

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH:

LUCKNOW

Lucknow this 3rd day of ^{March} February 1998.

Original Application No.464 of 1992.

HON. MR. V.K. SETH, MEMBER(A)

HON. MR.D.C.VERMA, MEMBER(J)

J.C. Arya S/o late Jaman Ram Arya

**R/o Village Gethia Parao, P.O. Gethiya,
District-Nainital.**

..Applicant

Versus

1. Union of India -through-
The Secretary, Ministry of Communication, New
Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director of Postal Service, Lucknow Region,
Lucknow.
4. Post Master General, Bareilly.
5. Senior Supdt. of Post Offices,
Nainital Division, Nainital..
6. Sri R. D. Kashmira, at present working
as Post Master Kheri.
7. Babu Ram, at present working as
Post Master Head Office, Badaun.

..Respondents

For the applicant: Sri Surendran(P), Adv.

For the respondents:Dr. D. Chandra, Adv.

ORDER

V.K. SETH, MEMBER(A)

Vide the present O.A. the applicant has sought directions to the respondents to promote him to H.S.G.-II w.e.f. 20.6.88 and H.S.G.I w.e.f. 11.6.92 with all service benefits.

2. The claim of the applicant has been contested by the respondents and pleadings have been exchanged between the two sides, which have carefully been perused by us. We have also taken note of the rival contentions advanced by the learned counsel during the course of hearing.

3. The applicant was appointed as a clerk in Nainital Postal Division and posted at Pilibhit Post Office in January 1963 vide an order dated 4.6.79 of the Senior Superintendent of Post Offices, Nainital Division. He was promoted to L.S.G. cadre w.e.f. from the date of issue of the orders on purely temporary and division basis. This order also mentions that the promotion will be terminated on availability of officials approved for promotion to L.S.G./L.S.G. 20% on circle bases. As per averments in the counter reply of the respondents on the introduction of time-bound One Promotion Scheme w.e.f. 30.11.83 allowing promotion of Postal Assistants, who had completed 16 years continuous satisfactory service, the D.P.C. considered the case of the applicant along with others for promotion but he was not found fit for promotion due to his unsatisfactory service. A copy of the memo dated 31.3.84 issued by the Post Master General, U.P. in this regard, is enclosed by the respondents with their supplementary counter affidavit. The applicant's name figures in an annexure-3 thereof among the officials, who had not been adjudged fit for promotion. Some years later the applicant was found fit for Time-bound One Promotion Scheme and was promoted to L.S.G. w.e.f. 1.10.88. Later on^{with} the introduction of another scheme called the Biennial Review Cadre(B.C.R.) introduced w.e.f. 1.10.91 of the officials, who had put in 26 years of satisfactory service including that in the basic scale of recruitment and higher scales were made eligible for promotion to H.S.G.-II. It is stated by the respondents that the applicant's case was considered by the D.P.C. but he was not found fit. They have enclosed as annexure S.R.2 a copy of the minutes of the D.P.C. dated 1.1.93 wherein it is, inter alia, mentioned that the case of the applicant for promotion under B.C.R. Scheme was considered and he was found fit for promotion w.e.f. 1.1.92 subject to outcome of Rule 16 disciplinary case contemplated

(emphasis supplied).

against the official/ It was further mentioned that the findings of the D.P. C. are being kept in sealed cover to be acted upon after finalisation of disciplinary case. Being aggrieved by the action of the respondents in denying him promotions to L.S.G. and H.S.G.-II from the date of his eligibility and ^{in these and in H.S.G.I} and promotion of his juniors/ the applicant states that he represented but his grievances were not redressed and, therefore, he approached the Tribunal.

4. It is argued on behalf of the applicant that he was already promoted to L.S.G. w.e.f. June 1979 and, therefore, there was no question of his promotion again to that level by an order of 23.1.88. We do not find any merit in this contention as the order of June 1979 clearly mentions that the promotion is temporary and on division basis. No material was placed before us in support of the contention that such a promotion gave him a vested right and was to be treated at par with the promotion granted to him subsequently vide orders of 23.1.88 in accordance with the rules and on the recommendations of a D.P.C. Obviously, therefore, there was no question of his being promoted to H.S.G.-II w.e.f. 22.6.88, a date prior to the date of his promotion to L.S.G. Promotion to H.S.G.II could arise only after promotion to the immediate lower level of L.S.G. As regards his contention of parity with juniors, the same is satisfactorily explained by the respondents in the C.A. wherein it is pointed out that Sri R.D. Kashmira, who was junior to him as clerk, opted for the accounts line, which has its own separate channels of promotion. Likewise it is also satisfactorily explained by them that the other person, junior to the applicant Sri Babu Ram was promoted to L.S.G. in 1981 and H.S.G.II in July 1989 on the basis of his record of service and his belonging to S.T. community. There is no effective rebuttal of these contentions of the respondents from the side of the applicant. The

respondents have also mentioned in their counter reply the punishment awarded to the applicant vide orders dated 6.10.82, 27.10.83 and 20.3.84. The existence of these punishments is not disputed by the applicant.

5. The learned counsel for the applicant next questioned the action of the D.P.C. in keeping his case for promotion to H.S.G.II in sealed cover. In response, the learned counsel for the respondents contended that the action of the respondents was in order. In this connection the applicant invited our attention to the O.M. dated 14.9.92 of the D.O.P.T.(reproduced at page 19 in A.T.C. Vol.21, 1992. All the aforesaid O.M., which are relevant for the purpose, are reproduced below:

O.M.No.
39/3/59-Estt.A
dt. 31.8.60.
7/28/63-Estt.A
dt. 22.12.64.
22011/3/77-Estt.A
dt.14.7.77.
22011/1/79-Estt.A
dt.31.1.82.
22011/2/86-Estt.A
dt.12.1.88.
22011/1/91-Estt.A
dt.31.7.91.

The undersigned is directed to refer to Department of Personnel & Training OM Bo.22011/2/86-Estt.A() dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India v. K.V. Jankiraman, ((191) 4 SCC 109). As a result of the view and in supersession of all the earlier instructions on the subject(referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the D.P.C., including 'Unfit for Promotion', and the grading awarded by

it will be kept in sealed cover. The cover will be subscribed 'Findings regarding suitability for promotion to the grade/post of.....in respect of Shri.....(name of the Government servant)'. Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri..... The proceedings of the DPC need only contain the note. The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded. "

6. The learned counsel for the applicant also referred to para-4 of the judgment of the Hon'ble Supreme Court in the case of Delhi Development Authority v. H.C. Khurana((1993) 24 A.T.C. 763) wherein the relevant portion of the earlier O.M. dated 12.1.88 is reproduced. This is furnished below:

" Para 2 is the relevant portion in these memoranda. In O.M. dated January 12, 1988, para 2 is as under:

"Cases of government servants to whom Sealed Cover Procedure will be applicable

2. At the time of consideration of the cases of government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

7. In our view, the action of the D.P.C./ is palpably erroneous as it had met on 1.1.93 i.e after the issue of O.M. dated 14.9.92(supra). Sealed Cover Procedure could, therefore, be followed only if at the time of the convening of the D.P.C., in respect of the applicant, a charge sheet had been issued and the

disciplinary proceedings were pending and there was no occasion for following this procedure on account of contemplation of disciplinary case as there was no such provision in the O.M. of September 1992. The action of the D.P.C. was apparently based on the instructions contained in the O.M. of 12.1.88, which stood superseded and modified by the O.M. of 14.9.92. In view of this position, we are of the considered opinion that the applicant, who was adjudged fit for promotion to the scale of Rs.1600-2600 under B.C.R. Scheme, is entitled to such promotion w.e.f. 1.1.92. However, his case for further promotion subsequently to H.S.G. I could arise only on the basis of recruitment rules for that level.

8. In the light of foregoing discussions, while we reject the prayer of the applicant for his promotion ^{to} H.S.G. II w.e.f. 22.6.88 and H.S.G.I w.e.f. 11.6.92 we direct that the applicant shall be deemed to have been promoted to H.S.G.II w.e.f. 1.1.92. He shall also be entitled to consequential reliefs of payment of arrears of salary & consideration for promotion to H.S.G.I on that basis. These orders shall be complied with within a period of three months from the date of receipt of this judgment & order.

9. The O.A. stands disposed of as above with no order as to costs.


MEMBER(J)


MEMBER(A)

March
Dated: ~~February~~ 3, 1998.

Narendra/-