

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 542/93

Date of Decision:

13.6.97

D.B. Waikar,

.. Applicant

Shri B. Dattamoorthy.

.. Advocate for
Applicant

-versus-

Union of India & Ors;

.. Respondent(s)

Shri P.M. Pradhan.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri B.S. Hegde, Member(J),

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

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

M.R. Kolhatkar

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 542/93.

Pr... this the 13th day of June 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

D.B.Waikar,
C/o.B.Dattamoorthy,
Advocate, High Court,
47/4, Asmita, Tarun Bharat
Society, Chakala,
Bombay - 400 099.

... Applicant.

(By Advocate Shri B.Dattamoorthy)

V/s.

1. The Postmaster General,
Nagpur Region,
Nagpur-440 010.
2. The Postmaster General,
Aurangabad Region,
Aurangabad-431 002.
3. The Chief Postmaster General,
Maharashtra Circle,
Bombay - 400 001.
4. The Union of India,
through the Chairman Postal
Services Board, Dak Bhavan,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri P.M.Pradhan)

O R D E R

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

The applicant was working as Assistant Superintendent of Post Offices in Shrirampur Postal Division from 5.1.1982 to 15.4.1986. In the month of June, 1982 there was recruitment to the post of Postal Assistants from the open market. In connection with this recruitment the applicant was proceeded against departmentally and by the order dt. 13.11.1991 (at Annexure 'B' page 18) he was visited with the penalty of censure. Later on, while working as A.S.P. Nanded he was promoted as P.M. (HSG-I) Wardha Head Office vide order dt. 28.6.1990 (Annexure - 'A' page 17).

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However, it was stated in the order that before actual promotion of the above official it may be ensured that no Disciplinary/Vigilance case is pending/contemplated against him and that no punishment is current. He could not be actually promoted in terms of this order because the charge sheet which resulted in the penalty of censure was issued on 20.6.1990. Subsequently, the applicant was promoted to Group 'B' on regular basis in February, 1992. The grievance of the applicant is that the denial of promotion to him to the intermediate grade of HSG has meant that he has suffered in terms of pay fixation in Group 'B'. The contention of applicant is that he was not at all blameworthy in the case of selection for the post of Postal Assistant cadre and that the penalty of censure should be quashed on the ground that it is baseless, arbitrary and unjust, and that the Respondents should be directed to implement the promotional order dt. 20.6.1990 and to fix the pay of the applicant and pay the resultant arrears and to give the applicant notional promotion with consequential benefits from the date the applicant's next junior was promoted to Group 'B'.

2. The penalty of censure was imposed as observed on 30.11.1991. Admittedly, the applicant did not file an appeal against the order. The O.A. was filed on 31.5.1993. The challenge of the applicant to the penalty as imposed, therefore is time barred and we are not inclined to go into the question of validity or otherwise of the penalty. We propose to proceed on the basis that the applicant was validly visited with the

subsequent penalty of censure and whether the action taken by the department is in accordance with the Rules or not.

3. The respondents have contended that the applicant could not be relieved to join the HSG post because disciplinary case was pending against the applicant. The respondents have also stated that since the order of promotion was passed on 28.6.1990 and since the charge sheet was issued earlier viz. 20.6.1990 and therefore his case was in fact considered as if sealed cover procedure was followed and therefore not relieving him on promotion was perfectly in order. So far as his promotion to Group 'B' is concerned the applicant was due for consideration by the DPC meeting held after 13.11.1991. Since the next DPC was held on 7.4.1992, the question of promotion to HSG - I did not arise as he has been promoted to the Postal Service Group 'B' post in February, 1992, thus there was no delay or denial of promotion after the conclusion of the departmental proceedings.

4. The counsel for the applicant in this connection relies on Government of India instructions No.26 below Rule 11 of CCS (CCA) Rules, 1965 extracted and at Annexure 'E' page 28/ the same reads as below :

"Where the departmental proceedings have ended with the imposition of a minor penalty, viz., censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the D.P.C. in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next D.P.C. when it meets after the conclusion of the departmental proceedings. If the findings of the D.P.C. are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or recovery of pecuniary loss caused to the Government by negligence or breach of orders."

further

14 The counsel for the applicant/states that the case of

the applicant has to be decided on the basis of the law as prevailing on the date of issue of charge sheet viz. 20.6.1990. On that day the Full Bench Judgment in K.Ch.Venkata Reddy & Ors. V/s. Union of India & Ors. (Full Bench Judgments of CAT Vol.I (1986-1989 Page 158)) held the field. In that Judgment it was held that "consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official". Further, "in cases where a penalty is imposed on the official after the conclusion of the enquiry, his claim for promotion should be considered by a review DPC as on the original date in the light of the results of the sealed cover as also the penalty imposed and his claim for promotion cannot be postponed for consideration to a subsequent date". The counsel for the applicant would therefore urge that the department ought to have considered the applicant for promotion to the HSG Grade, ^{through} ~~the~~ Review DPC after disciplinary proceedings against the applicant were concluded.

5. However, the Full Bench in K.Ch.Venkata Reddy & Ors. has been considered in the Supreme Court in Union of India V/s. K.V.Jankiraman (AIR 1991 SC 2010). The Supreme Court has interpreted the above conclusion of the Full Bench to mean that the promotion etc. cannot be withheld merely because some disciplinary/ criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge sheet has already been issued to the employee.

6. In terms of Union of India V/s. K.V.Jankiraman therefore the action of the department in denying the promotion to the applicant does not appear to be against the Rules.

7. The counsel for the applicant would, however,

submit that the Judgment in K.V.Jankiraman's case was delivered on 27.8.1991, but the Judgment in K.Ch.Venkata Reddy's case was delivered much earlier viz.2.3.1987 and K.Ch.Venkata Reddy's case should be deemed to have held the field on 20.6.1990.

8. It is difficult to accept the contention of the applicant. The department at any given time would follow the instructions as current at the time. The department cannot be expected to act in terms of the current case-law excepting the individual case especially when the decision in question was challenged before the highest Court. It has to be held that the law in the matter was in the state of flux and was settled only by pronouncement of the three Judge Bench in Union of India V/s. K.V. Jankiraman. I have already referred to the interpretation placed by K.V.Jankiraman's case on the conclusion in the Full Bench Judgment. K.V.Jankiraman's case has also made pertinent observations in para 8. In this para, the Hon'ble Supreme Court has not accepted the theory of double jeopardy which was followed by the Full Bench of the Tribunal, which had therefore held that "if an employee is visited with the penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the 'sealed cover procedure' was followed and as also the penalty imposed". The Supreme Court has observed that to qualify for promotion, the least that is expected of an employee is to have an unblemished record. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti.

9. Apart from the fact that 'sealed cover procedure' in fact was not followed in the case of the applicant, this Tribunal is required to decide the case on the basis of the law as prevailing on the date the Judgment is pronounced and not on the basis of the law as prevailing on the date that the charge sheet was issued.

10. Considering the facts and circumstances of the case therefore, we are of the view that the promotion to the HSG Grade was rightly denied to the applicant in the circumstances and after disciplinary proceedings were concluded the department has at the first opportunity ^{him} promoted to Group 'B' post. The department, therefore, cannot be said to have dealt with the applicant unfairly.

11. In our view, therefore, the O.A. has no merit and the same is dismissed with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde

(B.S.HEGDE)
MEMBER(J).

B.