

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

ORIGINAL APPLICATION No. 199 OF 1986.

Date of decision : March 25, 1987.

A.T.RAO ... Petitioner

M/s P.V. Ramdas & B.K. Panda,
Advocates ... For Petitioner

Versus

Union of India & others ... Respondents.

Mr. A.B.Misra, Sr. Standing
Counsel (Central) ... For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

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THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes .
2. To be referred to the reporters or not ? Yes .
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner invokes the jurisdiction of this Bench for interfering with the order of the Post Master General, Orissa in not giving due promotion to the petitioner under the Time Bound Promotion Scheme.

2. Succinctly stated, the case of the petitioner is that he entered into the Postal Department as a time-scale clerk on 22.1.1964. He was attached to Berhampur Head Post Office. The time bound promotion scheme was introduced with effect from 17.12.1983. The crux of the scheme is that due to stagnation, certain postal employees are unable to get the higher scale of pay prescribed in the Lower Selection Grade. Therefore, it was decided by the Government that due to such stagnation, the employees found to be suitable could be given promotion under the time bound scheme to the next higher scale of pay provided the employee has completed sixteen years of active service. In pursuant to the said scheme, cases of several employees of the Postal Department were examined, scrutinised and ultimately on 8.1.1986 the Post Master General ordered promotion of forty incumbents to the next higher scale of pay prescribed for Lower Selection Grade out of which the petitioner's name appeared against serial No. 25. According to the petitioner, all the incumbents ordered to be promoted, were in fact promoted except the petitioner. Being aggrieved by this action

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taken by the Post Master General , the petitioner has filed this application under section 19 of the Administrative Tribunals Act, 1985 praying for necessary redress .

3. In their counter , the respondents- opposite parties maintained that due to the pendency of ~~the~~ proceeding , the Post Master General rightly withheld the promotion of the petitioner and deferred the matter till the inquiry comes to an end . Hence, it is maintained on behalf of the respondents- Opposite Parties that no illegality having been committed by the competent authority, the application is liable to be dismissed .

4. Before we adjudicate the contentions raised at the Bar, it is worthwhile to mention that the admitted facts are that the petitioner joined the Postal Department on 22.1.1964 and he has completed sixteen years of active service as time scale clerk by 22nd January 1980 . It is further admitted that the Time Bound Promotion Scheme was introduced on 17.12.1983 and on 8.1.1986 the Post Master General ordered promotion of forty employees including the present petitioner whose name is mentioned against serial No. 25. The order of promotion was passed on the recommendation of the Departmental Promotion Committee . The Post Master General further passed an order stating that this promotion is subject to the condition that no proceeding is pending against any of the incumbents so promoted . So far as the present petitioner is
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concerned, two proceedings had been initiated against him, namely, in one proceeding penalty was imposed on 20.7.1982. The penalty imposed on the petitioner so far as that proceeding is concerned was stoppage of increment for six months. The second proceeding terminated on 30.12.1983 and therein it was ordered that future increments of the petitioner be stopped for six months. Keeping in mind the above data, it would be quite clear that the penalty imposed in both the proceedings ~~have~~ spent their force long before 8.1.1986. The promotion is said to have been withheld on the ground that a third proceeding has been initiated against the petitioner and the charge-sheet was delivered to the petitioner on 14.11.1986. It is stated that this proceeding is pending and this fact is also admitted.

5. The moot question that needs determination is as to whether any illegality has been committed by the Postal Authorities in withholding the promotion of the petitioner because of the pendency of a proceeding in which charge-sheet was filed or delivered to the petitioner on 14.11.1986. In order to decide the moot question the initial point which needs determination is as to when a proceeding is deemed to have been initiated. According to the learned Sr. Standing Counsel, the proceeding is said to be initiated as soon as the preliminary inquiry starts against a particular officer against whom certain allegations have been made to find out the truth or otherwise of the allegation. On the

other hand, it was contended by Mr. P.V.Ramdas, learned counsel for the petitioner that a departmental proceeding starts only when the charge memo is delivered to the particular employee who is being proceeded against. On this interesting question of law, there has been a recent pronouncement of the Principal Bench in Transferred Application No. 849 of 1986 and many others decided on 2.3.87 by a Full Bench (not yet reported) constituted by Hon'ble Chairman Mr. Justice K.Madhava Reddy, Hon'ble Mr. Justice G.Ramanujam, Vice Chairman, Madras Bench and Hon'ble Mr. B.N.Jayasimha, Vice Chairman, Hyderabad Bench and this arose before the Bench on a reference made by the Hon'ble Chairman on 13.11.1986. The Full Bench has decided the aforesaid question and we feel tempted and persuaded to quote the observations which run thus :

" At this stage we have to consider as to when exactly the sealed cover procedure is to be followed. In OM, dated 14.7.1977 it has been decided by the Government that the sealed cover procedure should be followed in those cases where, after investigation, the evidence collected indicates a prima facie case against the officer concerned and not when the preliminary investigation is pending (underlining and emphasis is ours) and no conclusion has been reached about the prima facie guilt of the officer as at that stage there is no ground for treating the said officer as one

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" Whose conduct is under investigation "

An Officer can be said to be under investigation only when a charge sheet is filed in a criminal court or charge memo under CCA Rules is issued to the official. (underlying and emphasis is ours)

In the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo is served on the official and the charge sheet is filed before the court." (underlining and emphasis is ours)

From the above, it is crystal clear that the date of initiation of the proceeding is the date on which the charge memo is delivered to the officer concerned. These observations of Their Lordships of the Full Bench have been reiterated in the conclusions which need not be repeated. In order to counteract the aforesaid observations of the Full Bench, learned Senior Standing

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Counsel relied upon a judgment of the Supreme Court reported in A.I.R.1963 Supreme Court 395 (Bachhittar Singh v. State of Punjab and another). Relying on this judgment, it was contended by the learned Sr. Standing Counsel that the Supreme Court is of the view that proceeding is deemed to have been initiated against a particular employee as soon as preliminary inquiry/investigation starts against him on receipt of certain allegations, to find out the truth or otherwise of such allegations. It was further contended that as a general principle it cannot be held that the proceeding is said to be initiated on the date on which the charge memo is delivered to the officer concerned. If Their Lordships of the Supreme Court have really stated in the aforesaid judgment exactly what the learned Standing Counsel has submitted, undoubtedly, we are bound by the views of the Supreme Court and we are equally bound to follow the principles laid down in the judgment of the Supreme Court ^{and prefer the same} ₁₆ to the judgment of the Full Bench referred to above. After hearing learned counsel for both sides and after giving our anxious consideration to the observations of Their Lordships of the Supreme Court in the aforesaid judgment, we find that no where Their Lordships have stated that the proceeding is deemed to have been initiated on the date on which the preliminary inquiry/investigation starts. Learned Senior Standing Counsel invited our attention to paragraph 7 of the said judgment wherein Their Lordships have stated as follows :-

" ¹⁶ Before we deal with the grounds, we

may state that the High Court was of the opinion that the proceeding taken against the appellant were made up of two parts: (a) the inquiry (which involved a decision ~~on~~ ⁱⁿ the question whether the allegations made against the appellant were true or not) and (b) taking action (i.e, in case the allegations were found to be true, whether the appellant should be punished or not and if so in what manner. According to the High Court, the first point involved a decision on the evidence and may ~~not~~ ⁱⁿ its nature be described as judicial while the latter was purely an administrative decision and that in so far as this was concerned there was no reason why the State Government was incompetent to change its decision " if it thought administratively advisable to do so ". We cannot accept the view taken by the High Court regarding the nature of what it calls the second part of the proceedings. Departmental proceedings taken against a Government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established".

Before we deal with the further contention of the learned Senior Standing Counsel, it is worth-while and

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profitable to state succinctly the facts of this particular case which was decided by Their Lordships. There was no dispute regarding the petitioner having found guilty of the charges. But this dispute centres round the fact that once the Revenue Minister of Pepsu Government had passed a particular order in regard to the quantum of penalty to be imposed on the petitioner, it was no longer open to the Chief Minister of Punjab to pass a contrary order on the file regarding the quantum of punishment to be awarded to the petitioner *especially when* ^{the} ~~the~~ on the next day after ~~the~~ orders were passed by the Revenue Minister of PEPSU, the State of Pepsu merged with Punjab. In that context, Their Lordships of the Supreme Court observed that the inquiry relating to the establishment of the guilt of the officer in regard to the charge cannot be made divisible from the question of imposition of penalty. Their Lordships are of the view that it is a continuous process. Nowhere we find any observation of Their Lordships, as contended by the learned Sr. Standing Counsel that the preliminary inquiry is included within the word 'inquiry' used by Their Lordships. If the contention of the learned Sr. Standing Counsel carries any merit that the word 'inquiry' used in the judgment also means the preliminary inquiry then ~~there~~ ^{the} ~~is~~ ^{is} no question of bringing home the charge ^{not} against the delinquent officer would arise in a preliminary inquiry. We are of the firm opinion that the word 'inquiry' used in the judgment of the Supreme Court

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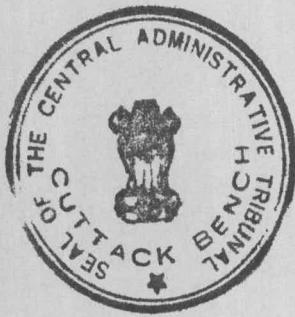
means regular departmental inquiry and does not include the preliminary inquiry as contended by the learned Sr. Standing Counsel. Therefore, we are of the opinion that the principles laid down by Their Lordships in the aforesaid judgment have no application to the facts of the present case and therefore we would respectfully follow the dictum laid down by Their Lordships of the Full Bench referred to above and hold that the inquiry/ proceeding is deemed to have been initiated on the date on which the charge memo was delivered to the delinquent officer and in this particular case charge memo having been admittedly delivered on 14th November, 1986, we are of the opinion that the inquiry was initiated on 14.11.1986.

6. Before we part with this aspect of the case, we would also like to observe that if any proceeding in the form of preliminary inquiry or a regular inquiry was pending at the time when the D.P.C. had cleared the cases of forty incumbents, we have no doubt in our mind that the D.P.C. would have stated to adopt the sealed cover procedure so far as the present petitioner is concerned. The D.P.C. very rightly did not pass any remarks of the aforesaid nature in their minutes because there was no proceeding pending against the petitioner- delinquent officer.

7. Having found that the proceeding in question was initiated or is deemed to have been initiated on 14.11.1986, it was not open to the Post Master General to withhold the promotion on the ground ^{that} the proceeding is pending. Law is well settled that no

extraneous matter can be taken into consideration while withholding the promotion of a particular employee. By 'extraneous matter' we mean to say that any allegation coming up against an officer and being enquired into much after the due date on which the officer is entitled to his service benefits, cannot be taken into consideration for applying brakes to grant of such service benefits to the officer concerned. The proceeding in question having been initiated eleven months after the due promotion given to thirty-nine persons excluding the petitioner is definitely an illegality committed by the competent authority. We would, therefore, direct that the petitioner be forthwith promoted to the higher scale of pay of Lower Selection Grade under the Time Bound Promotion Scheme and with effect from the due date when others were promoted entitling him to all his emoluments with effect from such due date so that there would be no discrimination or disparity between the thirty-nine employees already promoted ^{and the petitioner.} The seniority of the petitioner vis-a-vis the other employees would be governed according to the rules keeping in view their initial appointment, confirmation etc.

the parties to bear their own costs .



Agreed 25.3.87
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Member (Judicial)
25.3.1987

B.R. PATEL, VICE CHAIRMAN,

I agree

Br. Marshal
.....
Vice Chairman.
25.3.1987.

Central Administrative Tribunal,
Cuttack Bench
March 25, 1987/Roy.