

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.492 OF 1996
Cuttack, this the 21st day of September, 1998

Sri Rajendra Kumar Chatterjee Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
21.9.98

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(Signature)

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CORAM:

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

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Sri Rajendra Kumar Chatterjee,
aged 58 years, son of late Surendranath
Chatterjee, Retired Postal Assistant,
Cuttack G.P.O., at Shaik Bazar,
P.S-Lalbag, Cuttack-8

Applicant

By the Advocates -

M/s S.K.Mohanty
S.P.Mohanty &
P.K.Lenka.

Vrs.

1. Union of Indian, represented by
its Secretary, Department of Posts,
Dak Bhawan, New Delhi.
2. Senior Superintendent of Post Offices,
Cuttack City Division, Cuttack.
3. Chief Post Master General,
Orissa Circle,
Bhubaneswar

Respondents

By the Advocate -

Mr.Ashok Mohanty
Sr.C.G.S.C.

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to give promotion to the applicant to the cadre of HSG-II with effect from 1.7.1992 by way of implementation of the recommendation contained in order dated 25.9.1992 at Annexure-7 with all consequential benefits including the pensionary benefits.

2. Facts of this case, according to the applicant, are that he joined Postal Department as Time Scale Clerk on 3.5.1966. He was promoted to the cadre of LSG with effect from 30.11.1983 in the order dated 19.5.1984 at Annexure-1. In the year 1991 a scheme was introduced in the Postal Department, known as Biennial Cadre Review. Under that scheme officials completing 26 years of satisfactory service and subject to fitness were required to be promoted to the cadre of HSG-II. The applicant completed 26 years of service on 3.5.1992 and was eligible for promotion to HSG-II from that date. At that time no departmental proceedings, criminal case or vigilance enquiry were pending against him. By order dated 12.10.1992 (Annexure-2) he was placed under suspension while he was working as Sub-Post Master, Dagarpada. Again in order dated 4.3.1993 (Annexure-3) the order of suspension was revoked and he was transferred on the same day by order at Annexure-4 as Postal Assistant to Cuttack G.P.O. These Annexures 3 and 4 do not show pendency of any disciplinary proceedings. Again in order dated 20.5.1993 (Annexure-5) proceedings under Rule 14 of CCS (CCA) Rules were initiated against him which ultimately resulted in imposition of punishment of reduction of applicant's pay by two stages for three years. Challenging the above order of punishment, the applicant has moved the Tribunal in OA No.1 of 1995 which is still pending. As the applicant was not given promotion to the cadre of HSG-II with effect from 3.5.1992 he filed a representation which is at Annexure-6.

He did not receive any reply. On personal enquiry, he found that in order dated 25.9.1992 at Annexure-7 Director, Postal Services, Bhubaneswar, has promoted him along with some other officials to the rank of HSG-II with effect from

1.7.1992. In the said order, it is also stated that before giving appointment, the Divisional Superintendents should ensure that no vigilance/disciplinary case is pending against the officials approved for promotion. By virtue of the order dated 25.9.1992 the applicant should have been promoted to HSG-II with effect from 1.7.1992 as no proceeding was pending against him. After the applicant came to know of this order, he filed a representation to Chief Post Master General on 5.5.1995 (Annexure-8), but no orders on his representation were passed till his retirement on 31.5.1996. That is why he has come up in this application with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant entered the Department of Post on 10.8.1960 as a lower grade official and was promoted to the cadre of Postal Assistant on 3.5.1966. He retired on superannuation on 31.5.1996. According to the provisions of One Time Bound Promotion Scheme, the applicant was promoted to LSG after completion of 16 years on 30.11.1983, i.e., from the ^{date of} introduction of the Scheme. He was due to be promoted to the Higher Selection Grade (HSG-II) under BCR Scheme after completion of 26 years of service in Postal Assistant cadre. Director of Postal Services approved his promotion in BCR Scheme subject to satisfactory record of service. This order of Director of Postal Services (Headquarters), Bhubaneswar, approving promotion of the applicant in Memo dated 25.9.1992 (Annexure-7) was received in the office of respondent no.2 on 30.9.1992. In this order of Director of Postal Services, there was an instruction to the appointing units that before giving appointment, the Divisional Superintendent should ensure that no vigilance/disciplinary case is pending against the person concerned. The respondents have stated that on 29.9.1992 while the applicant was working as Sub-Post Master, Dagarpada Non-Delivery Sub-Office, a Special Squad

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under the leadership of Assistant Superintendent of Post Offices made a surprise visit to that Sub-Office and in course of their visit, grave misconduct reflecting on the integrity of the applicant was noticed. It was found by the Squad on 29.9.1992 that the petitioner had booked 18 registered letters at the rate of Rs.8/- each on which no postage stamp was affixed and postage stamp of Rs.3/- was affixed on three registered letters against the required fee of Rs.8/-. The Squad also found 200 insufficiently paid book packets posted in the office during the period from 25.9.1992 to 29.9.1992 were detained by the petitioner in his office till arrival of the Special Squad. Because of the above lapses, disciplinary proceedings were contemplated against him and the petitioner was placed under suspension with effect from 12.10.1992. Thus, while the departmental authorities were processing the action for promoting the petitioner to HSG-II, grave misconduct reflecting on his integrity came to light for which he was placed under suspension. Therefore, the petitioner was not allowed promotion. The applicant was found guilty of misconduct in departmental proceedings under Rule 14 of CCS (CCA) Rules and was awarded punishment of reduction of pay by two stages for three years in order dated 21.3.1994. This punishment for three years was modified to one year as it was found that the applicant was due to retire from service with effect from 31.5.1996 and he did not have three years of service at his credit. His appeal to Chief Post Master General against the above order was also rejected. On his reinstatement, the applicant was posted as Postal Assistant in Cuttack G.P.O. During the pendency of earlier disciplinary proceedings, he was again involved in a fraudulent withdrawal of Rs.4346.50 from a Recurring Deposit Account of Cuttack G.P.O. on 19.4.1993 while he was working as Postal Assistant of Recurring Deposit Ledger Branch. The respondents have stated in their counter and I

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quote, "The disciplinary proceeding was further under contemplation against him continued in this respect till the date of his retirement". It is not clear from the above averment whether another disciplinary proceeding was initiated against the applicant which continued by the time he retired. The respondents have stated that the petitioner was directly involved in loss and fraud case one after another till the date of his retirement and that is why he was not promoted under BCR Scheme as such promotion was subject to satisfactory and good record of service. The respondents have stated that even though the Director of Postal Services had approved the promotion of the petitioner in his order dated 25.9.1992, which was received on 30.9.1992, grave misconduct by the applicant was revealed on 29.9.1992 and disciplinary proceedings were contemplated, and that is how his promotion was not given effect to. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. Learned lawyer for the petitioner has filed a brief note of submission along with a date-chart which has also been taken note of.

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5. The sole point for consideration in this case is that when in order dated 25.9.1992 Director of Postal Services had approved promotion of the applicant along with others with effect from 1.7.1992 and when on 1.7.1992 or on 25.9.1992 no departmental proceeding was pending against him, whether the departmental authorities were justified in not giving effect to the above promotion

order. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Union of India, etc. etc. v. K.V.Janakiraman, etc., etc., AIR 1991 SC 2010, in which it has been held that only when charge memo in a disciplinary proceeding or a chargesheet in a criminal prosecution is issued to the employee, it can be said that the departmental proceeding/criminal prosecution is initiated against the employee. In that decision, the issue was at what stage the sealed cover procedure is to be adopted by the D.P.C. In the present case, there is no question of sealed cover procedure because Director of Postal Services had already approved the applicant for promotion under B.C.R.Scheme in order dated 25.9.1992 with effect from 1.7.1992 and no disciplinary proceeding or criminal case was pending against the applicant ^{at that point.} It has been contended by the learned counsel for the petitioner that the applicant's promotion should not have been arbitrarily withheld. The second case referred to by the learned counsel for the petitioner is Delhi Development Authority v. H.C.Khurana, AIR 1993 SC 1488, in which the decision in K.V.Janakiraman's case (supra) was followed. In H.C.Khurana's case (supra) Hon'ble Supreme Court took note of Office Memorandum dated 12.1.1988 and the subsequent Office Memorandum dated 14.9.1992. Both these memorandums again relate to adoption of sealed cover procedure. In the Office Memorandum dated 12.1.1988 it was provided that sealed cover procedure will be adopted when the Government servant is under suspension and secondly, in case of Government servant in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings. The second part mentioned above is laid down in paragraph 2(ii) of the Office Memorandum dated 12.1.1988. This paragraph was

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substituted in Office Memorandum dated 14.9.1992 where it was laid down that sealed cover procedure should be adopted in respect of Government servant against whom a charge-sheet has been issued and the disciplinary proceedings are pending. The provision about adoption of sealed cover procedure in respect of Government servant against whom a decision has been taken to initiate disciplinary proceeding was dropped in Office Memorandum dated 14.9.1992. In **H.C.Khurana's case (supra)** the relevant circular was O.M. dated 12.1.1988 and the Hon'ble Supreme Court took the view that once a decision has been taken to initiate a disciplinary proceeding, then sealed cover procedure has to be adopted because where a decision has been taken to initiate the disciplinary proceedings against a Government servant, his promotion, even if he is found otherwise suitable, would be incongruous, as a Government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. Again this aspect of the law is not relevant for the present case because it has been submitted by the learned Senior Standing Counsel that in the case of the applicant, decision for initiating disciplinary proceedings against him was taken on 9.10.1992. In view of the above position of law, the learned counsel for the petitioner has submitted that not promoting the applicant in pursuance of Annexure-7 is arbitrary and capricious action and he is entitled to the reliefs claimed. Learned counsel for the petitioner has also referred to two other decisions, Union of India and others v. Dr.(Smt.)Sudha Salhan, 1998(1) SCSLJ 353, State of M.P. v.J.S.Bansal and another, 1998(1) SCSLJ 625. Both these cases relate to applicability of the sealed cover procedure and therefore, it is not necessary to go into the facts of those cases.

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6. From the perusal of the above decisions, it is clear that disciplinary proceedings against a Government servant can be said to be pending only when draft charges have been issued to him. In this case, draft charges were issued to him only on 20.5.1993. But the other aspect of the matter is that the applicant was placed under suspension on 12.10.1992 in the order at Annexure-2. This suspension was revoked in order dated 4/10.3.1993 (Annexure-3). After revocation of the suspension order, he was posted to Cuttack G.P.O. in order dated 4/10.3.1993 and the chargesheet was issued another two months later on 20.5.1993. Claim of the petitioner has to be considered in the context of the above facts and law as mentioned above. It is seen from Annexure-7 that in this order Director of Postal Services specifically mentioned that before appointment, the Divisional Superintendents should ensure that no vigilance/disciplinary case is pending. The applicant's case is that on 25.9.1992 no disciplinary case was pending and therefore, this order should have been given effect to. The respondents have stated that this order dated 25.9.1992 was received by them on 30.9.1992. Before that date on 29.9.1992 during a surprise inspection of Dagarpada Non-delivery S.O. serious financial irregularity by the applicant was noticed. We have already noted the nature of the irregularity while mentioning about the averments made by the respondents in the counter. Because of this, a decision was taken on 9.10.1992 to initiate disciplinary proceedings against him and he was placed under suspension on 12.10.1992. The point for consideration is whether even in the face of such serious allegations which ultimately resulted in initiation of a major penalty proceeding and imposition of a major penalty which of course came later, the respondents were obliged to give promotion to the applicant. This point has not

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directly come up before the Hon'ble Supreme Court in **K.V.Janakiraman's case (supra)** where a plea was taken by Union of India before the Hon'ble Supreme Court that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion. The Hon'ble Supreme Court noted that sometimes preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. The Hon'ble Supreme Court noted that if the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. It was further noted that if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules and therefore, the authorities are not without a remedy. In this case, the promotion order itself indicated that it should be given effect to if no disciplinary proceeding was pending against the applicant. As a matter of fact, on 30.9.1992, when this order was received by respondent no.2, no disciplinary proceeding was pending against the applicant. But on the previous day, serious lapses of the applicant had come to the notice of the departmental authorities and it would not have been in the interest of purity of administration to give promotion to him on the technical plea that the approval order of promotion dated 25.9.1992 was subject only to the pendency of disciplinary proceedings. As a matter of fact, the applicant was placed under suspension in order dated 12.10.1992. Even though the suspension order was revoked on 10.3.1993, the chargesheet was issued on

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20.5.1993. During the pendency of a major penalty proceeding against the applicant, he cannot claim that he should have been given promotion because his promotion has been approved by the Director of Postal Services. The respondents have further stated that on his joining at Cuttack G.P.O., after revocation of his suspension, he was involved in another fraud case. We have quoted the relevant sentence of the counter and have noted that from the counter it is not clear if departmental proceedings were started against him for this alleged lapse relating to fraud in a Recurring Deposit Account and if the proceedings are continuing even after his retirement on 31.5.1996. It has been submitted by the learned counsel for the petitioner that as a matter of fact, no proceeding has been initiated against the applicant on the ground of allegation of fraud committed by the applicant while working in Cuttack G.P.O. Therefore, the allegation of this lapse cannot be taken into account by us.

7. The next point for consideration is whether after conclusion of Rule 14 proceedings against him and imposition of major penalty, he should have been given promotion to the higher grade. The admitted position is that granting of Higher Selection Grade is on the basis of satisfactory service and because of imposition of major penalty, it cannot be held that the applicant's service was satisfactory. Moreover, the revised punishment imposed on the applicant in that proceedings is reduction of his pay by two stages for a period of one year. It would be inconsistent if during the currency of this punishment reducing his pay, he is allowed promotion to the higher grade thereby nullifying the punishment. In any case, as we have noted earlier, promotion to HSG-II is subject to satisfactory and good record of service, and in case of the

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petitioner, it cannot be said that he had such record because of the major penalty imposed on him.

8. In consideration of the above, we hold that the applicant has not been able to make out a case for any of the reliefs asked for by him. The Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
21.9.98

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