

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 15 NOV 1994

APPLICATION NO: 1024 of 1994

APPLICANTS:-

V/S.

RESPONDENTS:-

K. N. Babu

Seey, D/o Post, N. Delhi & 2 ors.

T.

1. Shri. S. K. Mohiyuddin
Advocate

No. 11, Jeewan Bldg,
K. P. East,
Bangalore - 1.

2. Sri M. S. Padmajaiah,
Sri C. G. S. C.
High Court Bldg,
Bangalore - 1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~ passed by this Tribunal in the above
mentioned application(s) on 27/6/ret/94

Issued on
16/11/94

of
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 1024 OF 1993

THURSDAY, THIS THE 27TH DAY OF OCTOBER, 1994.

Mr. Justice P.K. Shyamsundar, .. Vice-Chairman.

Mr. T.V. Ramanan, .. Member (A)

K.N. Babu,
Aged 47 years,
S/o K.N. Shetty, Asst. Branch Manager,
Postal Stores Depot, Arsikere. .. Applicant.

(By Advocate Shri S.K. Mohiyuddin)

v.

1. Union of India
through Secretary,
Department of Posts,
New Delhi-1.
2. Director of Postal Services
(SK Region), Palace Road,
BANGALORE-1.
3. Superintendent of Post Offices,
Hassan.
.. Respondents.

(By Standing Counsel Shri M.S. Padmarajaiah)

ORDER

Mr. T.V. Ramanan, Member (A):-

In this case, the applicant has sought for quashing of
(i) the proceedings dated 8-11-1993 contained in memo of that
date issued by the Superintendent of Post Offices, Hassan Divi-
sion (Annexure-A10) by which the promotion of the applicant
to the cadre of Lower Selection Grade under TBOP scheme which
had previously been given effect to from 30-11-1983 was revised
to take effect from 1-9-1989 on the ground that the promotion
ordered with effect from 30-11-1983 was erroneously done; and
(ii) the letter dated 15-12-1993 (Annexure-A11) by which, as



a sequel to the order dated 8-11-1993 (Anneuxre-A10), the applicant was required to repay to the Government the excess payment of pay the allowances which he had received for the period from 30-11-1983 to 30-11-1993.

2. After having heard the learned counsel for the applicant and the learned Senior Central Government Standing Counsel, we find that the impugned memo and letter are in order. The applicant was facing a departmental inquiry which was initiated against him on 7-5-1983. The DPC, for consideration of promotion of eligible officers, including the applicant, under the TBOP scheme met in December, 1983 and later in September, 1986. In the DPC held in December, 1983 the applicant was not recommended for promotion. In the next DPC held in 1986 the recommendation was kept in a sealed cover. An order was issued on 31-3-1987 by the Disciplinary Authority imposing the penalty of withholding of one grade increment for a period of two years. The Government of India instructions relating to the sealed cover procedure provides as follows:-

"17.6.2 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

Accordingly, as the disciplinary proceedings ended in imposition of a penalty against the applicant, the recommendation contained in the sealed cover kept by the DPC at the time of 1986 DPC could not be acted upon. As required by the aforesaid instructions, therefore, the next DPC which met on 12-6-1987 considered the case of the applicant but did not recommend him for promotion. Similar was the position in the DPC held on 13-7-1988.

In the subsequent DPCs held on 30-6-1989, and 30-8-1990 the case of the applicant for promotion could not be considered for want of his Annual Confidential Reports. Finally, when the DPC met on 1-8-1991, his case was considered and he was recommended for promotion with effect from 30-11-1983 which was later granted by the competent authority. Later, it was discovered that the retrospective promotion that was given was incorrect on account of the fact that even in 1983 and in subsequent years when the DPCs met, the applicant was not recommended for promotion and as such the Director of Postal services ordered that ~~should~~ that a review DPC ~~take~~ take place to reconsider the case of the applicant. Accordingly, the review DPC took place on 21-4-1993 and this DPC recommended that the applicant be given promotion from 1-9-1989. Accepting the recommendation, the Superintendent of Post Offices, Hassan Division issued a show cause notice dated 10-5-1993 (Annexure-A8). The applicant's representation was considered and final orders were passed on 8-11-1993 (Annexure-A10). The promotion that was given from 1-9-1989 by cancelling the earlier promotion from 30-11-1983 seems to be correct because the applicant was not found fit for being promoted in the earlier DPCs upto the DPC held in July, 1988 except for the DPC which took place on 26-9-1986 when its recommendations were placed in the sealed cover. In the light of the instructions issued by the Central Government as regards the sealed cover procedure reproduced supra, once the delinquent official is penalised and in regard to whom a recommendation for promotion has been made and kept in the sealed cover such recommendation cannot be acted upon and in such cases the next DPC would consider the case of the applicant afresh taking into account the penalty suffered by him. We have already seen after the issue of the order of penalty on 31-3-1987 the next DPC



met on 12-6-1987 and considered the case of the applicant and found him not fit for promotion. In view of this, the earlier promotion granted to the applicant with effect from 30-11-1983 on the basis of the recommendation made by the DPC which met on 1-8-1991 was incorrect and as such the remedial measure was taken by holding a review DPC in April, 1993. Based on the recommendation of the DPC, a show cause notice was issued to the applicant and after duly considering his representation a final order was passed on 8-11-1993 granting the benefit of promotion to the applicant only with effect from 1-9-1989 instead of from 30-11-1983. In our view, no impropriety was committed by the respondents in allowing the promotion to the applicant only from 1-9-1989.

3. The learned counsel for the applicant stated that the only point he would agitate upon is that the show cause notice dated 10-5-1993 [Annexure A8], the memo dated 8-11-1993 [Annexure-A10] and the letter dated 15-12-1993 [Annexure-A11] have all been issued not by the appointing authority concerned, that is, the Director of Postal Services SK Region, Bangalore, because the applicant was at the relevant point of time holding a higher post under the BCR scheme and as such the Superintendent of Post Offices, Hassan Division had no competence to issue the show cause and the final order having a bearing on his promotion in the Lower Selection Grade under TBOP Scheme and also ordering recovery vide Annexure-A11. Learned Senior Central Government Standing Counsel disputes this argument and says that the communications referred to do not have anything to do with the imposition of a penalty under the Central Civil Services [Classification, Control & Appeal] Rules, 1965, but they were simple orders for setting right a mistake committed. Since the Superintendent

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of Post Offices, Hassan Division was the authority who at the relevant point of time had ordered his promotion to Lower Selection Grade under TBOP Scheme and since it was he who was required to set right the mistake committed, a review DPC took place under the orders of the Director of Postal Services and as a result of the recommendations made by the said DPC he took action by issuing a show cause notice and later after duly considering the representation made by the applicant passed a final order as at Annexure-A10. Similarly as a sequel to the order as at Annexure-A10, the Superintendent of Post Offices, Hassan Division had to issue the letter as at Annexure-All in order to recover the excess amount paid to the applicant between 30-11-1983 and 30-11-1993. Moreover, these communications have not in any way affected the applicant in so far as the present position held by him under the BCR. Therefore, the objection raised by the learned counsel for the applicant carries no weight and accordingly ~~be~~ rejected in toto.

4. We entirely agree with the submissions made by the learned senior Central Government Standing Counsel. It may be true that the present appointing authority of the applicant is the Director of Postal Services, SK Region, Bangalore, but the communications referred to supra relate to his promotion to the post of Lower Selection Grade under TBOP Scheme and it is not disputed that the Superintendent of Post Offices, Hassan Division alone was competent to make promotions to that grade and also make any changes in the promotion, if an error stands committed, he being the appointing authority for the Lower Selection Grade under TBOP scheme. Moreover as pointed by the learned Senior Central Government Standing Counsel, the applicant has ~~in~~ no way suffered by being brought down to a lower grade. In view of this position, we do not accept the arguments advanced by the learned counsel for the applicant.

5. In the result, this application fails and it is hereby dismissed. No order as to costs.

Sdr

MEMBER(A)

np/

Sdr

VICE-CHAIRMAN.

TRUE COPY

11/94
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore.

