

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 702/96

Dated this 1st, the first day of May 2001.

Shri Dineshkumar Hariji Bagle Applicant.

Shri S.P.Kulkarni Advocate for the
Applicant.

VERSUS

Union of India & 2 Ors. Respondents.

Shri S.S.Karkera for Shri P.M.Pradhan Advocate for the
Respondents.

CORAM : Hon'ble Shri S.L.Jain, Member(J).
Hon'ble Smt. Shanta Shastry, Member(A).

(i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library.✓

abp.

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

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ORIGINAL APPLICATION NO: 702/96

DATED THE 1st OF ^{May} APRIL, 2001.

CORAM: Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smti Shanta Shastry, Member(A)

Shri Dineshkumar Hariji Bagle,
then Working as : Senior Post Master,
Thane Head Post Office,
Thane -4
Residing at Postmaster's Quarters,
Thane - 400 601. ... Applicant.

By Advocate Shri S.P.Kulkarni

V/s.

Union of India

Through:

1. Chief Post Master General,
Maharashtra Circle, Old G.P.O.Bldg,
2nd Floor, Near C.S.T.(V.T.),
Central Railway, Mumbai - 400 001.

2. Director of Postal Services,
Aurangabad Region,
Office of the P.M.G.Aurangabad,
Aurangabad - 431 002.

3. Superintendent of Post Offices,
Jalgaon Postal Division,
Jalgaon - 425 001. ... Respondents.

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

(O R D E R)

Per Smt.Shanta Shastry, Member(A).

The Applicant is challenging his non promotion on adhoc basis though his juniors were promoted in 1993. The applicant entered the Postal Department as Clerk on 10/3/65 and climbed the ladder with promotions from time to time to the post of Inspector of Post Offices and Assistant Superintendent of Post Offices. He was further promoted to the

post of Post Master Higher Selection Grade-I on 1/5/91 and was posted as Post Master, Jalgaon Post Office. Thereafter, he was selected to the Postal Services Group 'B' on adhoc basis on 20/05/93. and regularly selected (All India selection post) to it on 07/03/1995. As far as his regular promotion from 7/3/95 is concerned, the applicant had filed another OA No.703/96 and the same was allowed. In that case though he was selected from 7/3/95, and was promoted ~~and~~ ^{he was} actually relieved from 19/8/1995 due to contemplated disciplinary proceedings. In the present case, the applicant is aggrieved that though he was selected for promotion to a Group 'B' post on adhoc basis, the Regional Post Master General's office declined to join duty as investigations were in progress in the case of false-claim of L.T.C by the applicant. The applicant has therefore approached this Tribunal to grant him the adhoc promotion to Group 'B' by holding and declaring ~~the~~ ^{that} letter dated 25/5/1993 as arbitrary and to grant him the promotion from the date his junior was promoted to Postal Services Group 'B' ~~and~~ to quash and set aside the order dated 25/5/93.

2. The respondents have contested the case. According to them the applicant was no doubt issued the promotion order on adhoc basis on 20/3/93 on the basis of his seniority and fitness and with roster point of Scheduled Tribe Community., and this promotion was subject to there being no disciplinary or vigilance case against the applicant. It was found that disciplinary case was pending against the applicant as the applicant had submitted a false/irregular

claim of LTC. It was under investigation and the Superintendent of Post Offices, Jalgaon on completion of investigation issued a charge sheet under Rule 16 of CCS (CCA) Rules on 4/10/1993 to the applicant and therefore the promotion order could not be given against the points reserved for S.C. Community, for the reasons the next official belonging to S.C. Community Shri M.L.Sabale was promoted against reserve point, the next reserve point for S.C. community fell due on 21/9/1993 and the applicant's case was not considered for the reason that the case regarding false/irregular L.T.C. claim was under investigation in which chargesheet came to be issued on 4/10/93. Thereafter the next reserve point for S.C. Community for adhoc promotion to P.S. Group B arose in April, 1994. At that time also another matter of conduct unbecoming of a Government servant had already cropped up against the applicant, ^{An} advertisement had appeared in Marathi Daily Lokmat on 22/3/94 at Jalgaon to the effect that Puppies of Pomerian white dogs were available with them for which the indending buyer may contact the Head Post Master, Jalgaon. Since the applicant was the Head Post Master at Jalgaon at that time, another official was asked to investigate the matter. A charge sheet was issued to him on 12/7/94 and a punishment of censure was awarded to the applicant on 19/8/94. In the meantime, his case for adhoc promotion was examined by the Chief Post Master General on 10/8/94, on the basis of record of service of the applicant, he was not considered fit for promotion. The applicant was earlier denied adhoc promotion on the basis of violation of rules and also the disciplinary proceedings in the matter

of false LTC claim had been finalised and the applicant was awarded the punishment of withholding of next promotion for a period of six months from 27/10/93 and therefore the applicant could not be granted adhoc promotion. The punishment expired on 27/3/94 but the applicant was not considered for adhoc promotion.

3. The respondents claim that the action taken by them is proper in the circumstances.

4. The applicant further contends that the action of the respondents in withholding his promotions is not at all correct. When he was selected for promotion on adhoc basis on 25/5/93, no disciplinary action was pending against the applicant. The case relating to false claim of LTC had already been enquired into earlier and the matter had been closed. When the Superintendent of Post Offices, Jalgaon had warned the applicant on 16/10/92 and therefore the applicant cannot be punished twice for the same reason. There was no decision to issue any charge sheet even though the case was re-opened as on 20/5/93. The charge sheet was issued only on 4/10/93. Therefore, the applicant should have been actually promoted on adhoc basis from 20/5/93. The applicant has further referred to letters dated 12/9/88 and 12/9/92 of the Ministry of Personnel Public Grievance and Pension. According to him the OM dated 12/9/88 does not contemplate any step to withhold the promotion so also the OM dated 12/9/92 does not enjoin the respondents to stop the promotion when no charge sheet is issued. Further, the applicant was promoted on regular basis w.e.f. 7/3/95.

The applicant has also relied upon the law laid down by the Apex Court in K.V.Janakiraman's case. According to him his case is squarely covered by the judgement in Janakiraman's case. The applicant is also aggrieved that ~~even if the exercise of withholding of promotion for~~ ^{after expiry of the punishment} six months, he was not given promotion ^{thereafter} which is also not fair.

5. We have heard the learned counsel for both sides and have perused the relevant material including the file relating to the disciplinary case against the applicant which the respondents had been directed to produce. The fact is that the applicant was selected for *ad hoc* promotion to Group 'B' post vide order dated 20/5/93. However, actual promotion was not granted to him. This is not denied. The reason is since disciplinary proceedings were contemplated against the applicant, the promotion ~~could not~~ be given. We find that already one enquiry had been conducted into the false claim of LTC by the applicant and the matter had been closed with a warning given to the applicant on 6/10/92. Therefore, as on 20/5/93, ~~there's not~~ was no disciplinary matter pending against the applicant.

5. We have also perused the file relating to the disciplinary ~~action~~ ^{against} the applicant. We find that after the disciplinary action was closed after warning the applicant, the respondents again took it up once again and there is material to show that the second disciplinary action was initiated from 1/4/93 itself wherein it is stated that the case of the applicant has been enquired ^{into by} ~~to~~ ADPS-I of ~~the~~ the Office of the Post Master General, Aurangabad Region and the enquiry report dated 11/3/93 was submitted for taking

further necessary disciplinary action against the official. This shows that disciplinary enquiry was contemplated before the promotion order of 20/5/93. Though according to the judgement of the Hon. Supreme Court in the case of K.V.Janakiraman, disciplinary action is said to have been initiated only when charge sheet is issued, There is a recent judgement of the Supreme Court in the case of Union of India V/s. R.S.Sharma decided on 18/4/2000 reported in (2000) 4 SCC 394. In this judgement, it has been held that sealed cover ~~should not~~ be opened till exonerated and sealed cover procedure has to be adopted during pending of investigation by the CBI. The judgement has dwelt at length on the provision of CM dated 12/1/1988 of the Department of Personnel and Public Grievances and the amended CM dated 31/7/91.

Para - 2 of the CM dated 12/1/88 is reproduced below:-

" Cases where 'Sealed Cover Procedure' applicable- 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 a ~~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 CBI or any agency, departmental or otherwise."

Further para 7 of the aforesaid OA reads thus:

"Sealed cover applicable to an officer coming under cloud before promotion - A government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

7. Since in the present case, the disciplinary action was already contemplated before the promotion order of 20/5/93, as in para-2 (ii) of the OM dated 12/1/88^{it} has to be considered as if the applicant's case had been placed in a sealed cover by DPC and he shall not be promoted until he is completely exonerated of the charges against him. In this case finally the applicant was punished by postponing his promotion for a period of six months. He was not exonerated. Therefore if at all the applicant had to be promoted, it had to be from

the date of completion of punishment which expired on 27/3/94. No charge sheet was pending between 28/3/94 to 11/7/94.

8. We therefore feel that the applicant should have been granted the promotion ~~after~~ ^{and} 27/3/94 if not from 20/5/93.

9. We therefore hold that the applicant is entitled to adhoc promotion from 28/3/94. The applicant will be entitled to notional promotion from 28/3/94 till he was again approved for adhoc promotion on 7/3/95. No arrears of pay shall be payable.

10. In the result, the OA is partially allowed. We do not order any costs.

Shanta S
(SHANTA SHAstry)
MEMBER(A)

S.L.Jain
(S.L.JAIN)
MEMBER(J)

abp.