

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 318/2007

This the ^{12th} day of January, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)

Hon'ble Dr. A. K. Mishra, Member (A)

Mithu Lal aged about 66 years son of Sri Nirhoo Lal retired SSPOs
Jhanshi, R/o 34, Manas Behar Serepure Rajaji Puram, Lucknow.

Applicant

By Advocate: Sri R.S.Gupta

Versus

1. Union of India, through the Secretary (D.G.), Department of Post, Dak Bhawan, New Delhi.
2. Chief Post Master General, U.P., Lucknow.
3. Director, Postal Services, Office of Chief Post Master General, U.P., Lucknow.

Respondents

By Advocate: Sri S.P.Singh

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application has been made for a direction to the respondents to promote the applicant to HSG I cadre w.e.f. 9.3.90, the date when his junior H.L.Tamta was promoted to this grade and also for grant of all consequential benefits.

2. The applicant joined the Postal Department as Postal Assistant on 2.4.1965. He was promoted to the IPO cadre in the year 1976 and was placed senior to Sri H.L.Tamta and others. His promotion to the higher post of Asst. Superintendent of Post Offices (ASPO) was put in sealed cover. Subsequently, he was given promotion to this grade w.e.f. 19.10.1983, the date when his junior Sri H.L.Tamta was promoted. This promotion was achieved by him as a consequence of the directions made by this Tribunal in

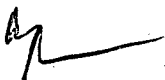


O.A. No. 102/2002. He was also given the full benefits of arrear of pay through another direction of this Tribunal in O.A. No. 385/2003.

3. His promotion to the next grade HSG I was denied to him on the ground that the DPC found him unsuitable for the purpose. This Tribunal also considered his prayer for promotion to the HSG I cadre in O.A. No. 385/2003 and directed that a review DPC should reconsider his case. The contention of the respondents about his unsuitability was not accepted by the Tribunal on the ground that no intimation about his adverse service record had been made by the respondents at any time. The review DPC reconsidered the matter again on 28.6.2007 and found him unfit for promotion on account of unsatisfactory service record. Accordingly, his representation was rejected in the impugned order dated 3.7.2007. Hence this O.A.


4. The respondents have submitted that the case of the applicant was rejected again on 28.6.2007 when his claim was reconsidered in pursuance with the direction of this Tribunal but the review DPC did not find the applicant suitable for promotion to the grade. It was admitted that Sri H.L. Tamta, who is junior to the applicant, was promoted w.e.f. 8.5.1990 on the basis of his service record. As regards the contention of the applicant that he was found suitable for promotion to the cadre of P.S. Grade II in the same year by Director General (Post), Govt. of India as communicated in his order dated 30.8.90, it was mentioned that this promotion was made at the headquarters level on the basis of materials available with them and it had nothing to do with the promotion to the HSG I level which was decided at the circle level.

5. It is unusual that the applicant should be promoted by the Head Office to a higher scale in the year 1990 but he should be found wanting by another DPC held at lower formation in the same very year. The respondents have not categorically stated whether the adverse service records which were relied on by the review DPC while rejecting the claim of the applicant for promotion to HSG I cadre had ever been communicated to




him. To that extent, we find that they have not given due regard to the observation of this Tribunal made on 7.9.2005 in O.A. No. 385/2003.

6. The Hon'ble Supreme Court in the case of **Dev Dutt Vs. Union of India and others 2008 AIR SCW 3486** have held that an employee should not be made to suffer civil consequences if he is not intimated about the unsatisfactory service record and given opportunity to make a representation. They have interpreted the principle of natural justice to hold that ACR entries which are not upto the bench mark level must be communicated to the employee concerned so that he has an opportunity to represent against it. Following the ratio of this judgment, we would direct that the respondents should communicate all the facts of unsatisfactory records including ACR entries to the applicant which were relied upon by the review DPC to hold the applicant unfit for promotion to HSG I cadre. The applicant should be given an opportunity to represent against such entries in the ACR/ service records within a period of one month. The competent authority should consider his representation within one month, thereafter. In case, his representation is allowed and his ACR entries are upgraded or the adverse entries in the service record are expunged, then another review DPC should consider his case again. The application is disposed of with the above directions. No costs.


(DR. A.K. MISRA)
MEMBER (A)

Hls/-


(M. KANTHAIYAH)
MEMBER (J)
12-01-2009