

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO.

23 of 1989.

~~T.A. NO.~~DATE OF DECISION 19th August, 1994.Shri Ismail Talati PetitionerShri K.S.Jhaveri Advocate for the Petitioner (s)

Versus

Union of India and ors. RespondentShri N.S.Shevde Advocate for the Respondent (s)**CORAM**

The Hon'ble Mr. K.Ramamoorthy : Member (A)

The Hon'ble ~~Mr.~~ Dr.R.K.Saxena : Member (J)**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Ismail Talati,
'Libiya Street',
Village, Tankana,
Tal. Dist. Bharuch.

...Applicant.

(Advocate : Mr. K. S. Jhaveri)

versus

1. Union of India,
service be made through,
General Manager,
Western Railway,
Churchgate,
Bombay - 400 001.
 2. The Chief Commercial Superintendent (Estt.),
Headquarters Office,
Churchgate,
Baroda.
 3. The Divisional Railway Manager (E),
Vadodara Division,
Pratapnagar - 390 005.
 4. Senior Divisional Office,
Superintendent (E),
Divisional Office,
Pratapnagar,
Baroda - 390 005.
- ...Respondents.

(Advocate : Mr. N. S. Shevde)

J U D G M E N T

O. A. NO. 23 OF 1989.

Date : 19.3.1994.

Per : Hon'ble Mr. K. Ramamoorthy : Member (A)

The present application was filed in January, 1989, seeking the relief for grant of promotion w.e.f. 11.6.1985 itself to the post of Reservation Supervisor, being the date when the first orders were issued for promotion. This order was subject to DAR clearance. Since the officer was under suspension on the date of issue of promotion order, promotion was not effected. However, by the time the case came up for final hearing, the respondents had issued the promotion orders. This was issued on 16.3.1990. The question that remains for decision is the question of deemed date for promotion.

(22)

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As regards the facts of the case, the applicant had joined the Railways in 1965, and was promoted to the post of ARS on 11.6.1985. This order was "subject to clearance of DAR, BRC cases and penalties if any should be checked by the division concerned." However, the applicant was under orders of suspension since 18.4.1985, and the promotion orders as stated earlier was not implemented. This suspension order itself was later revoked on 2.9.1985. A formal charge-sheet was issued on 4.6.1987, and a final punishment order inflicting the punishment of stoppage of increments for three years with future effect was passed on 28.5.1990. Thereafter, the promotion was given on 16.8.1990.

The questions that arise for consideration are as under : -

1. Whether the revocation of suspension order in September, 1985, should have resulted in immediate promotion of the present applicant since admittedly one junior person was promoted on 30.7.1986. The promotion of another junior of person on 28.6.1985, was issued when the applicant was still under suspension.

2. Whether the period between the revocation order from September, 1985, to June, 1986, when the charge-sheet was actually issued should be treated as "no event period" for considering the question of implementation of promotion order.

3. Whether with the implementation of promotion in August, 1990, soon after the intimation of the punishment order as inference cannot be drawn that the punishment was not one which came in the way of promotion.

(23)

: 4 :

The counsel for the applicant stated that in the present case no sealed cover procedure had been adopted and therefore, the question of withholding promotion should not have arisen particularly after the revocation of suspension order. More-over till the formal issue of charge-sheet in 1987, nothing can also come in the way of promotion and the counsel for the applicant referred to the judgment of the Supreme Court in K.V.Jankiraman's case AIR 1991 Supreme Court 2010. He also cited the case of K.Ch.Venkata Reddy and ors. Vs. Union of India and ors. ((1987)3 Administrative Tribunals Cases 174). In their reply the point made by the respondents is that if an employee is suspended or faced a disciplinary action he cannot be promoted automatically to any higher grade. In this case, a major DAR action was contemplated and a charge-sheet was issued which had resulted in punishment.

It is true that the promotion order was not effected because of the existence of the suspension order and therefore, if the suspension order is revoked the case for withholding of promotion also normally ceased. However, there cannot be any absolute proposition on this issue. The two judgments referred to by the counsel for the applicants also clearly lay down the proposition in this regard. In the case of Venkata Reddy and ors. Vs. Union of India and ors. the Central Administrative Tribunal, Hyderabad Bench, has put the proposition in the proper focus in the following words : -

(24)

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"There are two conflicting concepts here. A right to be considered for promotion is a right flowing from the conditions of service and once an employee is found fit for promotion, his promotion cannot arbitrarily be withheld and a junior promoted instead in the face of Article 14 and 16 of the Constitution. On the other hand, the purity of public service requires that a person under a cloud i.e. person against whom disciplinary or criminal proceedings had been initiated and are pending, should get himself absolved of the charges before he is actually promoted. It will be against public interest if any employee who is being proceeded against say on a charge of corruption were to be promoted while facing the corruption charges."

The Supreme Court has further clarified this issue in the Jankiraman's judgment when it over-ruled the Tribunal in this matter.

"According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve ~~that~~ his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the ~~x~~original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post

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and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an ~~employee~~ employee in the past while considering

(28)

: 7 :

his promotion any deny, him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

The para-20 of the Jankiraman's case referred to by the counsel for the applicant is in our opinion applicable to that case only.

The above extracts clearly uphold the view that the promotion need not be automatic when a disciplinary punishment results in certain cases.

Our reply to the first two questions raised above is that promotion does not automatically flow. As regards the third question, in this particular case, however, it is found that soon after the punishment, the respondents have also thought fit to issue the promotion order vide its order dated 18.6.1990, and it is presumed that the respondents intend to give effect to the punishment in the promoted scale.

In our opinion in a case like this even though a sealed cover procedure was not followed, in view of the fact that the promotion had been held back because of the suspension order and the later disciplinary action contemplated, which resulted in the punishment, the matter should have been decided by convening a review DPC after the imposition of the penalty on the conclusion of the disciplinary proceeding as mentioned in para-38 of the ATC case referred to above. We, therefore, direct the respondents


(27)

: 8 :

to formally convene the meeting of the review DPC to decide on the date from which the promotion order is to be effected, taking ~~into~~ consideration factors such as gravity of the charge, period for which suspension ^{was} ~~is~~ operating, and the cause for delay in initiation of the disciplinary proceedings, and several other factors. The decision may be spelt out in a speaking order since the ^{Adm. Tribunal} ~~ATC~~ has already stated that such an order can be open for a judicial review.

The liberty is given to the applicant to approach the Tribunal if he has any grievance on such a decision. The application is disposed of accordingly. No order as to costs.


(Dr. R.K. Saxena)
Member (J)


(K. Ramamoorthy)
Member (A)

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