

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 742/2005

Date of Order: 24th March, 2011

C O R A M

HON'BLE MRS. JUSTICE REKHA KUMARI, MEMBER[J]
HON'BLE MR. AKHIL KUMAR JAIN, MEMBER[A]

Lakshman Singh, Son of Late Nand Kishore singh, Postal Assistant (BCR),
Muzaffarpur H.O. Resident of Village and P.O. Karja P.S. Karja District –
Muzaffarpur.

..... Applicant.

By Advocate: - Shri J.K. Karn

-Versus-

1. The Union of India through the Government of India, Ministry of
Communication, Department of Posts, New Delhi:

Cum

The Director General, Department of Posts, India Dak Bhawan, New Delhi –
110001.

2. The Chief Postmaster General, Bihar Circle, Patna – 800001.

3. The postmaster General, Northern Region, Muzaffarpur- 842002.

4. The Director of Postal services, Northern Region, Muzaffarpur – 842002.

5. The Senior Superintendent of Post Offices, Muzaffarpur Division, Muzaffarpur
– 842002.

..... Respondents.

By Advocate: -Shri B.K. Prasad, ASC

O R D E R


Akhil Kumar Jain, Member [Administrative] :- This OA
has been filed by the applicant for directing the respondents to hold review DPC to
consider the case of the applicant for promotion to HSG II Cadre (norm based)
keeping in view the rules contained in Annexure A/8 series and A/9 and promote
him to HSG II Cadre w.e.f. 28.02.2005, i.e. from the date on which his juniors
were given promotion vide C.P.M.G, Bihar Circle, Patna memorandum dated
23.06.2005 as contained in Annexure A/1 and Sr. Superintendent of Post Offices,
Muzaffarpur Division O.M. Dated 23.08.2005 as contained in Annexure A/2 and
disburse arrears of pay and allowances accordingly. The applicant has further

prayed for directing the respondents to promote him to HSG I cadre from the date his juniors have been so promoted as appearing in Annexure A/5 and also for declaring his non promotion as illegal and irregular.

2. The basic facts of the case are not in dispute. The case of the applicant is that the applicant was appointed as Postal Assistant in the year 1970. He was promoted to next higher grade under Time Bound One promotion (TBOP in short) Scheme on completion of 16 years of regular service w.e.f. 19.01.1986 (Annexure A/3) and to HSG II cadre under BCR scheme along with his junior Ram Navami Sah w.e.f. 1.07.1996 (Annexure A/4). The applicant was awarded a punishment of stoppage of increment for one year without cumulative effect vide office memo dated 30.01.2004 (Annexure A/6). His date of next increment was 01.07.2004 and hence the penalty was effective till 30.06.2004. However, he was not considered for promotion to HSG-II (norm based) cadre by the DPC held on 11.03.2005 and as such he was not promoted to HSG-II (norm based) cadre, whereas his juniors were so promoted vide orders dated 23.06.2005 and 23.08.2005 (Annexure A/1 and A/2). Again he was not considered for promotion for HSG-I whereas his juniors have been so considered for promotion as claimed by the applicant.

3. Heard the learned counsel for both sides.

4. The learned counsel for the applicant submitted that a penalty of withholding of one increment is a minor penalty which does not debar the applicant for consideration for promotion. The respondents however did not consider his case for promotion to HSG- II (norm based) cadre in the DPC meeting held on 11.03.2005. This is violative of the Govt. of India instructions as contained in Department of Personnel and Administrative Reforms O.M. No. 21/5/70-Estt. (A) dated 15.05.1971 and O.M. No. 22011/2/78-Estt.(A), dated 16.02.1979, the extracts of which are enclosed at Annexure A/8 and A/8(a) [pages 93,121,122 of Swamy's Compilation on Seniority and Promotion in Central Government Service




juniors were promoted to HSG II cadre as they were notionally promoted to LSG cadre on 10.03.2005 which condition was required for promotion in HSG-II cadre. The applicant was awarded punishment strictly in accordance with the rules of the department and there is provision for appeal against the punishment order. In view of these submissions, the learned counsel for the respondents pleaded for dismissal of the OA.

6. We have perused the records and considered the rival submissions made by the parties.

7. We note that as per submissions made in the written statement filed by the respondents that D.P.C. for promotion of LSG officials to norm based HSG II post was scheduled to be held on 11.03.2005 but the name of the applicant was not sent as on 11.03.2005. He was not notionally promoted to LSG cadre due to the said punishment order. It is also noted that the applicant was granted HSG- II Cadre under BCR w.e.f. 01.07.1996 vide Sr. Superintendent of Post Offices, Muzaffarpur Memo dated 31.01.1997 as contained in Annexure A/4. Para 3 of the said letter stipulates that "the inter se seniority of the official as existing in LSG cadre would continue in HSG II cadre also." This has not been contested or denied by the respondents. Again, for arguments sake, if it is accepted that the reference in the memo at Annexure A/4 was only in respect of his financial upgradation to the scale equivalent to LSG and not norm based LSG cadre, there is no averment by the respondents as to when such consideration became due in case of applicant based on vacancies and whether he was considered therefor or not. Normally, he could not have been given HSG II even under BCR scheme unless he was in LSG cadre. Thus, the plea of the respondents that the applicant was not notionally promoted to LSG cadre does not appear to be convincing.

8. It is admitted position that the applicant was awarded punishment of withholding of one increment and the effect of the said punishment was till 30.06.2005.



9. In this connection, we note the instructions of the Government of India in C.S. (D.P.) OM No. 21/5/70 Estt. (A) dated 15.05.1971 annexed at Annexure A/8. The relevant extracts read as follows:-

" 3. 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. While, therefore, the fact of the imposition of such a penalty does not by itself debar the Government servant concerned from being considered for promotion, it is also taken into account by the Departmental Promotion Committee, or the competent authority, as the case may be, in the overall assessment of his service record for judging his suitability or otherwise for promotion or his fitness for admission to a Departmental/promotional examination (where fitness of the candidates is a condition precedent to such admission)."

10. We also note that the instructions of Govt. of India as contained in D.P. & A.R. O.M. No. 22011/2/78-Estt.(A), dated 16.02.1979, inter alia, stipulate as follows:-

" Where the departmental proceedings have ended with the imposition of a minor penalty, viz., censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or recovery of pecuniary loss caused to the Government by negligence or breach of orders. In the case of employees who have been awarded the minor penalty of "withholding of increments" or "withholding of promotion", promotion can be made only after the expiry of the penalty."

11. In view of these instructions, we are of the opinion that the applicant had a right to be considered for promotion to HSG II cadre (norm based) alongwith others including his juniors who were so considered. It is a different matter that if found suitable his promotion would have been given effect only after the cessation of the effect of the penalty. The respondents grossly erred in not


sending his name for consideration and in not considering him for such promotion to HSG II (norm based) alongwith others including his juniors in DPC scheduled on 11.03.2005.

12. In view of above discussions, we direct the respondents to consider the case of the applicant for promotion to HSG II (norm based) cadre alongwith others including his juniors who were considered in DPC scheduled on 11.03.2005 by holding a review DPC as per rules and if he is found suitable, promote him to HSG II cadre w.e.f. the date on which effect of penalty of withholding one increment was over.

13. The OA is disposed of accordingly. No order as to costs.



[Akhil Kumar Jain]
Member[A]



[Rekha Kumari]
Member[J]

srk.