

Jitendra S. Mehta,
Retired Dy. Post Master,
3/B, Shardanagar Co-op. Hsg. Society,
Behind Panchayat Nagar,
University Road,
Rajkot - 360 005.

..... Applicant.

(Advocate: Mr. M.D. Rana)

Versus.

1. Union of India,
(Notice to be served through
The Secretary, Ministry of
Posts & Tele-communication,
Parliament Street, New Delhi).

2. Post-Master General,
Navrangpura,
Ahmedabad.

..... Respondents.

(Advocate: Mr. P.M. Raval)

JUDGMENT

O.A. No. 11 OF 1988

Date: 22-3-91.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant has raised two grievances in this original application filed under section 19 of the Administrative Tribunals Act, 1985. The first is against withholding the order of his promotion to Higher Selection Grade-I. (HSG-I, for short). The second is about nonpayment of interest on delayed payment of retirement gratuity. The two apparently unconnected grievances and similar reliefs arose on account of one and the same reason, namely a disciplinary inquiry against the applicant.

2. The applicant superannuated on 1.8.1986 from the post of Deputy Post Master in the rank of HSG-II. When he was on leave, an order dated 28.5.86 was issued to promote him to HSG-I rank, the rank in which he was officiating before he proceeded.

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leave, with immediate effect. But the order of promotion was not implemented. When he resumed duty after leave, he was reverted from his officiating position of HSG-I to HSG-II without following due procedure for such reversion. The applicant had, on 13.11.84, drawn sanctioned scooter advance of Rs.3500/-.. However, he could not purchase the scooter within the specified period of one month but purchased it later and applied on 11.12.1984 for extension of time for purchase. However he was given charge sheet dated 19.6.86 under CCS(CCA) Rules 1965 rule 16 for the delayed purchase of the scooter. This rule provides for minor penalty. After the applicant submitted his reply to the charge sheet, by order dated 11.9.1986 the proceedings were dropped on the ground that the applicant had since retired and punishment of censure was awarded.

3. Apparently because a charge sheet for disciplinary inquiry was pending against the applicant when he retired, payment to him of retirement gratuity was made after about a month of his retirement and no interest was paid despite his representation and provisions of rule 68 and 69-C of the Pension Rules.

4. The respondents' reply is to the effect that as the order of promotion was subject to no disciplinary case/vigilance case being pending/contemplated and as the disciplinary proceedings were contemplated, the order was not implemented. For the same reason, payment of gratuity was withheld which was in accordance with Rule 69(1)(c) of CCS(Pension) Rules 1972.

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5. We have heard the counsel on both sides and perused the record.

6. Action under rule 16 of CCS(CCA) Rules, 1965, was taken against the applicant by the Senior Superintendent of Post Offices, Jamnagar, by his order dated 19.6.1986 on the imputation that having failed to purchase the scooter within the stipulated period, the applicant was asked to repay in lumpsum the amount of scooter advance and as he did not, the amount was recovered from him in instalments from his pay. It is obvious that the promotion order dated 28.5.1986 was made before the disciplinary action. The order did mention that the promotion was subject to the condition that no disciplinary/vigilance case of the type referred to in Directorates instruction dated 25.3.1972 read with instructions dated 8.9.1976 and 13.12.1977 was pending in which case the matter was to be referred to the office of Postmaster General immediately. These instructions have not been placed before us. However, on a plain reading of the order of promotion it is clear that when a disciplinary/vigilance case is pending or contemplated, instead of implementing the order of promotion, the matter of pending/contemplated disciplinary/vigilance case was to be reported to the Office of the Postmaster General. This is as it should be for the order of promotion having been issued by the Post Master General, he should be required to apply his mind to any ^{to} circumstances stated/come in the way of its implementation and decide the further course of action about the order. Instead of this to take place, at lower formation was decided not to implement the order of promotion apparently without referring to the Post Master General the reasons and awaiting his further

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instructions. In so far as this happened, injustice resulted to the applicant as the authority which issued the order of promotion did not apply its mind to the circumstances visualised by the lower formation to be coming in the way of immediate implementation of the order. The Post Master General could have, when informed, decided either way, namely, to not implement the order and then cancel it or hold it in abeyance or to implement it seeing the intrinsic nature of the contemplated disciplinary/vigilance action. It could not be presumed that the Post Master General's decision would be former only and therefore not refer the case to him. Besides, (see V.Jagdiswara Rao Vs. The Postmaster General, 1978 SLJ 201) promotion cannot be denied unless disciplinary proceeding is actually going on a charge sheet. That it is contemplated, the case herein, is no ground for withholding promotion. The case before us is even more questionable : an order of promotion was issued by the empowered authority but not implemented by a subordinate authority on the ground that disciplinary action was contemplated and the matter not even referred to the empowered authority to enable it to decide further course of action. Evidently, in the situation, the empowered authority could not even cancel/withdraw or hold in abeyance the order of promotion. In any case, no such order of cancellation/withdrawal/holding in abeyance of order of promotion has been shown to us. Thus the denial of promotion to the applicant cannot be upheld.

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7. Coming to the issue of delayed payment of gratuity. the delay is admitted by the respondents and as there is provision in rule 69(1)(c) of CCS (Pension) Rules to withhold gratuity when disciplinary action is pending, we hold that the payment was not delayed for any unjustifiable reason. In so far as the payment was made, on the disciplinary enquiry having been finalised, within a month of the retirement, we also hold that the payment was not withheld for a period longer than necessary and question of award of interest does not arise in the circumstances.

8. Thus the application succeeds in regard to one relief and fails in regard to the other.

9. In view of the above, we finally dispose the application^{of} by our direction to respondents No.2, Post Master General, Navrangpura, Ahmedabad, to, within three months of his receiving a copy of this order, pay to the applicant arrears of salary and emoluments arising on the basis that the applicant was promoted to HSG-I (General line) Cadre with effect from and inclusive of 28.5.86. Any arrears of consequential benefit to applicant's retiral benefits on account of this order should also be disbursed to him within the same period and his pension revised accordingly on the basis of our order if required.

10. There are no orders as to costs.

R.C. Bhatt
(R.C. Bhatt)
Judicial Member.

M. M. Singh
(M.M. Singh)
Administrative Member.