

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCM, BANGALORE

DATED THIS THE TWENTY THIRD DAY OF MARCH, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao

Member(J)

Hon'ble Shri P.Srinivasan

Member(A)

APPLICATION No.1457/86(T)

P.K.Paulraj,
Superintendent of Post Offices,
Channapatna Division,
Channapatna,
Bangalore District.

...

APPLICANT

(Shri M.R.Achar

... Advocate)

V.

The Director General(Posts),
Dak-tar Bhavan,
New Delhi.

Post Master General,
Karnataka Circle,
Bangalore - 1.

Post Master General,
Tamil Nadu Circle,
Madras.

...

RESPONDENTS

(Shri N.Basavaraj

... Advocate)

This application has come up before the court today.

Hon'ble Shri P.Srinivasan, Member(A) made the following :

ORDER

This application originated as writ petition No.7029/85 before the High Court of Karnataka. When the writ petition was filed, the applicant was working as Superintendent of Post Offices(SPO), Tirunelveli Division, under the Post Master General, Tamilnadu(PMG).

2. According to the applicant, the PMG accorded sanction for prosecution of the applicant for various alleged offences in January, 1981. The applicant had been working already as SPO on ad-hoc basis from 1973. After giving sanction for prosecuting the applicant, the PMG placed the applicant under suspension w.e.r.31.8.1982. The appli-

P. Srinivasan

cant was also not given any increment from 1.5.1981. The prosecution proceedings continued in the meanwhile and, on 31.1.1984, the trial court held the applicant guilty of an offence U/s 420 IPC r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947, and sentenced him to undergo imprisonment till the rising of the court, and to pay a fine of Rs.1000/-, and failing the latter, to undergo three months rigorous imprisonment. Thereafter, the applicant was reinstated in service on 2.7.1984, and transferred to Karnataka Circle as SPO in Channapatna Division and it was when he was still there that he filed the present application as a writ petition. It transpires that subsequent to the filing of the writ petition, the applicant was dismissed from service by order dated 6.2.1987 passed by the Secretary Postal Services Board, New Delhi, in view of his conviction of the criminal charge U/s 420 IPC r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947, earlier referred to.

3. The first two prayers in this application are to direct the respondents(1) to treat the period of suspension of the applicant from 31.1.1982 to 9.7.1984 as period spent on duty and to ~~update~~ ^{update} sanction increments due to him from 1.5.1981 onwards ^{upto date} (2) to consider the applicant's case for promotion as Postal Superintendent(Class II) w.e.f.11.1978 and to the next higher post of Senior SPO(Group-A) w.e.f. the date his juniors were so promoted and to allow all consequent benefits flowing therefrom. In the third prayer, the applicant wants us to quash order dated 6.4.1985 by which the applicant was [~]sought to be transferred from Channapatna to Hubli. Shri M.Raghavendrachar, learned counsel for the applicant, gave up the third prayer before us.

4. So far as the first prayer was concerned, Shri Achar's contention was that since the applicant had been reinstated on 9.7.1984,

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the period of suspension should be treated as on duty and increments falling due to him should be allowed. On the second prayer, Shri Achar pointed out that though the applicant had been promoted as Postal Superintendent(Class II) on adhoc basis from 1973 itself, his promotion to that post was regularised only as late as in 1979, while his juniors had been regularised from earlier dates. As this period fell before criminal prosecution against him was launched, he should have been regularised in his proper place ahead of his juniors. On the same basis, according to Shri Achar, the applicant would have been due for promotion to the post of Sr.SPO(Group A) from the date his junior Shri V.Krishnamurthy was promoted and that date would also be before the sanction of prosecution proceedings against him. He, therefore, pleaded that we should direct the respondents to promote him as Sr.SPO(Group A) on the date on which his junior Shri Krishna-murthy was promoted.

5. Shri N.Basavaraju, learned counsel for the respondents, refuted the contentions of Shri Achar. He pointed out in the first place that the applicant having been found guilty by a competent Court on one of the criminal charges levelled against him and this decision not having been reversed in appeal so far, the suspension which was ordered in connection with the same charges cannot now be treated as period spent on duty. For the same reason, the applicant could not be sanctioned any increment from 1.5.1981, because sanction for criminal prosecution had already been given by that time.

6. So far as the applicant's promotion to the post of SPO (Class II) is concerned, the applicant had actually been recommended for promotion by a DPC in 1979 and on that recommendation, he was selected against a vacancy which arose in 1975. Therefore, in effect, he had been given promotion from 1975 itself, though orders were issued only in 1979 after the DPC had met. Vacancies arising in 1974

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4 ^{to} and 1979 were together filled up in 1979, because the DPC could be held only in 1979. As far as the applicant's promotion as Sr.SPO (Group A) was concerned, a DPC was held in 1983 to fill up vacancies which arose in 1980, 1981 and 1982. In that DPC, the applicant's name was also approved, but since criminal prosecution was pending against him, his name had been kept in a closed cover. If the applicant is eventually acquitted of the criminal charge in appeal, ~~to be not guilty and is acquitted~~, he will be restored to his proper place in the post of Sr.SPO(Group A). Till then, the applicant could not be given promotion. Shri Krishnamurthy was also recommended for promotion in the same DPC; since there was no vigilance case against him, he was duly given promotion.

7. We have considered the matter very carefully. We agree with Shri Basavaraju that as long as the order convicting the applicant of offences U/s 420 IPC and Section 5(1)(d) of the Prevention of Corruption Act, holds the ^{field} ~~filed~~, and is not reversed in appeal, the reliefs prayed for by the applicant cannot be granted.

8. Shri Achar, at this stage, pointed out that in the strict order of seniority of SPO(Group-B), the applicant would have been entitled to one of the vacancies as Sr.SPO in 1980, particularly because he would have been entitled to one of the reserved posts as a scheduled caste candidate. At that time sanction for prosecution had not been issued. Merely because the DPC for filling up these vacancies was held in 1983, the applicant should not have been denied the promotion which he would otherwise have got.

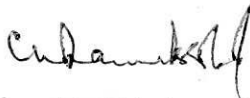
10. We are unable to agree with this contention. For one reason or the other, the DPC for promotion to vacancies which arose in 1980 could not be held immediately. In any case, even by January 1981, the sanction for prosecution of the applicant had been issued.


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That being so, even if the DPC had been held in 1981 to fill up vacancies which arose in 1980, the respondents would have followed the same procedure. It is well known that a DPC is held after a vacancy arises. At the moment, therefore, the claim of the applicant in this regard cannot be allowed till the appeal filed by him against his conviction is decided.

10. In view of this fact, this application cannot be allowed. If the applicant wins his appeal against his conviction, he would be free to approach the authorities for all the reliefs claimed here and if they do not allow him any of the reliefs, he would still have an opportunity to approach this Tribunal, if he so thinks fit.

11. In the circumstances, the application is dismissed. Parties will bear their own costs.


MEMBER(J)

 23/3/87
MEMBER(A)

AN.