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(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Promotion

O.A. No./332/90

~~T.A. No.~~
xxxxxxx

DATE OF DECISION 18.2.1993

K.K. Parmar

Petitioner

Mr. J.J. Yagnik

Advocate for the Petitioner(s)

Versus

The Union of India & Ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt,

Member (J)

The Hon'ble Mr. V. Radhakrishnan

Member (A)

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

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K.K. Parmar

.. Applicant

Vs.

1. Union of India,
Through:
Chief Post Master General,
Gujarat Circle,
Near Income Tax Office,
Ahmedabad.
2. The Senior Superintendent of
Post Offices,
Ahmedabad City Division,
Ahmedabad G.P.O. Compound,
Ahmedabad.

.. Respondents

ORAL JUDGMENT

O.A./332/1990

Date: 18.2.1993

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Mr. J.J. Yagnik, learned advocate for the applicant and Mr. Ketan Dave for Mr. Akil Kureshi learned advocate for the respondents are present .

2. The applicant at present serving as L.S.G. with the respondent Department has filed this application praying that the respondents be directed to promote the applicant to the post of H.S.G. II, with effect from 17th August, 1989, and to confer upon him all the benefits such as deemed date of promotion, seniority, arrears of salary, on the basis that he was promoted to the said

..3..



post with effect from 17th August, 1989. The question which arises in this case is, as to when the disciplinary proceeding can be said to have commenced against the applicant. This question is answered by the Hon'ble Supreme Court in the decision in Union of India Vs. K.V. Janki-raman in AIR 1991, 2010. It is held in this decision that it is only when a chargememo in disciplinary proceeding or a charge sheet in a criminal proceeding is issued to the employee that it can be said that the departmental proceeding /criminal prosecution is initiated against the employee. It is held in this decision that the pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt even the sealed cover procedure. In civil appeals no. 3018-21 of 1987 before the Hon'ble Supreme Court, in ~~the~~ that matter, no charge sheet was served on the employee when the DPC met to consider the promotion of the said employee. The Tribunal which first decided that case had directed the authority to open the sealed cover and if such persons were found fit for promotion by the DPC, the direction was given to give them promotion from the date their immediate juniors was promoted and the Tribunal had given that employee all the consequential benefits. The Hon'ble Supreme Court confirmed this finding of the Tribunal in appeal. In this view of the matter, if the charge sheet

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or charge memo was not served on the present applicant when the DPC, considered his case for promotion, the respondents cannot postpone the promotion of the applicant on the ground that some preliminary investigation was made against that employee or that some proceeding was going on against the employee. The main question to be considered is whether a charge sheet was served on the applicant when the DPC met to consider the applicant's promotion.

3. The applicant has alleged in the application that ~~xx~~ when he came to be selected for promotion in the H.S.G. II by the D.P.C. and the said approved list of persons for promotion to the H.S.G. II was made consequent upon the said selection, he came to be placed at serial no. 1 as per the memorandum dated 17th August, 1989, vide Annexure A, which was consequent upon the select list dated 14th August, 1989. It is the case of the applicant that inspite of he being included in the select list, and selected for promotion, he was not relieved for promotion and persons juniors to him were relieved and the promotions were effected. He ~~was~~ alleged in the application that thereafter, the office memo dated 6th/7th April, 1990, has been issued wherein the applicant has been placed at serial no. 1 in the promotion order, ordering for promotion in H^{SG} II cadre, with immediate effect vide Annexure A/2, but the applicant is not relieved for the said promotion and

persons juniors to him are promoted.

4. It is the case of the applicant that no charge sheet was issued to him when he was considered for the promotion and selected by DPC and therefore the action of the respondents in not promoting him to the post of HSG II with effect from 17th August, 1989, when his juniors were promoted was illegal and un-just arbitrary and violative of Article 14 and 16 of the Constitution of India.

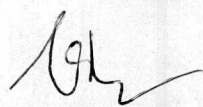
5. The respondents have contended in the reply that the applicant was not relieved for promotion in H.S.G. II cadre as one disciplinary case was contemplated against ~~the~~ him regarding alleged shortage of printing papers worth Rs. 9769.10. The respondents have contended in para 4.7 of the reply that the action for issuance of chargesheet for recovery of shortage of papers worth Rs. 9769.10 was under progress. It is contended that there was a shortage of papers worth Rs. 9769.10 while handing over the charge on 20th May, 1988, by the applicant and he was asked on 22nd June, 1989, for accepting the responsibility to pay the said amount for the shortage of papers. According to the respondents, the inquiry for loss of papers was already started before the date on which the shortage was noticed. It is contended that therefore, the action of the respondents, in not reliving for promotion cannot be held illegal. The learned advocate for the respondents drew our attention to the conditions of promotions mentioned in the order Annexure A/2 dated

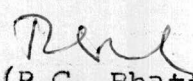
6th April, 1990. In our opinion, this condition has to be examined in light of the decision in the Jankiraman's case (Supra). It is not the case of the respondents that charge-sheet or charge memo for disciplinary inquiry was issued against the applicant on or about the time when the DPC met and selected the applicant for the promotion to the post of H.S.G. II, but their case is that the disciplinary case was contemplated. However, applying the ratio of Jankiraman's case, the action of the respondents in not promoting the applicant to the post of HSG II when his immediate juniors were promoted on the ground of contemplated disciplinary action was illegal and arbitrary and in violation of Article 14 and 16, ^{of Constitution of India.} The applicant in our opinion is entitled to be promoted to the post of H.S.G. II from the date when his juniors were promoted to that post with all the benefits. We pass the following order:

6.

ORDER

The application is allowed. The respondents are directed to promote the applicant to the post of H.S.G. II with effect from the date on which his immediate junior was promoted to that post with all the benefits of seniority etc. as if he was promoted with effect from the date on which his immediate juniors was promoted. The respondents are directed to carry out this order within two months from receipt of this Judgment. No order as to costs.


(V. Radhakrishnan)
Member (A)


(R.C. Bhatt)
Member (J)

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