

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH  
LUCKNOW**

**Original Application No 396/2006**

Order Reserved on 4.3.2014

Order Pronounced on 24-03-2014

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)**  
**HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Ambika Prasad Shukla, aged about 56 years son of Kedar Nath Shukla, at present working as Postal Assistant, Sultanpur City Post Office, Sultanpur.

**Applicant**

**By Advocate Sri 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.
4. Superintendent of Post Offices, Sultanpur.

**Respondents**

**By Advocate Sri K. K. Shukla.**

**ORDER**

**By Hon'ble Mr. Navneet Kumar, Member (J)**

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

*"Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the order dated 5.6.2006 contained in Annexure No. 1 and a direction be issued to the respondents to promote the applicant under BCR Scheme with effect from 20.1.2001 with all consequential benefits."*

2. The brief facts of the case are that the applicant was initially appointed in the P.A. cadre on 20.1.1985. Prior to that the respondents have introduced a scheme known as One Time Bound Promotion and the condition for promotion to this grade is 16 years regular service. The applicant completed 16 years of service in 2001 hence, he become eligible

for said grade. But the same was not given to the applicant and in January, 2002, the charge sheet was issued upon the applicant under Rule 16 of the CCS (CCA) Rules. The applicant submitted a reply and thereafter, the respondents after considering the reply, of the applicant imposed a penalty of recovery of Rs. 25,000/- by means of an order dated 11.5.2002. The applicant feeling aggrieved by the said action, preferred an appeal and vide order dated 29.1.2003, as contained in Annexure A-4 to the O.A., the penalty of recovery imposed upon the applicant was set aside and the case was remanded back to the Disciplinary Authority for de novo proceedings from the stage of issue of fresh charge sheet. It is also observed by the Appellate Authority that the said charge sheet should be self contained and speaking. In pursuance thereof, the respondents again issued a charge sheet upon the applicant on 10.4.2003 and finally, the Disciplinary Authority came to the conclusion that the charged official has contributory responsible for non making posting in the ledgers, as such, the recovery of sum of Rs. 5000/- from his pay in the monthly installment of Rs. 1000/- was ordered. The learned counsel for the applicant has also pointed out that since the applicant has rendered 16 years of service as such he is entitled to get the benefit of TBOP in 2001 whereas the first charged sheet was served upon him in 2002. But the respondents rejected the claim of the applicant indicating therein that the decision to issue the charge sheet was taken prior to the fixed date of DPC. As such, the representation of the applicant was rejected.


3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it is indicated by the respondents that the applicant was found co-offender in Sultanpur Head quarter RD fraud case and accordingly, the decision was taken to issue a charge sheet upon the applicant and the said charge sheet was issued in 2002. After observing the formalities, the decision was taken to recover a sum of Rs. 25,000/-, but the said punishment was set aside by the Appellate Authority and fresh charge sheet was issued and thereafter decision is taken to impose a penalty of Rs. 5000/- upon the applicant. It is also

indicated by the learned counsel for the respondents that since there was a specific decision of the respondents in regard to issue of the charge sheet prior to 16 years of service as such, the benefit of TBOP was not extended to the applicant and accordingly, the applicant's representation was rejected.

4. The learned counsel appearing on behalf of the applicant filed rejoinder and through rejoinder, it is indicated by the learned counsel for the applicant that actually, the issuance of charge sheet is an important date and any decision taken prior to the issuance of the charge sheet has no relevance to the grant of TBOP to the applicant and also there is no provision to punish a person on account of contemplated disciplinary proceedings. The action of the respondents are illegal, arbitrary and malafide and it requires interference by this Tribunal. The learned counsel for the applicant has also relied upon the judgment of Hon'ble Apex Court in the case of Union of India and Others Vs. K. V. Janikiraman and pointed out that the denial of promotion at the relevant time is bad in the eyes of law and is liable to be interfered with.

5. Heard the learned counsel for the parties and perused the record.

6. The applicant was initially appointed in the cadre of PA in 1985 and as per the TBOP Scheme, the applicant is entitled to get promotion in this grade after 16 years of regular service. This fact is undisputed that the applicant was appointed in 1985 and he was entitled to get the benefit of TBOP Scheme after completion of 16 years of service i.e in 2001. The averments of the learned counsel for the respondents that a decision was taken prior to the date of DPC, as such the benefit was not extended to the applicant appears to be unjustified. There is no decision which is available on record which may indicate that the decision was taken against the applicant for issuing the charge sheet. Admittedly, the first charge sheet was issued to the applicant in January 2002 and the punishment awarded was set aside by the appellate authority.



7. In the case of *Union of India Vs. K. V. Janikiraman* reported in *AIR 1991 SC 2010*, the Hon'ble Apex Court has been pleased to observe as under:-


***"It is only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee."***

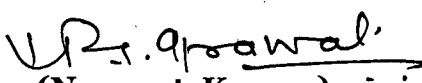
8. The another issue which came before the Mumbai Bench of this Tribunal in the case of *Shri K. G. Patil vs. Union of India and Ors.*, whereby the benefit of BCR Scheme was required to be given immediately on completion of 26 years of services and this has been observed by the Mumbai Bench of this Tribunal that **"even on facts charge sheet which was issued after completion of 26 years of service of the applicant cannot be a ground to deny him promotion under BCR Scheme. This is clear that scheme has been introduced with a view to grant promotion to stagnating employees at a particular intervals of time and in this case it is after completion of 26 years of the service. There is no reason which the promotion should be prolonged beyond that period only to suit the convenience of respondents in holding the Review Meetings to consider the employees for upgradation under the BCR Scheme.** In the instant case, it is explicitly clear that the applicant completed 16 years of service in 2001 and the charge sheet issued upon him in 2002. As such, the date on which the applicant was entitled to get the benefit of TBOP, no charge sheet was served upon the applicant.

9. In view of the discussions and reasons recorded, above, the O.A. succeeds. Accordingly, we are inclined to interfere in the present O.A. and we set aside the impugned order dated 5.6.2006 and direct the respondents to grant promotion under TBOP Scheme to the applicant actually he completed 16 years of service with all consequential benefits.

Respondents shall comply with the same within a period of three months from the date of receipt of copy of this order.

10. Accordingly, the O.A. is allowed. No order as to costs.

  
(Ms. Jayati Chandra)  
Member (A)

  
(Navneet Kumar)  
Member (J)

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