

II

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 98/2008

Date of order: 8-2-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

N.K. Singhvi S/o Shri Sagar Mal Singhvi, by caste Singhvi, aged about 53 years, resident of 1-B Panchwati, Near Shanti Nagar, Sirohi.

Ex.Postal Assistant (Male) of Department of Post in the office of Superintendent of Post Office, Sirohi Division, Sirohi.

...Applicant.

Mr. Rajesh Shah, counsel for applicant.

VERSUS



1. Union of India through Secretary, Department of Posts, Ministry of Communication, Government of India, Dak Bhawan, New Delhi.
2. The Personnel Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Director, Postal Accounts, Jaipur.
4. The Post Master General, Rajasthan Western Region, Jodhpur.
5. The Superintendent of Post Offices, Sirohi Division, Sirohi.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant was working as a Postal Assistant in the Department of Posts since the year 1975. He was issued a



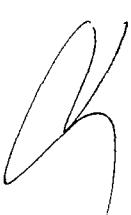
charge sheet on 17.10.1995. After completion of the enquiry proceedings, he was removed from service vide order dated 16.07.1996. The order of removal was upheld by the Appellate Authority. However, in the revision petition before the Member, Postal Service Board, the penalty of removal from service was modified as "Censure" vide memorandum dated 22.06.1998. Subsequently, the intervening period between the date of removal and the date of resumption of duty on reinstatement (between 16.07.1996 and 14.07.1998) was regulated under FR-54 in the following manner vide order dated 24.07.2000 (Annex.A/4):

- (a). Pay and Allowances to be paid at 90% of Pay & Allowances otherwise admissible.
- (b). The period aforesaid to be treated as spent on duty for the specific purpose of pension.

Aggrieved by the order dated 24.07.2000, the applicant filed an Original Application before this Bench of the Tribunal (OA No. 288/2000). The said O.A. was dismissed by order by order dated 04.02.2002 (Annex. A/5). Against the dismissal of the O.A., the applicant filed DBCWP No. 1505/2002 before the Hon'ble Rajasthan High Court, Jodhpur, which was also dismissed vide order dated 17th May, 2002 (Annex. A/6). While dismissing the CWP, the Hon'ble High Court had however observed that if any order adverse to the petitioner depriving him of his seniority for the intervening period is passed, it will be open for the petitioner to challenge the same by way of separate



proceedings in accordance with law. Thereafter, the applicant was given promotion under B.C.R. Scheme w.e.f. 01.01.2005 ignoring the period from 16.07.1996 to 14.07.1998 on the recommendations of the DPC. However, subsequently, a review DPC was held to consider the representation of the applicant and on the basis of the recommendation of the review DPC, the promotion under BCR Scheme was antedated to 01.01.2002 instead of 01.01.2005. The applicant took voluntary retirement w.e.f. 13.02.2007. During the course of finalization of pension, Director Accounts (Postal), Jaipur raised an objection that counting the period between 16.07.1996 to 14.07.1998 for the purpose of promotion was not correct in view of the specific order passed under FR-54 that the said intervening period was to be treated as duty for the specific purpose of pension. Subsequent to the objection raised by the Director Accounts (Postal), Jaipur, a show cause notice was issued to the applicant for changing the date of promotion as 01.01.2005 instead of 01.01.2002. After considering the representation to the show cause notice, the Postmaster General, Rajasthan Western Region, Jodhpur vide order dated 25.02.2008 (Annex. A/1) has modified the promotion of the applicant w.e.f. 01.01.2005 instead of 01.01.2002. Subsequently, an order dated 02.04.2008 (Annex. A/2) a ~~memo~~ for recovery of Rs. 24,950/- was also issued by the Superintendent of Post Offices, Sirohi Division, Sirohi. The applicant has challenged the aforesaid orders at Annexure A/1 and A/2 in this Original Application.



2. In the reply filed by the respondents, they have contended that in the order issued under FR-54 dated 24.07.2000, it was clearly mentioned that the intervening period should be considered as spent on duty only for the specific purpose of pension. Therefore, the modification of the promotion order was legally correct. It is also contended by the respondents that they have taken a lenient view of the applicant's misconduct and the penalty of removal from service was converted as "Censure". The grant of 90% Pay and Allowances for the intervening period does not by itself amount to treating the period for all purposes since there is a specific order to the effect that the period is to be treated as spent on duty for the specific purpose of pension.

3. We have heard the learned counsel for the applicant Shri Rajesh Shah and the learned counsel for the respondents Shri M. Godara for Shri Vinit Mathur. We have also perused all the documents available on record. During the course of the arguments, counsel for the applicant emphasised the point that no DPC was held before changing the date of promotion from 01.01.2002 to 01.01.2005. Counsel for the applicant also relied on the following citations:

- "(1). SBCWP No. 3318/2003 – Shanker Lal Bamniya vs. State of Rajasthan.
- (2). 2004 (2) CDR 925 (Raj.) – Devi Singh vs. State of Raj. & Ors.
- (3). 2009 WLC (Raj.) UC 230 – Avadhesh Chandra vs. State of Raj. & Ors.
- (4). 2009 WLC (Raj.) UC 8 – State & Anr. Vs. Bheem Singh.

- (5). 2007 AIR SCW 2408 – The Director General, I.C.M.R. vs. D.K. Jain & Anr.
- (6). 2009 WLC (Raj.) UC 777 – Shankarlal Balai vs. State of Raj. & Ors.
- (7). 2007 AIR SCW 3619 – S.B. Bhattacharjee vs. S.D. Majumdar & Ors."

4. The issue that has to be adjudicated in this O.A. is whether the intervening period between 16.07.1996 to 14.07.1998 which was regularized by the order dated 24.07.2000 is to be considered as eligible for promotion. It is necessary to look at FR 54 in this regard. FR 54 reads as follows:

"F.R. 54 (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order –

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly, attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by

him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving, notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice. (emphasis added)

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose: (emphasis added)

Provided that, if the Government servant so desires, such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

.....
.....

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

The aforesaid rule enables the competent authority to regularize the period of absence between removal and reinstatement. By order dated 24.07.2000, the competent authority has decided the matter and regularized the period with a specific direction that it should be treated as spent on duty only for the purpose of pension. It is evident from the order dated 24.07.2000 that the intention of the order is not to treat the said period as eligible for any other purpose except pension. The manner in which the period has been regularized is covered by the sub-rule (4) and (5) of Rule 54, (the underlined portion), as the applicant has not been fully exonerated. It is further to be noted that the applicant challenged the order dated 24.07.2000 in OA No. 288/2000 but it was dismissed. The Hon'ble High Court also dismissed the CWP which was filed against the decision of the Tribunal.

5. We have perused the citations relied on by the counsel for the applicant. The main citation, which is relied on is 2004 (2) CDR 925 (Raj.) – Devi Singh vs. State of Raj. & Ors. It is found that the facts of that case are not identical. In the case of Devi Singh, the issue involved was whether selection grade should be

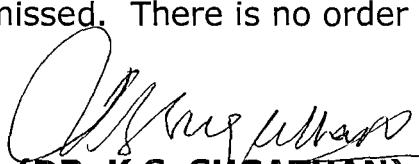
granted to an employee who suffered a punishment of censure.

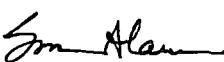
The issue involved in the present O.A. is not whether the applicant can be barred for promotion on account of punishment of censure, but whether the intervening period between his removal and reinstatement would be counted as duty period for the purpose of promotion. In citation SBCWP No. 3318/2003 – Shanker Lal Bamniya vs. State of Rajasthan, the Hon'ble High Court has relied on the decision of Devi Singh. In 2009 WLC (Raj.) UC 230 – Avadhesh Chandra vs. State of Raj. & Ors., the issue was also whether the employee is entitled to selection grade on account of punishment of censure and stoppage of increment. In 2009 WLC (Raj.) UC 8 – State & Anr. Vs. Bheem Singh also the issue involved was whether the selection grade can be granted in spite of having suffered the punishment of censure. In 2007 AIR SCW 2408 – The Director General, I.C.M.R. vs. D.K. Jain & Anr., the issue involved was denial of pensionary benefits for the period of break in service. In 2009 WLC (Raj.) UC 777 – Shankarlal Balai vs. State of Raj. & Ors., also the issue involved was whether the punishment of censure is a bar on promotion. In 2007 AIR SCW 3619 – S.B. Bhattacharjee vs. S.D. Majumdar & Ors., the issue considered was the ACRs which have to be considered by the DPC. Therefore, none of the citations can be made applicable to the facts of the present case.

6. In view of the above discussion, we are of the considered opinion that the modification in the date of effect of BCR promotion effected by the respondents by order dated 25.02.2008 is consistent with the order dated 24.07.2000 by which the period of absence was regularized under Rule 54 FR. We do not see any illegality in the impugned orders.

7. For the reasons stated above, the Original Application is dismissed. There is no order as to costs.




(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

nlk

Copy Received on
behalf of Mr. Rajesh Shah

Signature

17/2/10

दिनांक 17/12/15 के आदेशानुसार
भौतिक संस्करण के इसांक 9/2/16
को जारी किया गया ।

अनुशासन विभाग
केन्द्रीय स्कूल व अधिकार
जोधपुर नं. 101, जोधपुर

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