

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 665 OF 1997

Date of order : 23.7.2001

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. L.R.K. Prasad, Administrative Member

Nemai Chandra Rana
Postal Assistant,
Midnapore Head P.O.

VS

1. Union of India through the Secretary, M/o Communication, (Postal), New Delhi
2. The Post Master General, West Bengal, Calcutta-12
3. The Director of Postal Services, South Bengal Region, O/o Chief P.M.G. Calcutta
4. The Post Master General, South Bengal Region, Calcutta
5. The Sr. Superintendent of Post Offices, Midnapore Division. P.O. Midnapore.

.... Respondents

For the applicant : Mr. R.N.Ghorai, Counsel

For the respondents : Mr. M.S.Banerjee, Counsel

O R D E R

D.Purkayastha, J.M.:

The dispute in this case is whether the respondents were justified in denying the applicant the benefit of one time 'bound promotion w.e.f. 17.4.84 i.e. the date on which he completed 16 years clerical service from the date of entry into the cadre.

2. The case of the applicant is that he was appointed in the clerical cadre under the Postal Deptt. on 18.4.1964. The Deptt. of Post introduced a scheme called Time Bound (one) Promotion Scheme for P & T Employees as per orders dated 17.12.83 & 4.1.1984. According to the scheme, which was effective from 30.11.83, all officials belonging to basic grades in Group C or Group D to which there is direct recruitment and who have completed 16 years of service in that grade will be placed in the next higher grade. According to the applicant,

he was eligible to get the next higher grade under the aforesaid scheme on completion of 16 years service w.e.f. 17.4.84. But the respondents authorities granted him the said benefit w.e.f. 30.5.85. This was due to the fact that a disciplinary proceeding was initiated against him for certain misconduct and he was awarded a minor penalty of censure by order dt. 30.5.85 and from the same date he was granted the benefit of one time bound promotion as per order dt. 5.12.85 (annexure-D). His grievance is that censure is only a minor penalty and for this his entitlement to get the time bound promotion from the date when he completed 16 years service cannot be postponed to a later date and on the other hand, he should have been given the said benefit retrospectively from 17.4.84 i.e. the date when he became eligible to get such benefit.

3. The respondents have filed a reply in which the action of the respondents has been justified by contending that in view of pendency of the disciplinary proceeding, the applicant could not be given the time bound promotion from the date of his eligibility and that as soon as the disciplinary proceeding was concluded and he was awarded the punishment of censure, the authorities granted him the benefit from the same date when the penalty order was passed i.e. from 30.5.85. Therefore, there was no illegality in the action of the respondents.

4. We have heard the learned counsel for both the parties and have gone through materials available on record.

5. Mr. M.S.Banerjee, 1d. counsel for the respondents has taken a preliminary point of limitation. According to him, the applicant was awarded the penalty of censure by order dt. 30.5.85 which he never challenged nor any appeal was preferred against the same. The applicant made a representation on 10.4.89 against the order dated 5.12.85 by which he was granted the benefit of time bound promotion w.e.f. 30.5.85. This representation was replied on 13.3.90 (annexure-E). But the present application has been filed only in the year 1997 i.e. long 7 years after the rejection of his representation. Hence, the present OA is barred by limitation.

6. Mr. Ghorai, ld. counsel for the applicant has, however, submitted that the applicant has also filed further representation which was also forwarded by the appropriate authority on 12.7.96 (annexure-F). Therefore, the present OA is within time. He has also argued by referring to a decision of the Hon'ble Supreme Court that when there is merit in a case, the courts or Tribunals should not reject the same merely on technical ground of limitation. He has also contended that because of postponement of time bound promotion, the applicant has been suffering recurring financial loss in pensionary benefits and hence it is a case of recurring cause of action. So, there cannot be any question of limitation.

7. In any event, we have considered the matter on merit without going into the question of limitation. It is a fact that the applicant was punished with censure in a disciplinary proceeding and during the pendency of the proceeding, he became eligible for getting the benefit of time bound promotion on completion of 16 years of service. But the respondents postponed his such promotional benefit due to award of the aforesaid penalty of censure and allowed him the benefit w.e.f. 30.5.85 i.e. the date when he was awarded the penalty of censure. Ld. counsel for the applicant relying on a decision of the Kerala High Court in the case of S. Mukundan -vs- State of Kerala, 1970 SLR 586 has argued that censure by itself is not a ground for overlooking seniority in the matter of promotion.

8. Ld. counsel for the respondents has, however, argued that the case of the applicant was not overlooked. Because of pendency of the DA proceeding he could not be given the benefit of promotion in time. He further argued had the applicant been exonerated in the DA proceeding, he could have been granted such benefit retrospectively from the date of his eligibility. But in the DA proceeding, he was awarded a penalty, though a minor one, of censure. Therefore, he cannot be given the benefit retrospectively from the date on which he completed 16 years service and the authorities allowed him the benefit from the date of conclusion of the proceeding which ended in awarding

the penalty of censure w.e.f. 30.5.85.

9. We have given our anxious consideration to the facts of the case and the contentions advanced by both parties. Our attention has been drawn to a DOPT OM dt. 16.2.78, which has also been incorporated in the scheme for time bound promotion dated 4.1.84. This order stipulates that censure by itself does not render an employee unfit for promotion although it may be taken into account by the DPC for making an overall assessment of the records of an employee for adjudging his fitness for promotion. From the promotion order dated 5.12.95 (annexure-D) we find that the applicant has been promoted as per time bound promotion scheme w.e.f. 30.5.85 and posted as Postal Assistant. There was no change of designation by this promotion. It appears that it is not a case of normal promotion with higher responsibility or change of designation. In fact, this is a kind of in situ promotion. The only ground taken by the respondents in postponing the date of promotion of the applicant as per the scheme is pendency of a DA proceeding against him. It is admitted that the penalty of censure was awarded against the applicant in the said DA proceeding. Keeping in view the aforesaid DOPT OM, which has been incorporated in the scheme itself, such penalty of censure should not render the applicant unfit for promotion though it may be taken into account for making overall assessment of his records for adjudging his fitness for promotion. It is not the case of the respondents that the applicant was adjudged unfit for such time bound promotion. In fact, he was given such promotion but from a later date. It is contended by the 1d. counsel for the applicant that the applicant has retired in the meantime and because of his delayed promotion, he has been getting less pensionary benefits. On a consideration of the matter from all its aspect, we are of the opinion that when the applicant was not adjudged as unfit for promotion, the penalty of censure should not be considered as a bar to his getting the benefit of time bound promotion from the date when he became eligible for such promotion as per the scheme, particularly when it was not a case of promotion to a higher

post with higher responsibility. The applicant remained as Postal Assistant after such promotion. Only certain pay fixation benefit was given to him. We are of the view that the respondent authorities should not have denied the applicant the benefit of time bound promotion from the date of his eligibility i.e. 17.4.84 when he completed 16 years service only because a minor penalty of censure was awarded against him; which by itself does not render him unfit as per the aforesaid DOPT OM mentioned above.

10. In view of the above, we allow this application and direct the respondent authorities to give the benefit of time bound promotion to the applicant with effect from the date when he completed 16 years service in the clerical cadre i.e. from 17.4.84. However, his pay on such promotion is to be fixed notionally and actual monetary benefit, if any, will accrue to him only from date of filing this OA i.e. from 12.6.97. His pension and other pensionary benefits be calculated on that basis and paid to him accordingly. This order be carried out and arrears, if any, be paid to be applicant within four months from the date of communication of this order. There will be no order as to costs.

Mr. G. D.

MEMBER(A)

1000
2000

MEMBER(J)