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Vs.

Union of India &amp; others ... Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

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(By Hon. Mr. Justice U.C. Srivastava, VC)

The applicant was initially posted as Postal Assistant and after having been promoted to the post of Clerk he was appointed as Sub Post Master w.e.f. 7.1.81. There was one more Clerk to assist him but subsequently the Clerk was withdrawn and it appears on one particular date that an amount which was to be deposited by the applicant on that particular date, but it was made on the subsequent date. It came to the notice of the authority and the applicant who was also entitled for promotional post of selection grade of Rs. 425-700 w.e.f. 1.10.84 was not granted the same grade when others were granted. The applicant was placed under suspension w.e.f. 19.1.85 and thereafter a criminal complaint was lodged on 8.10.85 in which a final report was filed. A charge-sheet was served upon him on 18.9.87 and the enquiry proceeded. The disciplinary authority found that the applicant was guilty of his irregularity and awarded a punishment of stopping 3 increments without cumulative effect. The applicant filed an appeal in respect of his non promotion as well as a minor punishment and the appellate authority disposed of the said appeal by a common order dismissing the same and

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rejecting the plea of the applicant that because of rush of work and non availability of Clerk, who was earlier to assist him, this irregularity came into existence and that there has been no monetary benefit for which he was charged. Learned Counsel for the applicant contended that the applicant was placed under suspension in the month of January <sup>1985,</sup> in contemplation of disciplinary action and the charge-sheet was served upon him in 1987. The persons can not be denied of the selection grade in respect of the charges that are subsequently <sup>issued.</sup> There was nothing against the applicant, no criminal proceedings, no departmental proceedings on 1.10.84 when the applicant like others became entitled to the selection grade. His contention has got to be accepted and it not necessary to cite authority in this behalf that there is no proceedings against the applicant. The applicant should have been promoted as he was entitled to the said grade w.e.f. 1.10.84 and the respondents committed error in withholding the promotion. So far as the penalty is concerned the Learned Counsel contended that the Senior Superintendent of Post Office who acted as disciplinary authority could not act as such because he himself was the complainant and lodged an F.I.R. We are unable to agree to this contention as Sr. Superintendent of Post Office as Head of the Department was bound to lodge an F.I.R. merely because in the official course the F.I.R. was lodged and that could not deprive him of his right to hold an inquiry or because of that it can not be said that he is a biased officer. The Learned Counsel contended that the punishment awarded was minor, but it was irregular and there being no corrupt intention on his part and the punishment is excessive with the result that this has adversely affected his future career. May it be so, but so far the quantum of the

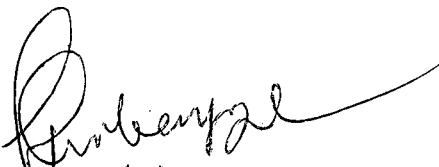
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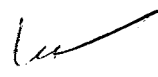
punishment is concerned, the Tribunal has no power to interfere in the same, except in certain circumstances which do not exist in this case. See U.O.I. Vs. Permanand 1989, S.C. Page 177. The Learned Counsel further contended that the appellate authority rejected the promotion of the applicant first and the same must have influenced the said authority in rejecting his appeal against the punishment order as such the appellate order is vitiated having been given with a prejudiced mind from before. Because these two matters were considered by the appellate authority, it can not be said that the appellate authority order is vitiated, or that the second one was to be passed keeping in tune with the first one which was against the applicant. It is still open for the applicant to approach the appellate authority or even the higher authority, which in the circumstances can even now consider the plea of the applicant that the punishment is excessive and severe. Lastly it was contended that the promotion to the higher post has been denied to him though he was entitled to it. Learned Counsel for the respondents in reply contended that the second promotion which was claimed by the applicant was by way of process of selection and if the departmental promotion committee found him unfit because of the certain reasons, the applicant can not claim promotion in the absence of any allegation of bias and malafide. The respondents contention in this behalf is quite valid and as such is accepted.

The Learned Counsel in the end contended that in case this punishment goes out or is reduced, the applicant is to get benefit of the same. It is for the

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applicant to approach the competent authority to re-consider his case and no observation in this behalf can be made out. Thus in view of what has been said this application is partly allowed and partly dismissed. There will no order as to be costs.

  
Member (A)

  
Vice Chairman

Lucknow  
dt.25.6.92

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