

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 17.4.1996.

OA No. 21/1996

S.D. Mishra

....

Applicant.

v e r s u s

Union of India & Ors.

...

Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman.
Hon'ble Mr. S.P. Biswas, Member Administrative.

PER HON'BLE MR. S.P. BISWAS:

Applicant, presently working as Executive Engineer with Air Force, Jaisalmer (Rajasthan), is highly aggrieved because of not getting promoted to the post of Executive Engineer against the vacancies of 1983 and 1984 because of downgrading the Annual Confidential Report (ACR, for short) from "Good" to "Average" following penalty of "Censure" imposed on him. Consequently, he seeks a direction to be given to respondents to consider his case of promotion against the above vacancies by granting him the weightage i.e., one grade higher because of officiating on promotional post for a long time. The applicant claims to have earned excellent report for the year ending 30th September, 1993, while working as Executive Engineer on the promotional post. As per applicant, for the year 1993, he should have been assessed one grade higher than the grade earned by him due to his working on promotional post for the purpose of comparing his merit vis-a-vis others who did not work on such higher post. The applicant claims that his case for promotion on the above mentioned lines is covered under the ratio laid down by the Hyderabad Bench of the Tribunal in S.S. Sambhus vs. Union of India (1992 (2) CAT Hyderabad 225.

2. We have heard learned counsel for the applicant and perused the records available before us. We find that the case of the applicant was earlier considered in O.A. No. 465/92 decided on 16.12.93. The operative portion of the order of the Tribunal in above mentioned O.A. reads as under :-

"The review DPC may be convened within a period of six months from the receipt of a copy of this order and if the applicant is found suitable for empanelment from a date earlier than the date on which he was actually promoted he may be given promotion from the date on which his junior in that panel & promoted with all consequential benefits."

3. We find that Departmental Promotion Committee (DPC, for short) did not recommend any change in the Select Panel prepared by the original DPC held in May, 1986. The applicant was not considered eligible for promotion against the vacancies of Executive Engineer pertaining to years 1983 and 1984. The records reveal that the disciplinary proceedings was initiated against the applicant in 1983 and 1986. In respect of proceedings in 1983, he was punished with "Censure" and in respect of proceedings in 1986, the applicant was exonerated after due process of enquiry. As the DPC did not find the applicant eligible for promotion, the applicant's case was, therefore, considered on merit and rejected accordingly.

4. The case law cited by the applicant does not render any assistance to him in this OA. That was the case where the Hyderabad Bench of the Tribunal evaluated the ACRs of two different groups of official working in completely two different grades. The group of officers discharging higher responsibilities with higher grade were given the grading "Good", whereas the officials working with lesser responsibilities were graded as "Very Good". While considering these officials for fresh selections, the Tribunal decided that the responsibilities discharged by the officials holding Class-I post cannot signify lower talent in the incumbents of the higher posts. The facts and circumstances of the case cited by the learned counsel

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for applicant cannot be considered as applicable to the case on hand.

5. The learned counsel for applicant also submitted that the applicant suffered "double jeopardy". From the circumstances of the case, we find it difficult to support the contention of the applicant in this respect. When an employee is held guilty and penalised, and is, therefore, not promoted atleast till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. If a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. We are fortified in this view by the decisions of the Hon'ble Supreme Court in Union of India vs. K.V. Jankiraman (JT 1991 (3) SC 527).

6. In view of the reasons aforementioned, the application fails being devoid of merits and is being disposed of at the admission stage. No costs.


(S.P. BISWAS)

Member (Adm.)

cvr.


(GOPAL KRISHNA)
Vice Chairman