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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Original Application No.198 of 1988

Date of decision: 2nd March, 1990

1. Sri Golak Bihari Baral,
aged about 46 years,
S/o Late Somanath Baral, Sub-Postmaster,
Gambhari Munda, P.O. Gambarimunda,
Via-Khurda, Dist. Puri.

..... APPLICANT

-Versus-

1. Union of India, represented by
Director General, Posts, Dak Tar Bhawan,
New Delhi-110001.
2. Postmaster General, Orissa Circle,
Bhubaneswar-751001, Dist. Puri.
3. Senior Superintendent of Post Offices,
Puri Division, Puri-752001.

..... RESPONDENTS

For the Applicant. M/s. P.V. Ramdas
& B.K. Panda

For the Respondents Mr. T. Dalei, Addl. Standing
Counsel (Central).

C O R A M :

THE HON'BLE MR. P. S. HABEEB MOHD., MEMBER (ADMN)

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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

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P.S.HABEEB MOHD., MEMBER (ADMN) Sri Golak Bihari Baral, Sub-Post-Master, Gambari Munda, district of Puri has filed this application under section 19 of the Administrative Tribunal's Act, 1985 with the prayer for issue of directions giving effect to his promotion retrospectively as L.S.G. Clerk and re-fixing his seniority in the Divisional Gradation List as per Annexure-9 dated 7th August, 1987.

2. The case of the applicant is that he entered service as a time scale clerk on 15.8.62 in the Postal Department and was confirmed as such with effect from 1.3.65. He appeared for an examination on 10.12.78. He was informed that he has successfully completed the said Examination as per Annexure-1 dated 6.6.79.

" Copy of letter No. RE/30-17/78 dt. 6.6.79 from PMG Orissa (Annexure-1).

Sub: Result of the higher grade Examination-1/3rd quota of vacancies for 1977 and 1978 held on 10th December, 1978.

This list of officials who has passed in the qualifying examination for the higher grade of Time scale clerks/sorters and UDC SB & ICO-1/3rd quota of vacancies held on 10.12.78 is enclosed. The name of the qualified candidates are arranged according to their inter-se-seniority. This may please be wide circulated among the concerned staff.

Sd/-P.C. Mishra
A.P.M.C. (Rectt)
For Postmaster General,
Orissa,
Bhubaneswar-751001

ORISSA POSTAL CIRCLE

PURI OFFICE

(Puri Division)

Sl. No.

Roll No.

Name

xx

xx

xx

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15. 39 Golakbehari Baral
xx xx xx

No.B-12-12-Examn.dated at Puri 752001 15th June'79.

Copy to:-

- 1-3. All PMS in Puri Division
4-10 All Officials in Puri division those who appeared in the Examination.

Sd/-Illegible
For Sr.Suptd.of Post Offices,
Puri Division,Puri-752001*

2. Vide Annexure-2 his case was approved for promotion to the L.S.G.quota vide Memo No.St.26-5/81 dated 1st June,1982.However,he was not actually promoted to the L.S.G.cadre on the ground that there was a disciplinary proceeding against him in which vide orders by the Disciplinary Authority on 1.10.83, the penalty of stoppage of increment for 6 months was imposed on him(Annexure-3).The appeal petition before the Appellate Authority was rejected on 24.1.84 vide Annexure-4.In November,1983 time bound promotion was introduced for time scale clerk and the petitioner was promoted on the basis of the time bound promotion scheme on 13.10.84.His plea is that he should have been promoted on the basis of the examination earlier and the promotion should not have been held up on account of the Disciplinary Proceeding.

3. The Respondents take the following plea in their reply;

"In the mean time the petitioner passed an examination for promotion to L.S.G.,the result for which

was published on 6.6.79. There being no vacancy to absorb him instantly he was allotted against a vacancy of 1982 vide Annexure-2. The aforesaid examination is a qualifying examination and unless vacancies arise one may not be absorbed. Before giving him the promotion his case was considered in the DPC dt. 24.5.82 in which his name was kept in sealed cover. In the year 1983 on 30.11.83 the orders relating to promotion to LSG cadre were changed. There was no necessity for passing any examination but anybody having completed 16 years unblemished service be given promotion to LSG scale of pay irrespective of the post one works in. On this Time Bound promotion scheme the DPC dt. 24.5.82 considered his name but he was not found fit as the disciplinary case was pending. Thus after the punishment was over he was given his due promotion vide Annexure-2 and as such it is submitted that the applicant is not entitled for the reliefs sought for, and the application is not maintainable and it is liable to be dismissed".

3. We have heard the learned Counsel for the applicant and the Counsel for the Respondents. It is un-doubted that Annexures A/1 and A/2 were issued. Annexure-R-2 dated 24.5.82, the proceedings of the DPC produced by the Respondents, shows the DPC followed the sealed cover procedure in so far as the applicant was concerned vide the proceeding dated 24.5.82. The records show that the applicant was chargesheeted under rule 16 of the CCS(CCA) Rules, 1965 vide Office Memo No. dated 15.7.83 and the chargesheet was delivered to the applicant on 19.7.83. This

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clearly shows that the stage for coming to the conclusion that the proceeding was pending against him had not been reached. That is the only ground on which promotion has been held up. ~~the proceeding.~~ The Full Bench Judgement Central Administrative Tribunal in K.CH.Venkata Reddy & Ors-Vs- Union of India held as follows:- (Pages 158-182 of the Full Bench Judgements of the CAT (Bahri Bros.) Delhi, 1989 Edition.

- (1) Consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceeding against an official.
- (2) Withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are pending against him cannot be treated to be a penalty under Rule 11 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965;
- (3) The instructions issued by the Central Government embodying the sealed cover procedure do not conflict with CCS (CCA) Rules, 1965 and as such it is quite valid except for the portions indicated above which have been struck down by us.
- (4) the sealed cover procedure can be restored only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;
- (5) the adoption of the sealed cover procedure as modified by us sufficiently safeguards the interests of the employees against whom disciplinary or Criminal proceedings had been initiated as also the public interest in the matter of promotion and the same is valid;
- (6) the sealed cover procedure to be valid should provide for payment of salary for the period during which the promotion was withheld along with all consequential benefits in case the official is completely exonerated in the disciplinary or criminal proceedings;
- (7) in cases where a penalty is imposed on the official after the conclusion of the enquiry, his claim for promotion should be considered by a review DPC as on the original date in the light of the results of the sealed cover as also the penalty imposed and his claim for promotion cannot be postponed for consideration to a subsequent date;

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- (3) a similar sealed cover procedure shall be adopted and followed by the Government in cases of withholding selection grade or the higher scale of pay or the crossing of the efficiency bar pending disciplinary or criminal proceedings, to safeguard and protect the interests of the official concerned in the event of ultimate exoneration in those proceedings".

4. From this judgement clear that the sealed cover can be followed only after the charge memo has been served on the concerned officer of the chargesheet filed before the Criminal Court. In view of this, it cannot be held that the promotion of the applicant should have been held up on this ground and therefore the with-holding of his promotion was not in accordance with the law. We therefore, direct the Respondents to convene the Review D.P.C. and consider the case of the applicant for promotion in accordance with Annexures-A/1 and A/2 from the appropriate date and give him the service benefits including his seniority after such promotion. However, he will not be entitled to back wages for the period he has not worked in the higher post. This order be implemented within one month from the date of receipt of its copy.

There will be no order as to costs.

[Signature]
2.3.90
.....
MEMBER (JUDICIAL)

[Signature]
21.3.1990
.....
MEMBER (ADMINISTRATIVE)

