

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.113/2007

This the 1st day of ^{December} November 2008.

HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)

Ram Pal Singh, son of Sri Baru Singh, resident of 39-Bhim Nagar, Near Janta Girls Inter College, Alambagh, Lucknow.

...Applicant.

By Advocate: Shri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.

.... Respondents.

By Advocate: Shri S.K. Singh.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed the OA with a prayer to quash the order Dt. 14.12.2006 (Ann.A-1) and issue direction to the respondents for his promotion on the post of HSG-II w.e.f. 5.7.1999 and HSG-I w.e.f. 15.4.1994 with all consequential benefits i.e. arrears of pay and allowances, re-fixation of pension, revision of retiral gratuity, commutation of pension on the following grounds:-

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I. That many of his juniors have been promoted, ignoring the claim of the applicant in HSG-II and HSG-I cadre.

II. Nothing was against him when his turn for promotion was taken up for the post of HSG-II and HSG-I.

III. The punishment of 'Censure' is not a ground to deny the promotion to the applicant.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the order Dt. 14.12.2006 (Ann.1) was passed in accordance with Law, since the DPC after due consideration did not recommended for promotion of the applicant on the ground of unsatisfactory service records and thus justified their action.

3. The applicant filed Rejoinder Affidavit, denying the stand taken by the respondents stating that no reasons were given for denying the promotion to the applicant.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant who was appointed as clerk in the respondent department, retired from service on 30.11.1995 on attaining superannuation and thereafter, an order was issued promoting the applicant in LSG cadre w.e.f. 1.6.1974 vide order Dt. 23.6.1998 (Ann.-3). Admittedly, Umrao Singh and Karan Singh, who are juniors to the applicant have been promoted to HSG-II cadre vide Memorandum Dt. 5.7.1989 (Ann.A-4) and again promoted to HSG-I cadre vide Memorandum Dt. 15.4.1994 (Ann-A-5). When his



juniors were promoted, the applicant made a representation to Respondent No.3 requesting for his promotion from the dates of his juniors were promoted in respective cadre but they did not consider it while the applicant was in service. Subsequently, he also made representation to Vigilance officer vide Ann-A-7 Dt.10.11.2004 and another representation to the applicant Dt. 20.3.2006 (Ann.A-8) and when there was no response, he filed application in Dak Adalat for redressal of his grievance vide letter Dt. 24.6.2005 (Ann.A-9). Upon which the respondents placed the matter before the review DPC which held on 27.11.2006, and they communicated reply with a finding of not found fit for promotion due to unsatisfactory service records (Ann-A-1). Subsequently, the applicant also obtained the records of unsatisfactory service record under Right of Information Act.

7. It is also not in dispute that a penalty of recovery of Rs. 4000/- was ordered against the applicant S.S.P.Os Lucknow vide Memo Dt. 30.10.1987, which was subsequently reduced to Rs.2000/- by Member (P) vide his order Dt. 21.07.1989 and excess recovery of Rs. 2000/- was also refunded to him. There was also punishment of 'Censure' against him vide Memo Dt. -9.03.1992, Memo Dt. 09.03.1993, Memo Dt. 28.11.1995 and another Memo Dt. 29.11.1995.

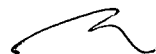
8. It is the case of the applicant that his juniors Umrao Singh and Karan Singh have been promoted to HSG-II cadre vide Memorandum Dt. 5.7.1989 and again promoted to HSG-I cadre vide Memorandum Dt. 15.4.1994 (Ann.-A-5) but he was denied for his promotion with out any reasons. He also further contended that Sri Puttu Ram and



Balbir Singh were promoted to HSG-II cadre during the currency of punishment whereas, in the case of the applicant, the respondents have taken a different view, which is against the provision of Article-14 and 15 of the Constitution of India. He also further pleaded that nothing was against him after August, 1988 and as such, he was entitled to get promotion to HSG-II cadre in 1989 and also for promotion to HSG-I cadre in 1994, from the date when his juniors were given promotion. The applicant also further states that the adverse entries were never supplied to him and no opportunity was given to him for making representation against such adverse entries.

9. The respondents have taken a plea that DPC considered the claim of the applicant on 27.11.2006 but after due consideration found that the applicant was not found fit for promotion due to unsatisfactory service record. They also further stated that the applicant has been awarded 'Censure' four times during his service and recovery of Govt. money from his salary, which reflect the level of service record of the official.

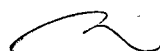
10. The respondents have in paragraph 17 of C.A. categorically denied the contention of the applicant that candidates junior to him namely were promoted during the currency of punishment imposed on them. Their contention is that the case of each candidate is considered by the Departmental Promotion Committee and on the basis of their fitness and seniority, the committee recommend promotion which is finally approved by the competent authority.



11. As regards, the contention of the applicant that imposition of minor penalty such as recovery of loss caused to the Government or censure are no bar to the promotion, it may be stated that Annexure -6 of the O.A. filed by the applicant himself, which contains guidelines issued by the DOP&T, makes it clear that minor penalties will not stand in the way of consideration of the candidate concerned. The following extract makes the position clear. "As in the case of promotion of a Government servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of the loss caused by him to Government or of withholding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty."

In the present case, a review DPC was held specifically to consider the claim of the applicant for promotion. So, it is not correct to say that his case was not considered. However, it is seen that at paragraph 16 of the C.A., it has been mentioned that "the case of promotion is found fit not only on the basis of punishment awarded but also the CR entries made by the immediate authorities. The DPC did not find the case fit for promotion on the basis of unsatisfactory service record." It means that the ACRs of the applicant were also taken into consideration in the DPC.

12. Admittedly, at no point of time, the respondent authorities have informed and communicated adverse/ unsatisfactory remarks in ACRs, which disentitle the applicant or make him ineligible for promotion and



no opportunity was given to him to give his reply. While preparing the select list on the basis of merit and suitability with due regard to seniority, if senior is superseded, it is incumbent upon the selection committee to state the reasons for not considering the case of the applicant and in the absence of such reasons and opportunity the applicant is entitled for questioning the same. Though the applicant retired from service, if his representation against adverse remarks is allowed, he would get benefit in his pension and other retiral benefits. In support of his stand the applicant counsel relied on the following decision:-

1. **2008 AIR SCW 3486 Dev Dutt Vs. Union of India & Ors.**

The relevant paras of the judgment is as follows:-

" Para-40

We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness of public servants. The state must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

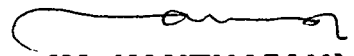
Para-45

In our opinion, non-communication of entries of the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."



13. In view of the above circumstance the O.A. is disposed of with a direction to the respondents to communicate the adverse entries of the applicant within a period of one month from the date of receipt of copy of this order and on being communicated the applicant may make representation against such entry within one month thereafter, and the said representation of the applicant should be decided within one month thereafter. If his entry is upgraded review DPC may be held to consider his suitability for promotion from the date of his juniors Sri Umrao Singh and Karan Singh in the cadre of HSG-II and HSG-I by the DPC within two months thereafter and with this observation, OA is disposed of. No order as to costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIYAH)
MEMBER (J)
01.12.2008

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