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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 149 OF 1995
Cuttack this the 31st day of July/2000

Srimati Nirupama Nanda

...

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

31.7.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(6)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.149 OF 1995
Cuttack this the 31st day of July/2000

CORAM:

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

...

Srimati Nirupama Nanda
W/o. Late Kulamani Bhatta (Ex L.S.G. S.P.M.)
AT/PO: Nukhapada, Via - Narasinghpur
Dist : Cuttack

...

Applicant

By the Advocates

Mr.P.K.Padhi

-VERSUS-

1. Union of India through it's Secretary
Ministry of Communication
Dak Bhawan, New Delhi - 110001
2. Chief Post Master General (Orissa Circle)
Bhubaneswar - 751001
3. Superintendent of Post Offices
Cuttack South Division,
Cantonment Road
Cuttack - 753001

...

Respondents

By the Advocates

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

...

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant's husband late Kulamani Bhatta joined as Postal Assistant on 23.3.1966 and was promoted to the cadre of L.S.G. on 30.11.1983 under Time Bound One Promotion Scheme. Due date of promotion to the cadre of H.S.G. II under Biennial Cadre Review (in short B.C.R.) Scheme fell on 1.3.1992 to be effective from 1.7.1992, the date of holding D.P.C.

2. It is the case of the applicant that her husband died on 25.8.1993. He was not given promotion under Biennial Cadre Review Scheme. After the death of her husband applicant came to know of this fact that her husband was not considered for promotion because of disciplinary proceedings under Rule-16 of C.C.S.(CCA) Rules, 1965 initiated through Memo dated 23.3.93, i.e. much after the D.P.C. met. In the D.P.C. meeting 10 employees were promoted from L.S.G. II to H.S.G. II and out of them four are juniors to her late husband. As no disciplinary proceeding was pending against him on 1.7.1992, his case should have been considered and he should have been promoted. Her representations dated 22.4.1994 and 20.1.1995 (Annexures-3 and 4) did not yield any result. Hence this application for direction to respondents to treat her late husband promoted to H.S.G. II with effect from 1.7.1992 with all consequential financial and service benefits and also pensionary benefits.

3. The Department in their counter state that while late Kulamani Bhatt was working as Sub-Post Master, Barambagarh S.O. from 15.5.1989 to 3.7.1992 he manipulated the office copy of Telegram receipt and misappropriated Govt. cash. For the above omissions and commissions and also for someother irregularities

he was proceeded against under Rule-16 of CCS (CCA) Rules, 1965 through Memo dated 23.3.1993. The disciplinary proceedings ultimately ended with punishment of stoppage of one increment for three months when falls next by order dated 3.5.1993 (Annexure-R/1). His case was taken up for consideration for promotion to the cadre of H.S.G. II by the Departmental Promotion Committee on 1.7.1992. By that time the allegation of misappropriation was already enquired into by the A.S.P. In-charge of Jagatsinghpur S.O. and prima facie case was established. Accordingly the D.P.C. kept his case in the sealed cover. The next D.P.C. for the said purpose was also held on 1.4.1993. The D.P.C. considered his case and again kept the matter in the sealed cover since the disciplinary proceedings against him was pending by that time. Thereafter he expired on 28.8.1993. Under the circumstances he was not promoted to H.S.G. II grade during his life time. With these averments the respondents have opposed the prayer of the applicant.

4. In the rejoinder filed by the applicant no new facts have been urged excepting the contention that promotion cannot be held up since the punishment order owing to the death of applicant's husband could not be executed. There is a

5. We have heard Shri P.K.Padhi, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing for the Respondents (Department). Also perused the records.

6. There is no denial by the applicant either during hearing or in the rejoinder that by the time the D.P.C. met on 1.7.1992 and 1.4.1993, the allegation of misappropriation of Govt. money by late Kulamani Bhatt had already been enquired into by the A.S.P. In-charge, Jagatsinghpur and a prima facie case was established. It is also not in dispute that on both these dates

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the D.P.C. adopted the sealed cover procedure in respect of the applicant.

7. Shri Padhi, the learned counsel for the applicant contended that since no disciplinary proceeding was initiated by the time the D.P.C. on the two dates met, there was no justification for adopting the sealed cover procedure. He placed reliance on the decision of the Apex Court in K.V. Janakiraman's case reported in AIR 1991 SC 2010. In para-6 of the judgment the Apex Court nodoubt observed that sealed cover procedure is to be resorted to only after charge memo/charge sheet is issued. Pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If these two sentences of this judgment are only taken into account then the contention of Shri Padhi has some force. Yet at a later stage the Apex Court while interpreting the Memorandum dated 30.1.1982 issued by the Government of India (Department of Personnel & Training) held that sealed cover procedure can even be resorted to in respect of an employee against whom a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings. This is all the more clear in their discussion in Paras-14 to 17 in respect of Civil Appeal No.51 - 55/90. In those cases the D.P.C. met in July, 1986 to consider the cases of the employees for promotion but resorted to sealed cover procedure in view of pendency of the disciplinary proceedings against them, though formally charge sheet was issued either in August/December, 1987. In those cases the Tribunal directed the Department to give promotion to the employees on the basis of the recommendation, if any, of the D.P.C. of July/1986. The Apex Court observed that the Tribunal had taken a mechanical view and applied, because by

the time the D.P.C. met in July/86, the Committee had before it the record of refund of the amount by the respondents-employees and the consequent withdrawal of prosecution without prejudice to the authorities' right to institute departmental proceedings. Hence according to Apex Court the D.P.C. was justified in resorting to sealed cover notwithstanding the fact that the charge sheet in the departmental proceeding was issued in the year 1987.

8. Hence we are not inclined to accept the contention of Shri Padhi that decision of the Apex Court in Janakiraman's case will support the case of the applicant. On the other hand we came across ~~from~~^a later decision of the Apex Court which by interpreting the Janakiraman's case laid down that once a decision has been taken by the competent authority to initiate disciplinary proceedings, sealed cover procedure can be resorted to even though the charge-memo/charge-sheet had not been issued (Vide Union of India v. Kewal Kumar reported in AIR 1993 SC 1585 which was also referred to by the Apex Court in Union of India v. R.S.Sharma reported in 2000(2) SLR 428) A Division Bench of C.A.T., Mumbai Bench, referring the cases of Janakirama, Kewal Kumar, and the Apex Court decision in State of M.P. vs. Syed Naseem Jahir, reported in 1993(SCC) L&S 429^{ant} in the case of Ramachandra S.Bhaskar v. Union of India reported in 2000(2) All India Services Law Journal 69 observed that purpose of sealed cover is that a person under cloud should not be rewarded with a promotion and one may not be promoted from the date the authority takes a conscious decision to issue him the charge-sheet.

9 We also take note of the another Supreme Court decision relied on by Shri Padhi which appears to have been reported in

January/96 (Part of Swamy's News). This case is distinguishable inasmuch as by the time the D.P.C. met, the applicant's husband was facing trial in criminal case and later on he preferred criminal appeal on his conviction and during the pendency of the criminal appeal he died. Ultimately the High Court apparently in view of his death recorded an acquittal. Under those circumstances the sealed cover was directed to be opened and if it transpired that appellant's husband was fit for promotion then he was to be deemed to have been promoted to the post of A.G. (Grade-II) with consequential service benefits. Shri Padhi also filed xerox copy of decision of the C.A.T., Ernakulam Bench in O.A./91 (O.A. no. is not legible) decided on 30.1.1992. The gist of the decision is also not clearly legible. Be that as it may, even if the decision will support the case of the applicant, we cannot take note of this decision in view of subsequent decisions of the Supreme Court and the latest decision of the Mumbai Bench (as referred above). Another decision of the Supreme Court (xerox copy filed) in Civil Appeal No. 739 of 1991 decided on 15.2.1991 has also been relied by Shri Padhi. It is not clear whether this decision has been reported in any Law Journal. Shri Padhi also did not file the full extract of the decision. He only filed a portion of Placitum. Even if this decision of the Apex Court is in favour of the applicant, the same cannot override the three decisions of the Supreme Court referred by us above.

10. Earlier we had already observed that the averment in the counter that by the time the D.P.C. met on 1.7.1992 and 1.4.1993, a prima facie case against the applicant's husband was established ~~and~~ on completion of enquiry ^{has not been disputed} subsequently

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thereafter

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Disciplinary proceeding was initiated, In other words, by those two dates the competent authority had already taken a conscious decision to initiate disciplinary proceedings against the applicant's husband. In view of the legal position discussed above with reference to decisions of the Apex Court and C.A.T., Mumbai Bench, the D.P.C. had not committed any illegality in resorting to sealed cover procedure in respect of applicant's husband. The fact remains ultimately the applicant's husband was punished in the disciplinary proceedings in order dated 3.5.1993. There is nothing on record that prior to death of applicant's husband on 25.8.1993, he preferred any departmental appeal and the same is pending. Position would have been different had the applicant's husband been exonerated from the charges - in which case he would have had his ultimate claim of promotion with effect from 1.7.1992 when his juniors were promoted.

11. In view of our discussions above, we do not see any merit in this Application which is accordingly dismissed leaving the parties to bear their own costs.

V. S. NATH SOM
VICE-CHAIRMAN
31.7.2000

31.7.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//