

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 206/92

~~T.A.NO.~~

DATE OF DECISION 06.08.1998

H.B. Kapdi

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner [s]

Versus

Union of India and Others

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. Laxman Jha, 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 ?

H.B. Kapdi,
S.P.M.,
Milpura, T.S.O.,
Porbandar - 360,575.

... Applicant

(Advocate: Mr. P.H. Pathak)

VERSUS

1. Union of India
Notice to be served through
The Director
Department of Post,
Postal Board,
New Delhi.
2. Chief Postmaster General,
Navrangpura, Ahmedabad.
3. Superintendent of Post Offices,
Porbandar Division,
Porbandar.

... Respondents

(Advocate: Mrs. P. Safaya)

ORAL ORDER

O.A./206/92

Dated: 06.08.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Pathak for the applicant and Mrs. Safaya for the Postal Department.

2. The applicant's grievance relates to denial of the benefit of time bound promotion with effect from 30.11.83 by the postal Department and granting the same only with effect from 11.12.84.

3. The applicant joined service, according to the respondents in February, 61 whereas he says he has joined in the year 1960. The Department notified a scheme in December, 83 for giving the time-bound promotion to regular employees and instructions were issued to the effect that the scheme that would come into effect from 30.11.83 and such persons who had completed 16 years of

Contd..3/-

regular service in the cadre concerned will be granted promotion so long as they are found fit by a Departmental Promotion Committee. As the applicant had completed 16 years well before December, 83 in the normal course he should have been eligible for the promotion from 30.11.83 if he is found fit by the DPC. However, there were certain proceedings against him and a police complaint also was lodged. According to the respondents, this criminal case was disposed of by the Magistrate, Porbandar on 14th September, 83 acquitting him of the criminal charges alongwith others with the benefit of doubt. Disciplinary proceedings also were initiated against him and he was placed under suspension initially for the period from August, 75 which however was revoked on 19.6.96. He was served with a major chargesheet under Rule 14 vide memo dated 13.12.95 but the said charges were dropped by memo dated 8.9.88. Subsequently he was served with another chargesheet under Rule 16 dated 1.10.88 for inflicting a minor penalty. The disciplinary authority awarded the punishment of recovery of about Rs.12000/- on account of pecuniary loss to the Government. He filed an appeal against this order and the Appellate Authority set aside all the penalty against him including the recovery of the amount stated to be the pecuniary loss caused to the Government.

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In view of the pendency of the disciplinary proceedings when the applicant was assessed for time-bound promotion, the DPC kept its recommendations in Sealed Cover. Mrs. Safaya makes available the relevant file which contains a copy of the DPC proceedings. We find from this that the DPC which met on 19.7.85 considered him fit for promotion for time-bound promotion in PA cadre but stated it would depend on the outcome of the disciplinary case

contemplated against him. After the conclusion of the disciplinary proceedings, the applicant was given the first time-bound promotion to the scale of Rs.1400-2300/- with effect from 10.4.89. On his submitting a representation to the Chief Postmaster General, the latter advanced the date of promotion with effect from 11.12.84 but ordered that his pay may be fixed notionally without any monetary benefit from that date. This is as per the order dated 3.4.90 and a copy of this order is at Annexure A-11. The applicant was initially not allowed to cross the EB in view of the problems he was facing but the Department issued an order dt. 12-16.7.90 allowing him to cross the EB from the due date i.e. 1.2.80. We are also informed that the applicant was given the second time-bound promotion from the date it was due to him. He has since retired from service w.e.f. February, 97. The grievance of the applicant relates to the fact that even though he was to have been promoted to the scale of Rs.1400-2300/- w.e.f. 13.11.83 the same was given after a year later and that too notionally for the period up to April, 89.

4. Mr. Pathak for the applicant submits that in view of the fact that in the disciplinary proceedings he was exonerated and as he was found fit by the DPC, there is no reason to hold back his promotion particularly when his juniors were promoted with effect from 30.11.83. He contends that while initially he was taken as an accused by the police in a criminal case later he was cited as a witness in the court.

5. Mrs. Safaya submits that the applicant was not fully exonerated in the Departmental proceedings. She states that the Appellate Authority had only set aside the penalty of recovery of money on humanitarian grounds. It is also her stand that the

acquittal orders of the court have been challenged before the High Court and the same is pending. According to her, as the applicant was not exonerated in the proceedings, he had no right to get the promotion with effect from 30.11.83. To a query as to the significance of the date of 11.12.80 as given by the Chief Post Master General the respondents are not able to throw any light. No reason is given for fixing the date in the order of the Chief Postmaster General as at Annexure A-11. The same have not been elaborated in the reply statement nor any material has been shown to us from the Departmental file which would furnish the reason for fixing this date.

6. We have carefully considered the submissions of both sides. There is some controversy regarding the criminal case. The respondents had said that he was an accused in the criminal case but was ~~exonerated~~ ^{acquitted}. Mr. Pathak however submits later that even though he was shown as an accused by the police in the beginning, in the trial court he was cited as a witness. It is however not necessary to dilate on this aspect as the Department's action is based on the disciplinary proceedings particularly the orders of the Appellate Authority. The Department seems to have gone on the basis that the order of the Appellate Authority does not amount to complete exoneration but that it should be taken as only a concession on humanitarian ground and what the Appellate Authority did was not to enforce the recovery of a sum of about Rs. 12,000/- ordered by the disciplinary authority. This contention is not borne out from the Appellate order, copy of which is furnished both by the applicant as at Annexure A-7 and also by the respondents at Annexure R-12. In para 3, it says:-

"As the circumstances under which the original ledger card was replaced has not been discussed linking the role of Shri H.B. Kapdi, it is difficult to sustain the charge against Shri H.B. Kapdi."

In para 4, it says:-

"It is conceded that the group 'D' is not the authorised person to prepare the ledger card and it is the ledger clerk who should prepare the ledger card for the new account. Even if the group 'D' had prepared the ledger card it is not established how this alone has helped the culprits to commit the fraud. The basic charge of contributory negligence facilitating the bogus withdrawal, is therefore, not established beyond doubt."

In para 6 it says:-

"The recovery of Rs.11896.70 inclusive of penal interest which had accumulated due to delay of 14 years in conclusion of proceedings for which Shri H.B. Kapdi is not at all responsible, is not found justified. While applying the principle of contributory negligence, it is also to be clearly established as to how and which lapse has actually contributed to the loss sustained by the department. The principal offenders are still facing prosecution proceedings."


In para 7 it says the recovery of the entire balance of the principal amount from the applicant is unjustified. In the last para i.e. para 8 the Appellate Authority observed as follows:-


"Now coming to the actual amount that should be considered for recovery from Shri H.B. Kapdi, I find this is only Rupees 900/- for which also his role is committing the fraud by culprits is not clearly established and therefore, on purely humanitarian grounds, this is also set aside. However, he could not be absolved of the charge that he allowed the group 'D' of the office to prepare the ledger card and also allowed the counter clerk to sign the ledger card unauthorisedly. However, I have considered that during the pendency of a major disciplinary proceedings hanging like the sword of Damocles on his head he has already suffered several disadvantages in his service by way of losing promotion and not being permitted to cross E.B. etc., therefore, all the punishment ordered by the SP Porbandar as discussed above, is ordered to be set aside upholding the appeal of Shri H.B. Kapdi."

From this order, it would seem that the Appellate Authority had taken into account various aspects before deciding to set aside the punishment against the applicants. It had clearly held that the lapse, if any, of the applicant related to permitting a Group 'D' of the office to prepare the ledger card and allowing the counter clerk to sign the ledger card unauthorisedly. How-

ever, it did not choose to inflict any penalty not even penalty not even the penalty of censure against the applicant. It has, no doubt, used the term humanitarian ground but the fact remains that the disciplinary proceedings had ended without inflicting any penalty whatsoever. We also note that the applicant was allowed to cross the Efficiency Bar w.e.f. 1980 by an order issued in 1990 as referred to earlier. Keeping in view the totality of circumstances, and ^{particularly as} partially/no penalty was inflicted nor is there anything to show that the applicant at least was warned for such lapses, we have to hold that the disciplinary proceedings had resulted in exoneration of the applicant. In the circumstances, we see no reason as to how the CPMG should postpone his date of promotion to 11.12.84 giving the ^{promotion} ~~penalty~~ only notionally for the period from December, 84 to April, 89 for which no reasons whatsoever has been assigned. We accordingly quash the order of the CPMG as at Annexure A-11 and also the Postal Directorate's letter dated 21.2.91 as at Annexure A-13 which rejects the representation of the applicant without giving any reasons for such rejection. We note that the DPC has assessed the applicant as fit for promotion and accordingly we direct the Department to grant him promotion to the first grade of time-bound promotion namely Rs.1400-2300/- with effect from 30.11.83, including the financial benefits from that date. The Department shall comply with these directions within two months from the date of receipt of a copy of this order.

7. The OA is disposed of as above, with no order as to costs.


(Laxman Jha)
Member (J)


(V. Ramakrishnan)
Vice Chairman