

Original Application No:72 of 1987

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

J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner seeks redress from this Bench on account of the fact that his case was not considered by the D.P.C. to give due promotion under the Time Bound Promotion Scheme.

2. Shortly stated the case of the petitioner is that he entered into Postal Department as a Postal Assistant on 10.4.1965. In course of time it was found that there was stagnation for promotion and therefore, the employees of the Postal Department made representations to the higher authorities and ultimately the Government promulgated the time bound promotion scheme wherein it was envisaged that any employee having completed 16 years of active service by 30th November 1983 is to be considered for promotion in the L.S. Grade to the next higher pay scale so that the grievance of the employees on account of stagnation could be redressed. Accordingly D.P.C. was held in the year 1984 to consider the cases of several employees who had reached the consideration zone for getting due promotion under the time bound promotion scheme. The case of the petitioner is that though according to him he was fit to come within the consideration zone, yet his case was not considered by the D.P.C. which met in the year 1984 and therefore prayer of the petitioner is that the competent authority should be directed to convene a review D.P.C. which should consider the case of the petitioner and give due promotion to him.

3. In their counter, the Opposite Parties maintained that a departmental proceeding was initiated against the petitioner on 12.8. 1983 and inspite of such proceeding having been initiated against the petitioner, his case was sent to the D.P.C. which met on 28.3.84 and the D.P.C. found him to be 'not fit' and therefore the petitioner was not given promotion under the time bound promotion scheme. It is further more maintained by the respondents - O.Ps. that no illegality having been committed by the D.P.C. or the disciplinary authority in connection with the case of the petitioner, the petition is liable to be dismissed as it is devoid of any merit.

4. Mr.S.C. Ray, learned counsel appearing for the petitioner strenuously urged before us that the case of the petitioner not having been considered by the D.P.C. which met in the year 1984, there is no other option left for the Bench but to quash the order of promotion given by the competent authority to other employees and further more this Bench should direct the competent authority to convene a review D.P.C. and send the case of the petitioner for consideration by the D.P.C. Mr. A.B. Misra, learned Sr. Standing Counsel for the respondents on the other hand urged that the case of the petitioner was duly considered by the D.P.C. held in the year 1984 and the D.P.C. having found the petitioner to be unsuitable or unfit, there is no further scope for the petitioner to agitate before this Bench claiming any redress in the matter because neither any bias nor malafide has been pleaded against the D.P.C. far

less to speak of such bias or malafides being proved to the hilt. True it is, that no malafide or bias has been pleaded by the petitioner against the members of the D.P.C. or the appointing authority without which we cannot lay our hands for interference in matters of this nature. However, Mr. Ray invited our attention to Annexure-3 which runs thus :

" I have been directed by the Postmaster General, Orissa Circle, Bhubaneswar to inform that the PMG has carefully considered the two identical representations from Sri N.Mohapatra, Kanika Rajabati S.O.(Cuttack-8) and Sri A.K.Sen, P/A Tulsipur S.O.(Cuttack-8) regarding their non-promotion to the LSG grade under the time bound ~~one~~ promotion scheme.

At the time the DPC considered the question of promotion of eligible officials to the LSG under the time bound ~~one~~ promotion scheme, departmental proceedings were pending against the officials as follows :-

- 1.Sri N.Mohapatra :-Proceedings under Rule 14 CCS (CC&A) Rules initiated(i) on 16.6.83 and(ii)on 12.10.83.
- 2.Sri A.K.Sen :-Proceedings under Rule 14 of CCS (CC&A) Rules 1965 initiated on 12.8.83.

The Departmental Promotion Committee did not take a final decision on the fitness of otherwise of these two officials for promotion on account of the pendency of disciplinary proceedings as above. As such, the cases of these officials be reviewed by the D.P.C. in the light of the final decision taken in the departmental proceedings referred to. The question of their promotion or otherwise to the LSG cadre will, therefore have to await finalisation of the departmental proceedings.

The above decisions of the P.M.G.should at once be communicated to the above officials and compliance reported. "

The last paragraph of Annexure-3 appears to be very important. Therein it is stated that the D.P.C. did not

take a final decision on the fitness or otherwise of this particular officer for promotion on account of the pendency of the disciplinary proceeding, as stated above. The further important fact found in the said letter is that the P.M.G. is of the view that the case of these two officials would be reviewed by the D.P.C. in the light of the final decision taken in the departmental proceeding. Taking into consideration the contents of Annexure-3 along with the note given in the minutes of the D.P.C. that the petitioner was unfit, we are of the view that the D.P.C. found the petitioner to be unfit because <sup>a</sup> ~~the~~ proceeding was pending prior to 30th November, 1983.

Learned Sr. Standing Counsel Mr. Misra vehemently urged before us and submitted that the language employed in Annexure-3 is not happily worded and therefore the Bench should take serious notice of the fact that the D.P.C. having once found the petitioner unfit, there is no further scope for a review D.P.C. to be convened to reconsider the case of the petitioner. Ordinarily we might have accepted the aforesaid argument of the learned Sr. Standing Counsel if Annexure-3 would not have been in existence. In a recent judgment of the Full Bench constituted by the Hon'ble Chairman and Hon'ble Vice-Chairmen of two other Benches reported in ATR 1987 (1) CAT 547 (K.Ch. Venkat Reddy & others Vrs. Union of India & others) it has been observed that sealed cover theory should be adopted in a case where the D.P.C. finds that a proceeding is pending against a particular employee whose case is under

consideration by the D.P.C. In the present case the sealed cover theory should have been adopted. But it was submitted by the learned Sr.Standing Counsel that the D.P.C. having found the petitioner to be unfit or unsuitable, there was no occasion for the D.P.C. to adopt the sealed cover system. It is difficult for us to accept this submission of the learned Sr.Standing Counsel because of the contents of Annexure-3. There is another stumbling block for the respondents - O.Ps. In para 3 of their counter, the respondents - O.Ps. have stated as follows :-

" That the facts stated in para 6(1) to 6 (3) of the application are not fully correct. Although the applicant was due for promotion with effect from 30.11.83 as per the scheme, his case could not be considered by the DPC held in 1984 due to the fact that proceeding under Rule 14 of the C.C.S. (C.C. & A) Rules 1965 was initiated on 12.8.85 and the punishment inflicted thereby was current by that time. "

The averments noticed in para 3 completely runs counter to the arguments advanced by the learned Sr.Standing Counsel. On the contrary, it supports the view taken by us that the D.P.C. found the petitioner unfit because a proceeding was pending against him. It is needless to state that even if a departmental proceeding is pending, yet discretion lies with the competent authority to give promotion to the petitioner. If the discretion is not used by the competent authority in favour of a particular employee no court can lay its hands for interference but in the present case we find that promotion if any was due to the petitioner with effect from 30.11.1983. Proceeding has been initiated on

12.8.83 which admittedly culminated on 30.7.86 with an order of censure having been passed against him. Dirty linen, if any against the petitioner has since been washed away. Therefore, now the case of the petitioner should be considered by D.P.C. to adjudge the suitability of the petitioner for promotion under the Time Bound Promotion Scheme. Therefore, we would direct that the case of the petitioner be considered by the review D.P.C. which should be convened within two months from the date of receipt of a copy of this judgment and the suitability or otherwise of the petitioner should be adjudged by the review D.P.C. with reference to the date of entitlement of the petitioner i.e, 30th November, 1983 and in case the petitioner is found to be suitable, all benefits should be given to him according to rules.

Thus, the application is allowed leaving the parties to bear their own costs.

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
Dated the 16th June, 1987/Roy

*[Signature]*  
16.6.87  
Member (Judicial)

*[Signature]*  
16.6.87  
Vice-Chairman