

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.

321/1990

T. A. No.

199

DATE OF DECISION 13.8.1991

G.Sukumaran Nair Applicant (s)

Mr.P.V.Mohanan Advocate for the Applicant (s)

Versus

Union of India, represented Respondent (s)
by Secretary, Ministry of Communication,
New Delhi and 4 others

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P.MUKERJI, VICE CHAIRMAN**

The Hon'ble Mr. **N.DHARMADAN, JUDICIAL MEMBER**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 2nd April, 1990 the applicant who has been working as Lower Selection Grade Sorting Assistant has challenged the impugned order dated 20.6.86 at Annexure-I promoting him to the Lower Selection Grade with effect from 1.9.1985 and the seniority given to him by Annexure-III in that grade. He has also challenged the impugned orders at Annexures-V, VI and VIII rejecting his representation, petition and further petition and has prayed that respondents 1 to 4 be directed to promote him to that grade with effect from 30.11.83 with all consequential benefits and declare him to be entitled to that promotion despite the departmental proceedings initiated against him and to give him revised seniority. The brief facts of the case are as follows.

2. Having entered service in 1962 as Class IV servant, the applicant was promoted as Sorting Assistant on 19.3.1967 and was working in that grade till 31.8.85. Vide his order dated 17.12.83 the Director General, P&T promulgated what is known as the Time Bound One Promotion Scheme effective from 30.11.83. According to that scheme all operative cadres of the department on completion of 16 years of qualifying service in any grade were to be promoted to the next higher grade. The applicant had completed 16 years of service on 16.4.83 and therefore he became entitled to the promotion to the next higher grade of Lower Selection Grade of Rs.425-640 with effect from 30.11.83 itself. However, by the impugned order dated 20.6.86 at Annexure-I he was given this promotion belatedly on 1.9.85. His grievance is that persons like the 5th respondent who was junior to him and even others junior to him were given promotion to the L.S.G under the aforesaid scheme with effect from 30.11.83 and subsequent dates. By missing this promotion he lost his chances of further promotion given to his juniors. His representations and petitions were also rejected by the impugned orders on the ground that on the basis of some alleged misconduct with relation to an event which took place on 18.9.83 , on 30.11.83 disciplinary proceedings were contemplated against him . The applicant's contention is that he was chargesheeted on 11.1.1984 because of unauthorised absence on 18.9.1983 . Since prior to 11.1.1984 neither any memo of charge nor any vigilance case was pending against

him, he could not be denied promotion to LSG as on 30.11.1983 when his juniors were so promoted.


3. According to the respondents on the basis of the chargesheet dated 11.1.84 the applicant was awarded the punishment of withholding of his next increment for one year by the order dated 16.3.84. In appeal the punishment was reduced to withholding of his increment for a period of six months by the appellate order dated 22.6.84. Since his next increment was due on 1.3.85 and the punishment was operative from 1.3.85 to 31.8.85 and since he could not be promoted during the currency of the punishment order, he was given the promotion with effect from 1.9.85. They have conceded that the 5th respondent was junior to the applicant in the grade of Sorting Assistant but was promoted to LSG's grade on 30.11.83. They have also conceded that the applicant had completed 16 years of service as Sorting Assistant on 16.4.83 and was eligible for promotion under the Time Bound One Promotion Scheme as from 30.11.83. He, however, could not be promoted earlier than 1.9.85 because of his misconduct and currency of the punishment. The Departmental Promotion Committee which met on 24.2.84 after the chargesheet had been served on 11.1.84 kept its findings in a sealed cover and when the review DPC was held on 17.4.86 they recommended him for retrospective promotion with effect from 1.9.85 after the punishment was over. They have argued that since the event which attracted the penalty took place on 18.9.83 and the enquiry was in progress till 11.1.84, he could not be promoted

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like his juniors with effect from 30.11.83.

4. In the rejoinder the applicant has referred to the decision of the Full Bench of the High Court of Kerala in 1981 KLT 458 holding that the eligibility at the time of vacancy need only to be looked into for promotion. He has also argued that the sealed cover procedure has been wrongly followed in his case by the DPC as the applicant did not have any penalty or chargesheet on 30.11.83.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It has been held by this Tribunal in K.Ch.Venkata Reddy and others vs. Union of India and others, 1987(1)ATR 547 that consideration for promotion for grant of Selection Grade, crossing of Efficiency Bar etc. cannot be withheld merely on the ground of pendency of disciplinary/criminal proceedings and that the sealed cover procedure should be followed only after the chargesheet is served on the official. In the case before us it is true that when the DPC met on 24.2.84 the chargesheet had already been served on the applicant on 11.1.84, but the fact remains that the DPC though it was meeting on 24.2.84 was actually considering the case of the applicant for being granted promotion to the LSG under the Time Bound One Promotion Scheme with effect from 30.11.83 when he had completed more than 16 years of service. The mere fact that the DPC instead of meeting on 30.11.83 met on 24.2.84 should not make any difference so far as the consideration of the applicant for promotion with effect from 30.11.83 is concerned.



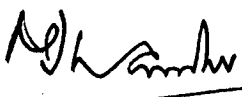
Since on 30.11.83 no chargesheet had been served on the applicant, the applicant should have been considered for promotion with effect from that date without any reference to the chargesheet which was served on him subsequent to that date. The respondents' argument that the event of unauthorised absence for which he was chargesheeted in January, 1984 took place on 18.9.1983, cannot be accepted because as held by this Tribunal, pendency of disciplinary proceedings commences from the date the chargesheet is served and not prior to that when the disciplinary proceedings are merely contemplated. In B.B.Gupta vs. State of Himachal Pradesh, ATR 1987 519 the Himachal Pradesh Administrative Tribunal held that a review Committee meeting subsequently for considering the candidates for promotion in 1973 cannot follow sealed cover procedure on ground of disciplinary action commenced subsequent to 1973. Since the review DPC which met on 17.4.86 found him fit for promotion with retrospective effect from 1.9.85 despite the punishment imposed on him we have no hesitation in concluding that if the DPC which met on 30.11.83 or the review DPC considered the case of the applicant for promotion from 30.11.83 without taking into consideration the subsequent development of chargesheet of 11.1.84 and the punishment thereafter, there is no reason to presume that he would not have been found fit for promotion to the LSG. Since the promotion under the Time Bound One Promotion

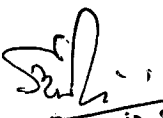
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Scheme is not on competitive merit but on seniority subject to suitability the applicant cannot be denied promotion with effect from 30.11.83 when his juniors were promoted merely on the ground of chargesheet served on him in January 1984. The punishment of withholding of increment could still have been imposed on him even after his promotion to LSG.

6. In the conspectus of facts and circumstances we allow the application, set aside the impugned orders at Annexures-I,III,V,VI, VIII in so far as the applicant is concerned and direct the respondents to promote the applicant to LSG with effect from 30.11.83 with all consequential benefits of seniority and consideration for further promotion. We however make it clear that his retrospective promotion with effect from 30.11.83 will not take away his liability of undergoing the penalty of withholding of increment for six months even in the higher grade.

There will be no order as to costs.


13.8.91.
(N.Dharmadan)
Judicial Member


13.8.91
(S.P.Mukerji)
Vice Charman

n.j.j

SPM ND

(36)

Mr P.V. Mohanan by proxy.
Mr Unnisaj proxy for state.

At the request of learned
counsel for respondents, list for further
direction on ~~14.8.92~~ 4.8.92.

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SPM & ND

- (23) Mr PV Mohanan by proxy.
Mr V Krishnakumar, ACGSC

At the request of the learned counsel for the
respondents, list for further directions on 14.8.92.

ND
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SPM

4.8.92

- 14.8.92 Mr.Damodaran through proxy
Mr.Krishnakumar

Heard the learned counsel for both the parties
in this CCP. The learned counsel for the respondents
produced the order dated 13.8.92 promoting the petitioner
to ISG cadre with effect from 30.11.83 with all conse-
quential benefits and stated that the monetary benefit
by virtue of this order will be made available to the
applicant within a period of one month from today.
Accordingly list the CCP for further directions on 18.9.92.

Copy by hand to the ACGSC.

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14.8.92

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Co. issued
on 17/8/92

Adj. by notia
on 17/9/92

17/9

Mr. P.V. Mohanan by proxy
Mr. V. Krishnakumar ACGSC

It is accepted by learned counsel for both parties that the respondents have fully complied with the judgment of this Tribunal in O.A. 321/90. Accordingly, the CCP is closed and the notice on contempt is discharged.

ph
N. Dharmadan
(N. Dharmadan)
Judicial Member

S.P. Mukerji
(S.P. Mukerji)
Vice Chairman

13.10.92

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order issued
on 16.10.92
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