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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 710 OF 1994
Cuttack this the 09th day of November/2000

T.R. Patra ... Applicant(s)

-versus-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9/11/2000

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)
9.11.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.710 OF 1994
Cuttack this the 09th day of November/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

T.Ramesh Patra, S/o. T.M. Patra,
Asst. Post Master (Accounts)
At/PO: Chatrapur, DIST : GANJAM

...

Applicant

By the Advocates

M/s.G.A.R.Dora
V.Narasingh
G.P.R.Dora

-VERSUS-

1. Union of India through the Director General of Post Offices, New Delhi
2. Chief Postmaster General, Orissa Zone, Bhubaneswar, At/PO-Bhubaneswar, Dist - Khurda
3. Postmaster General, Berhampur (Gm) Region At/PO - Berhampur, Dist - Ganjam

...

Respondents

By the Advocates

Mr. A.K. Bose
Sr. Standing Counsel
(Central)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : In this Application, applicant T.Ramesh Patra, who was serving as Assistant Post Master (Accounts) on the date of filing of application on 6.12.1994 ^{prop} for issue of direction to Respondents (Department) to promote him under the Biennial Cadre Review (B.C.R.) Scheme with effect from 1.10.1991 with consequential benefits and interests, ~~the~~ following facts, as mentioned in Para-2 are not in controversy.

2. The applicant joined as Postal Assistant on 15.8.1962 and was promoted to the next higher cadre of L.S.G. on 13.10.1982. His Serial No. in the Circle Gradation List of L.S.G.s corrected upto 1.7.1989 was 296. He had completed 26 years of service in

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the Clerical Cadre on 14.8.1988.

Promotion to the next Higher Selection Grade-II (H.S.G.II) under Biennial Cadre Review (BCR) Scheme was introduced vide D.G. Posts letter dated 11.10.1991 to be effective from 1.10.1991. The scheme is applicable to the employees who are in Group C and D cadres and who were already promoted to L.S.G. Cadre.

By Memo dated 2.5.1991 (Annexure-R/1) of Senior Superintendent of Post Offices, Bhubaneswar, the applicant was proceeded under Rule-16 of C.C.S. (CCA) Rules, 1965 in an allegation of taking illegal gratification from six E.D. officials while drawing their arrears dues and making payments to them. The applicant was awarded penalty of stoppage of one increment for three years without cumulative effect, by order dated 18.11.1991 (Annexure-R/2). On the appeal preferred by the applicant the Appellate Authority, i.e., Director of Postal Services, Berhampur after considering the gravity of the charge set aside the penalty order and directed the Disciplinary Authority to draw the proceedings against the applicant under Rule-14 of the CCS (CCA) Rules vide Annexure-R/4 dated 28.2.1992.

In the meanwhile along with other officials of L.S.G. the applicant was also considered for promotion to the cadre of H.S.G. II by the Departmental Promotion Committee and the applicant was not found fit for promotion as per the DPC proceedings dated 27.1.1992. The reason assigned by the D.P.C. was that though there ^{was} no adverse entries against the applicant, he was punished with withholding of one increment for three years without cumulative effect by the disciplinary in its order dated 18.11.1991.

As per the directions communicated by the Appellate

Authority the applicant was proceeded under Rule-14 of CCS(CCA) Rules, 1965 by the Senior Superintendent of Post Offices, Berhampur vide Memo dated 22.7.1992(Annexure-R/6). The applicant challenged ^{the appellate} this order before this Tribunal in Original Application No.321/92. On 20.7.1992, the Original Application was admitted with a direction that the proceedings can continue but no final order should be passed without leave of the Tribunal.

3. The grievance of the applicant is that under B.C.R. scheme he is entitled to One Time Bound Promotion on completion of 26 years of service in the basic cadre. By the time the D.P.C. met there was no adverse entries in his ACRs and he having satisfactory service of 26 years, was entitled to be promoted to H.S.G. II carrying pay scale of Rs.1600-2600/-. Shri Narasingha Panda and Shri Khali Behera who were punished in the disciplinary proceedings for pecuniary loss have been promoted under the B.C.R. Scheme. The applicant represented on 16.1.1993 to the Post Master General for reconsideration of the recommendations of the D.P.C. and this was forwarded to the Chief Post Master General, Bhubaneswar with due recommendation on the ground that the applicant's case was not examined properly by the D.P.C. As it did not yield any result, this Application has been filed.

4. In the counter, ^{file on 7.3.95} the stand of the Department is that since on the date of the D.P.C., i.e., 27.1.1992, the penalty awarded by the Disciplinary Authority against the applicant was in force, he was not considered for promotion. In fact, the cases of Narasingh Panda and Khali Behera were also taken up for consideration by the D.P.C. held on 27.1.1992, but they were not considered fit to be promoted due to the currency of

of punishment in the disciplinary proceedings, as would be evident from the remarks of the D.P.C. under Annexure-R/5, against Serial Nos. 13, 19 and 82. During subsequent D.P.C. these two officials were allowed to be promoted by that time as no punishment was current against them and no disciplinary proceeding was under contemplation against them. Even the case of the applicant was duly taken up for consideration by the subsequent D.P.C. held on 4.9.1992 and 30.3.1993 and his case was kept in the sealed cover. According to Department, mere completion of 26 years of service without having sound record of service does not entail promotion as a matter of right under the B.C.R. Scheme. On these averments the Department pray for dismissal of this Original Application.

5. In the rejoinder it is the case of the applicant that the plea of the Department that in the D.P.C. he was not considered fit for promotion because of the currency of the punishment awarded by the Disciplinary Authority cannot be entertained under law, because the punishment was ultimately set aside by the Appellate Authority. Moreover, pendency of disciplinary proceedings is no bar for promotion under the B.C.R. Scheme.

6. We have heard Shri G.A.R.Dora, the learned counsel for the applicant and Shri A.K.Bose, the learned Sr.Standing Counsel appearing for the Respondents (Department). Also perused this record and the record of O.A.321/92, which was disposed of on 28.5.1996 on being withdrawn.

7. Shri Dora, the learned counsel for the applicant submitted that under the B.C.R.Scheme which is effective from 1.10.1991, the applicant's case as on 1.10.1991 should be taken into consideration and since by 1.10.1991 he had completed 26

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more than 26 years of service without any adverse entry in his A.C.R. his promotion could not have been withheld simply because of pendency of disciplinary proceedings by 1.10.1991. In support of his contention Shri Dora furnished xerox copy of a judgment purported to have been pronounced by the Central Administrative Tribunal, Ernakulam Bench on 30.1.1992 in O.A.986/91. In course of hearing Shri Dora submitted that this has been xeroxed from a journal of All India Telecom Employees' Union, Class-III dated 10.6.1992. Learned counsel for the applicant could not enlighten us whether such a judgment was pronounced in any recognised legal journals, usually contributed by the Courts/Tribunals. Even, we could not come across any such judgment having been published in any of the legal journals preserved in the Library of this Bench. This apart, this xerox copy is an extract of Paras-6 to 9 only. It comes to this even if such a judgment has been pronounced by the Ernakulam Bench, the applicant is unable to furnish the full ^{text} gist of the ^{said} judgment for better appreciation by this Tribunal as to the point involved therein. Extract of Para-6, as apparent from this xerox copy reveals that the Ernakulam Bench is of the view that the pendency of a disciplinary proceeding is not a bar for grant of promotion under the B.C.R. Scheme, because B.C.R. Scheme pertains to the demand of the Staff Union for granting One Time Bound Promotion on completion of 26 years of service in the basic cadre and the Respondents (Department) have accepted the demand and issued a policy decision uniformly applicable to all concerned. But a perusal of the B.C.R. Scheme dated 11.10.1991 (Annexure-A/1) reveals that the Staff Union pressed not for granting One Time Bound Promotion as mentioned in that judgment, but for 2nd Time Bound Promotion on completion

26 years of service in the basic grade. Even this concept was not found acceptable. However, the Government had accepted the need for B.C.R., i.e. (once in two years) under which the incumbent would of existing post be enabled to draw pay in higher scale on completion of 26 years of service not only for providing promotional opportunities for the staff concerned, but also on the basis of functional justification. Under Para-2(iv) the criterion for promotion would be the eligibility of 26 years of satisfactory service. This Para-2(iv) was amended on 25.2.1992 to the effect that criterion for promotion would be 26 years of satisfactory service rendered in the basic scales of pay taken together with the service rendered in the scale of pay of Time Bound Promotion after 16 years of service.

It comes to this, the promotion under B.C.R. Scheme is not automatic, but is subject to satisfactory service of 26 years. This promotion will be considered by the D.P.C. In the Office Memorandum dated 12.1.1988 issued by the Government in regard to sealed cover procedure it has been mentioned that at the time of consideration of cases of Govt. servants for promotion details of Government service in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the D.P.C. :

- i) Government servants under suspension;
- ii) Government servants in respect of whom disciplinary proceedings are pending or decision has been taken to initiate disciplinary proceedings;
- iii) Government servant in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; and

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- iv) Government servant against whom an investigation on serious allegation of corruption/bribery or similar grave misconduct is in progress either by the C.B.I. or any other Agency, departmental or otherwise
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These instructions of the Government of India were in force till 14.9.1992, on which date another Office Memorandum superseding this Office Memorandum was issued. There is no dispute ^{that} even by 1.10.1991 disciplinary proceeding was pending against the applicant. Even if the D.P.C. had taken this particular day into consideration, as per instructions issued vide Office Memorandum dated 12.1.1988, the D.P.C. would have kept their views in the sealed cover without recommending for promotion. It is not clear from the extract of the purported judgment of the Ernakulam Bench which is from Para-6 to Para-9 that the Bench had the scope to consider the Office Memorandum dated 12.1.1988 in its proper perspective. As already stated, and the this extract not being in full gist/full report of such judgment not being available we cannot place reliance on this extract.

There is no dispute that the D.P.C. for the first time met on 27.1.1992 and considered the case of the applicant, and by that time the punishment in the disciplinary proceedings against the applicant was still in force. As earlier discussed, even if the D.P.C. had met earlier, i.e. soon after the B.C.R. Scheme was circulated, the D.P.C. in normal course would have adopted the sealed cover procedure in respect of the applicant in view of pendency of the disciplinary proceedings and since the proceedings ultimately ended in imposition of punishment on the applicant, such sealed cover could not have been opened in view of the rulings of the Apex Court in Para-7 of Janaki Raman's case reported in AIR 1991 SC 2010 to the effect that

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sealed cover cannot be opened if any penalty including censure has been imposed.

10' The fact remains that much prior to 27.1.1992 when the D.P.C. met the applicant by order dated 18.11.1991 of the Disciplinary Authority was punished on the proof of charge that he had accepted illegal gratification from the E.D. Agents, sometime in September, 1990. Hence by 1.9.1991 it cannot be said that the applicant had 26 years of satisfactory service to be eligible for promotion under the B.C.R. Scheme.

11. We are aware that Shri Dora contended that the punishment order dated 18.11.1991 should be treated as non-existent under law as the same was set aside by the Appellate Authority by order dated 28.2.1992; and on this count the decision of the D.P.C. Meeting on 27.1.1992 not to recommend promotion of the applicant solely on the ground that punishment order was in force cannot be sustained under law. The punishment order of the Disciplinary Authority was set aside by the Appellate Authority not on account of established and proved innocence of the applicant, but on account of the fact that nature of charges being grave minor penalty charge sheet should not have been issued and the charge sheet under Rule-14 of CCS.(CCA) Rules for imposition of major penalty ought to have been issued and accordingly to that effect direction was given by the Appellate Authority. So here is a case where the Appellate Authority did not observe that the charges against the applicant were not proved. The order of the Appellate Authority would imply that through that order the Department had taken a decision to initiate proceedings by issuing charge sheet for imposition of major penalty on the applicant. This being so, as per the

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guidelines issued in Office Memorandum dated 12.1.1988, even under such circumstances the D.P.C. would not have straightaway recommended promotion but would have kept its opinion in the sealed cover. This Office Memorandum dated 12.1.1998 was the subject matter of interpretation by the Apex Court in the cases of Delhi Development Authority v. H.C.Khurana reported in AIR 1993 SC 1488, Union of India & Ors. vs. Kewal Kumar reported in AIR 1993 SC 1585 and also recently by three Judges in Union of India & Ors. v. R.S.Sharma reported in 2000(2) (SLR) 428. The Apex Court nowhere declared this Office Memorandum as ultra vires or illegal.

12' In regard to the point of discrimination pleaded in the Original Application that S/Shri Narasingha Panda and Khali Behera were promoted under the B.C.R. Scheme even though they were punished in the disciplinary proceedings the reply of the Department in their counter is clear and this has not been refuted in the rejoinder. These persons like the applicant were not considered for promotion in the 1st D.P.C., because of penalties imposed on them were still in force. But in the subsequent D.P.C. they were allowed to be promoted as by that time neither the punishment was current against them nor any proceeding was pending against them.

12 - Even the case of the applicant was considered in the D.P.C. held on 4.9.1992 and 30.3.1993 and his case had been kept in the sealed cover because of the proceedings initiated through Memo dated 20.7.1992 (Annexure-R/6) was still pending. This proceeding could not be completed by then as the applicant in Original Application No.321/92 obtained an order that final order should not be passed without the leave of this Tribunal. Hence the procedure adopted by the subsequent DPC is also justified under law.

14. Of course Shri Dora, the learned counsel for the applicant during hearing placed reliance on the following decisions :

- 1) V. Jagadeswar Rao vs. P.M.G.(A.P.) decided by A.P. High Court and reported in 1978 SLJ 201
- 2) S. Somayah v. Zonal Manager, F.C.I. reported in 1978 SLJ 295
- 3) D. Srinibas Iyer v. Mysore State reported in 1971 Lab. I.C. 937
- 4) Piara Singh v. Delhi Development Authority reported in 1984(2) SLR 659
- 5) N. Sanjeevi v. Union of India & Ors. reported in 1991 (1) (CAT) 390

In none of these decisions interpretation of Office Memorandum dated 12.1.1988 issued by the Government of India was involved, because the relevant dates involved in those cases were much prior to the issue of this Office Memorandum. Hence these cases are distinguishable.

15 For the reasons discussed above, we do not see any merit in this Original Application which is accordingly dismissed leaving the parties to bear their own costs.

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN

(Signature)
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//