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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 203 of 2002

Friday, this the 18th day of June, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.K. HAJRA, ADMINISTRATIVE MEMBER

1. A.N. Mohanan,
S/o Narayanan A.K.,
Assistant, Regional Passport Office, Cochin
Residing at 'Alazhata House',
Kadavanthara PO, Cochin - 682 020 Applicant

[By Advocate Mr. Shafik M.A]

Versus

1. Union of India represented by
Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.

2. The Chief Passport Officer &
Joint Secretary (CPV),
Ministry of External Affairs, New Delhi.

3. The Regional Passport Officer,
Regional Passport Office, Cochin. Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 18-6-2004, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Assistant, Regional Passport Office, Cochin, has in this application filed under Section 19 of the Administrative Tribunals Act, 1985 sought the following reliefs:-

"(i) To call for the records relating to Annexure A-1 to A-10 and to quash Annexure A-1 being illegal and arbitrary;

(ii) To declare that the applicant is entitled to be promoted to Grade V Assistant, on the basis of the recommendations of the DPC conducted in October, 1999 and to direct the respondents to

give effect to the recommendations of the DPC held in October, 1999 as regards the promotion of the applicant to Grade V Assistant, is concerned and to consequently promote the applicant with effect from 1.11.99 with all consequential benefits including seniority and arrears of salary;

- (iii) To issue such other appropriate orders or directions this Honourable Court may deem fit, just and proper in the circumstances of the case; and
- (iv) To award the costs of this Original Application."

2. While the applicant was working as Upper Division Clerk he was served with a memorandum of charges dated 3rd August, 1999 (Annexure A2). He denied the charges. An enquiry was initiated. While the matter remains so, finding that his juniors have been promoted, he submitted Annexure A3 representation requesting that he be promoted with effect from 1-11-1999. He was, by Annexure A4 order, informed that the recommendations of the DPC in his case has been kept in a sealed cover and on culmination of the disciplinary proceedings the recommendations would be implemented. The applicant submitted Annexure A5 representation requesting that he be promoted, wherein he also had stated that pendency of the proceedings being a block in his promotion the proceedings may be dropped. He also expressed regret for the happenings, if any. Taking the expression of regret by the applicant as an admission of guilt, Annexure A6 order was issued imposing on the applicant a penalty of 'censure' against which the applicant has filed an appeal (Annexure A7), which is pending. In the meanwhile, after a subsequent DPC meeting, the applicant was promoted as Assistant Grade-V with effect from 17-10-2001. The applicant represented for promotion on the basis of the recommendations of the DPC which met on 1-11-1999, in reply to which he was served with Annexure A1 order stating that since the validity of the panel for promotion had exhausted long back

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there was no question of he being promoted retrospectively. Aggrieved, the applicant has filed this application for the above said reliefs.

3. It has been alleged in the application that the 'censure' not being a bar for promotion and as one B.Sreekumar under identical circumstances awarded with the penalty of 'censure' has been promoted with retrospective effect, the action of the respondents in not granting the benefit of promotion to the applicant basing on the recommendations of the DPC with effect from the due date is arbitrary, discriminatory and illegal.

4. Respondents in the reply statement contend that the expression of regret by the applicant in Annexure A5 was properly taken as an admission of guilt, that the applicant has been promoted on the basis of the recommendations of a subsequent DPC and that as the disciplinary proceedings against the applicant was pending till 13-9-2001 he could not be promoted with retrospective effect. They have sought to distinguish the case of promotion given to Sreekumar on the grounds that the penalty of 'censure' was imposed on Sreekumar on 15-10-1999 and the DPC held only on 1-11-1999, whereas in the case of the applicant the penalty of 'censure' was ordered on 13-9-2001.

5. We have heard the learned counsel on either side and have perused the materials on record. The admitted fact of the case is that the applicant was proceeded departmentally, that the recommendations of the DPC in his case was kept in a sealed cover and that the applicant was awarded a penalty of 'censure'. It is also not disputed that the penalty of 'censure' is not a bar for promotion. It is further admitted

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that one Sreekumar who was awarded the penalty of 'censure' was promoted with retrospective effect and has been given arrears of pay and allowances. We, therefore, do not find any justifiable reason why in the case of the applicant the recommendations of the DPC which was kept in the sealed cover was not acted upon even though the penalty imposed on the applicant was only a 'censure'. The contention in the impugned order that the period of validity of the panel has been exhausted and the applicant would not be entitled for retrospective promotion is untenable and totally irrational. The panel would not lapse so long as the recommendations of the DPC kept in sealed cover is not opened. So far as the case where the sealed cover procedure has been adopted, till the departmental proceedings comes to a final conclusion the recommendations would be valid and will have to be acted upon once the proceedings is decided according to its result. In this case, since the applicant has been awarded only a 'censure' which has been admitted by the respondents to be not a bar for promotion, we are of the considered view that the respondents should have opened the sealed cover and given effect to the recommendations of the DPC.

5. In the result, the impugned order Annexure A1 is set aside. Respondents are directed to open the sealed cover, see the recommendations of the DPC which met on 1-11-1999 and in case the DPC had recommended the applicant for promotion, to promote him with retrospective effect and to make available to him the consequential monetary benefits. The above directions shall be complied with as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order.

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6. The Original Application is disposed of as above with no order as to costs.

Friday, this the 18th day of June, 2004

S. K. Hajra

S. K. HAJRA

ADMINISTRATIVE MEMBER

A. V. Haridasan

A. V. HARIDASAN

VICE CHAIRMAN

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