

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO: 162 OF 1990.

Date of decision: January 14, 1991.

B.Jagatdeo

Applicant

Versus

Union of India and others

Respondents

For the applicant

: Mr. D.P.Dhalsamant, Advocate

For the Respondents

: Mr. Aswini Kumar Mishra,
Sr. Standing Counsel (CAT)

C O R A M:

THE HONOURABLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HONOURABLE MR. N.SENGUPTA, MEMBER (J),

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1. Whether Reporters of local paper may be allowed to see the Judgment ? Yes.
 2. To be referred to the reporters or not ? *No*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

OPTA, MEMBER (J),
N. S. The applicant has asked for reliefs of a direction to promote him to the Higher Selection Grade-II (H.S.G.-II) Cadre in the Postal Service from the date his juniors were promoted to that grade.

2. The applicant's allegations are that he was promoted on Ad-hoc basis to H.S.G.-II cadre ~~wide~~ a order dated 10th August, 1988 but the same order was cancelled before he could join in the Post where he was joined on promotion. His Juniors were allowed to work in the higher grade. The order of his promotion was cancelled on the ground of currency of a punishment inflicted in a Disciplinary Proceeding for recovery of an amount. The applicant's case is that such a punishment is no bar for promotion. Therefore, the cancellation order was wrong and he should be deemed to have been promoted from the date he was due to be promoted and his juniors actually officiating in the higher grade Post.

3. The Respondents in their reply have stated that the applicant as a senior official in the lower selection grade cadre was due to be promoted to the cadre of H.S.G.-II and in fact his case was considered but he

Not Served

~~He could not be promoted as~~ his name was at Sl.No.28 in the list prepared and as such he could not be recommended for promotion by the Departmental Promotion Committee (DPC) which met on 30.3.1988, that DPC recommended names of 15(fifteen)eligible officials for promotion. However, the applicant was selected for adhoc spromotion to HSG-II as some vacancies ~~were~~ available and was ordered to be posted as Post Master Bargarch Head Office but subject to the condition that no Disciplinary or Vigilance case was pending against him. As the Senior Superintendent of Post Offices, Cuttack City Division reported by his letter dated 22.8.1988 that a Disciplinary Proceeding was pending against the applicant, the order of promotion of the applicant was cancelled. The case of the Respondents further is that as the applicant was found unfit for promotion to the H.S.G.-II cadre, he was not promoted.

4. We have heard Mr. D.P.Dhalsamant, learned Counsel for the applicant and Mr. Aswini Kumar Mishra learned Senior Standing Counsel(CAT) for the Respondents.
There is -
~~We have~~ no dispute that the post in H.S.G-II are non-selection posts. Therefore, promotion is to be made according to seniority subject to elimination of the unfit. Mr. Dhalsamant has urged before us that once an order of promotion was issued, there can be no question of the applicant being found unfit for being promoted to

New Encl

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H.S.G.-II cadre. On the other hand Mr. Misra, the learned Counsel for the Respondents, has urged that the very fact that the order of promotion in which the applicant ^{relied} makes an express ~~mention~~ of the promotion being subject to there being no pending Disciplinary or Vigilance case against the applicant ~~suggested~~ suggested that it was ^a conditional order and the fitness of the applicant had not been adjudged fully. On a perusal of the averments in the application and the Annexures thereto it would be found that in fact at the date of order of promotion/Disciplinary Proceeding was pending against the applicant and it had not been disposed of finally in as much as at that time an appeal preferred against the order of imposition of penalty of recovery was pending disposal. After the disposal of the appeal the applicant filed another Original Application No.322 of 1989 and this Original Application was disposed of by the judgment dated 21st May, 1990 by which the case was practically remitted back for fresh disposal after examining a material witness in presence of the applicant. Mr. Dhalsamant has contended that when only a minor penalty of recovery of an amount was imposed, ~~and~~ according to the instructions dated 19th May, 1984, copy at Annexure-4 to the application, there ^{was} no justification for the cancellation of the promotion order. The Respondents do not dispute that there are instructions to the effect that punishment of

McAuley JV

recovery of pecuniary loss would not constitute a bar to the promotion of the official, but, however, such official can be promoted only on the basis of overall assessment of his records of service and a further condition that the DPC must have recommended his promotion to the next higher grade. The learned Counsel for the Respondents has reiterated that the order of promotion at Annexure-1 to the application was only a tentative and conditional one and he has further urged that in view of the statement made in the counter that the DPC did not recommend the case of the applicant for promotion, the applicant cannot claim any relief.

5. For appreciating this submission of Mr. Misra a reference to para 3(v) of the counter filed by the respondents may be made. In that subpara the Respondents have stated that the DPC which met subsequently for considering the case of the applicant for promotion to H.S.G.-II cadre, did not recommend him for promotion for the reason of currency of the punishment of recovery of an amount. From this, it would appear that the fact of currency of the punishment weighed with the DPC, but in the earlier application, the punishment order was set aside and the case was remitted back for fresh disposal after examining a person

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in the presence of the applicant, so in fact the punishment was wiped out and any order or finding based on such a fact which was legally nonexistent, cannot be valid and a reconsideration of the case of the applicant by a DPC on the facts now existing would be necessary.

After the disposal of the earlier application, more than 7 months have passed, possibly the Disciplinary Proceeding might now have come to a conclusion.

6. In these circumstances we would direct that if the disciplinary proceeding has ended, in favour of the applicant, he should be promoted with effect from the date he was due for promotion or the date from which his immediate junior began to officiate in H.S.G.-II, otherwise the case of the applicant be considered by Review D.P.C.. Since the applicant was aged about 57 years at the time of filing of the application, the review DPC to meet and consider the applicant's case for promotion within two months hence.

7. Thus, this case is accordingly disposed of leaving the parties to bear their own costs.

Parashuram
..... 14.1.91
VICE CHAIRMAN



Alka Singh
..... 14.1.91
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench/K.Mohanty.