

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 429/96

Date of Decision 9-1-97

D.H.Bagle

Petitioner

Shri S.P.Kulkarni

Advocate for the Petitioner.

Versus

Union of India & Ors.

Respondent

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R.Kolhatkar, Member(A).

The Hon'ble Mr. -

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? X

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No.429/96.

Pronounced, this the 9<sup>th</sup> day of January, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

D.H.Bagle,  
Postmaster's Quarters,  
H.P.O. Building,  
Thane - 400 601.

... Applicant.

(By Advocate Shri S.P.Kulkarni)

V/s.

1. Union of India through  
Chief Postmaster General,  
Maharashtra Circle,  
Old G.P.O. Building, 2nd floor,  
Near C.S.T., Central Railway,  
MUMBAI - 400 001.
2. Superintendent of Post Offices,  
Jalgaon Postal Division AT P.O.  
Jalgaon - 425 001.
3. Postmaster General,  
Aurangabad Region, AT P.O.  
Aurangabad - 431 002.

... Respondents.

(By Shri S.S.Karkera for Shri P.M.Pradhan)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

The applicant challenges the O.M. dt. 12.6.1995 from the Superintendent of Post Offices informing the applicant that the DPC held on 25.9.1995 did not consider the applicant fit to cross the E.B. The applicant challenges the O.M. on the ground that the DPC considered irrelevant material to arrive at its decision. According to the applicant he was promoted to the post of HSG-I cadre (Rs.2000-3200) from 1.5.1991. He was further promoted on ad hoc basis as Superintendent of Postal Services Group 'B' (Rs.2000-3500) from 20.5.1993. However, he was never allowed

of ad hoc promotional post.  
to take charge / <sup>Subsequently,</sup> he was promoted on regular basis by order dt. 7.3.1995 (page 32), but he could take charge only on 21.8.1995. It appears that the applicant was subjected to the penalty of withholding of promotion for a period of six months by order dt. 6.10.1993 and subsequently he was visited with a penalty of censure by order dt. 11.8.1995 in respect of <sup>latter penalty</sup> which / proceedings were initiated only on 20.7.1995. According <sup>to</sup> the applicant both these penalties could not come in the way of his crossing the Efficiency Bar because the first penalty was imposed in 1993 and the second penalty was issued on 11.8.1995 in terms of proceedings dt. 20.7.1995 well after the date of the meeting of the DPC. It is further contended by the applicant that if at all it was intended to deny the benefit of crossing of the E.B. to him, the Respondents ought to have resorted to the 'sealed cover procedure' in terms of Government of India instructions dt. 30.3.1989 reproduced at page 103 to 106 of Swamys compilation of FR SR especially in relation to FR 25.

2. The applicant has further contended that the respondents appear to have taken into account a special report in respect of the applicant for the month of April/May, 1995, whereas, the Respondents ought to have considered records only up to March, 1995.

3. The applicant, therefore, contends that the action of holding him up at the EB stage taken in terms of DPC dt. 29.5.1995 is illegal and may be quashed.

4. The respondents have opposed the O.A. According to them, ad hoc promotion in 1993 was not given to the applicant because of contemplation of disciplinary proceedings against the applicant vide memo dt. 27.10.1993 in connection with bogus LTC bill. The punishment of <sup>promotion for</sup> withholding of ~~six~~ months became effective from the date <sup>regular</sup> of ~~promotion~~ to the PSS Group 'B' cadre and since order of promotion was dt. 16.2.1995 the <sup>penalty</sup> ~~(L)~~ was made operative from that date and the applicant was accordingly promoted after expiry of six months from 16.2.1995. So far as the action of not permitting him to cross EB is concerned, it was contended that the applicant was not found fit by the DPC because of his unsatisfactory service record. The respondents contend that the question of following 'sealed cover procedure' or of having a fresh review in respect of the EB case does not arise because the applicant has already been promoted before expiry of one year to P.S.S. Group 'B' cadre in the scale of Rs.2000-3500 and his pay has also been fixed at the stage of Rs.2450/- in the promotional post.

5. As directed by the Tribunal, the Respondents have filed papers relating to DPC in EB case, as well as, <sup>from record</sup> the C.R. file of the applicant. It appears ~~that~~ the decision to deny permission to cross EB was taken on the basis that the punishment is current and hence the case had not been recommended <sup>crossing of</sup> for ~~EB~~. This punishment would refer to the punishment imposed by Memo dt. 27.10.1993 <sup>mm</sup> in terms of which the applicant was not to be promoted for

six months. The respondents have stated that the punishment was to take effect from the date of regular promotion viz. 16.2.1995. The action of the Respondents in this regard does not appear to be proper. First of all the applicant has been denied promotion on ad hoc basis w.e.f. 2.5.1993. Secondly, the regular promotion has been delayed by six months in terms of the punishment <sup>thirdly</sup> and ~~the~~ applicant has been denied the permission to cross EB also in terms of the same penalty. The case is apparently of triple jeopardy. It is true that the C.R. of the applicant as a whole has also to be seen and if the C.R. is adverse and the DPC does not find the services of the applicant to be satisfactory in all respects, the DPC would be entitled to recommend <sup>up</sup> holding ~~of~~ the government employee at the EB. In this particular case, however, the DPC appears to have been influenced by the pendency of the penalty in terms of which the regular promotion of the applicant ~~has~~ already been delayed by six months. On the same <sup>therefore</sup> ground ~~the~~ applicant cannot also be held up at the EB.

6. I am of the view that the decision of the DPC to hold up the applicant at EB on the ground of pendency of the penalty is not proper. The departmental communication in this regard is therefore quashed and set aside. The Respondents are directed to have a review DPC which would consider the case of the applicant on the basis of the record of the applicant up to 31.3.1995 and take a view ~~whether~~ to permit the applicant to cross the EB or not without reference to ~~any~~ currency of any

penalty against the applicant. If the DPC takes a different view and permits the applicant to cross the EB on the due date, consequential benefit of refixation of pay of the applicant may also be allowed to him. The O.A. is disposed of in these terms with no order as to costs.

M.R. Kolhatkar  
(M.R. KOLHATKAR)  
MEMBER (A).

B.