OA the applicant was promoted as Section Supervisor on adhoc basis. It was when he was reverted as SSSA (TBP) vide the respondents' order dated 7.7.2005, he approached this Tribunal again by way of supplementary affidavit in OA 605/2005 and obtained a stay against the said order. However, later this Tribunal dismissed the said OA on the ground that the promotion of the applicant's who belong to SC/ST category and the promotion of the general category candidates could not be treated at par. In our considered opinion none of the

(13)

preliminary objections raised by the Respondents are valid as the applicant has filed the present OA immediately after the dismissal of the earlier OA filed by them and the promotion of the similarly placed co-applicants to the higher post later. In such a situation, insistence on the part of the respondents that the applicant should have made further representation or an appeal against the impugned order can at best be treated as mere technical objection and nothing more. Moreover, the present OA has nothing to do with the earlier OA 605/05 as the issue indicated in these two OA are entirely different. Just because he got a stay of the respondents order dated 07.07.2005 filed by way of a supplementary affidavit cannot be treated as an adjudication of the issue while consideration of this OA. In any case the respondents order dated 07.07.2005 is not the issue before this Tribunal in this OA.

7. Now the question is whether reason given by the respondents in their reply affidavit that it was due to the pendency of disciplinary proceedings he was not promoted alongwith his juniors as Section Supervisor on regular basis w.e.f. 08.12.2006 can be accepted or not. According to them, the applicant was not entitled for the promotion on regular basis w.e.f. 08.12.2006 because he was facing the departmental enquiry under rule 12 of the EPF Staff (CCA) Rules

2

(14)

1971 and he was awarded the penalty of "Censure" on 25.06.2007 and he will be considered for his promotion only by the next regular Departmental Promotion Committee as no one can be considered for promotion during the pendency of departmental enquiry or during the currency of the penalty. They have also submitted that "Censure" is one of the punishment included in the list of punishments contained in Rule 7 of the EPF Staff (Classification and Appeal) Rules, 1971. Now the logical question that arises is whether the respondents had issued any charge sheets in the enquiries in the disciplinary case which culminated in the "Censure" dated 26.02.2007 and the "Warning" dated 08.12.2006, and whether they were pending on the date on which DPC has considered the applicant and his juniors for selection to the post of Station Supervisor. Neither the applicant nor the respondents have indicated the date on which the applicant was served with the Charge Sheets in those two cases. However, it is the specific averment of the respondents that departmental proceedings were pending against the applicant on the date of regular promotion of his juniors.

8. The Govt. of India Ministry of Home Affairs DP & AR has explained the scope of 'Censure' in its OM No. 22011/2/78-Estt (A) dated 16.02.1999 in the following manner:

2

(15)

"An order of 'Censure' is formal and public act intended to convey that the person concerned has been guilty of some blameworthy act if omission for which it has been found necessary to award him a formal punishment, and nothing can amount to a "Censure" unless it is intended to be such as formal punishment and imposed for "good and sufficient reason" after following the prescribed procedure. A record of the punishment so imposed is kept on the officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit of suitability for promotion to higher posts."

9. The Apex Court has recently considered issue of impact of 'Censure' on the promotional prospect of the employee in Union of India and others Vs. A.N. Mohanan (2007) 5 SCC 425. The Apex Court has noted para 3.1 of the Office Memorandum relating to the promotion of Government Servants dated 14.09.1992 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. The said paragraph clearly postulates that where penalty has been imposed, finding of the sealed cover is not to be acted upon and the case of promotion can be considered by the next DPC in the normal course. It reads as under:

"3.1. If any penalty is imposed on the government as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the finding of the sealed over/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

Agreeing with aforesaid procedure prescribed in the said OM the Apex Court held as under:

"11. Awarding the censure, therefore, is a blameworthy factor. A bare reading of para 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

12

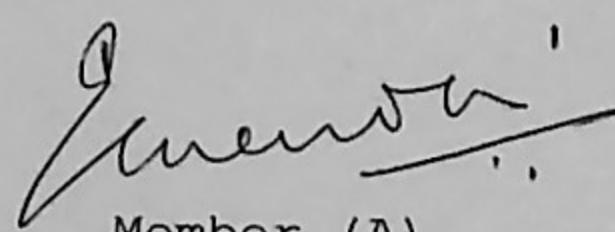
(16)

12. Having regard to the penalty imposed on him, undisputedly the respondents has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of the High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside."

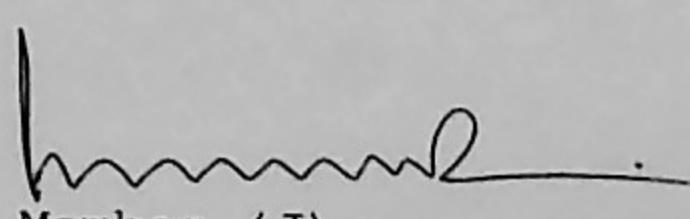
10. In view of the ratio of the case contained in the aforesaid judgment of the Apex Court, this OA is dismissed. The applicant is not entitled to demand promotion with retrospective effect from 08.12.2006 i.e. the date from which his juniors have been promoted on regular basis. The applicant shall wait for consideration of his case for promotion to post of Section Supervisor on regular basis till the next regular selection Committee/DPC Meeting. However, it is expected the respondents shall follow the prescribed time frame for holding the Selection Committee/DPC meeting to fill the regular vacancies available with them.

11. There shall be no order as to costs.

/pc/



Member (A)



Member (J)