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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH;
J A I P U R.

O.A. NO. 1115, 1992

Date of order: 27-11-1992

Shri D.K.Sharma S/o Shri Magi Lal
Sharma, aged about 50 years,
r/o Ward No.9, Near Bus Stand,
Srimadhopur, Distt. Sikar (Raj.)
at present employed on the post
of P A in Sikar Postal Division,
Rajasthan.

* Applicant

Versus

1. Union of India through Secretary
Department of Posts, Ministry of
Communication, Government of India
New Delhi.
2. Chief Post Master General, Rajasthan
Circle, Jaipur.
3. Post Master General,
Rajasthan Western Region,
Jodhpur.
4. Director Postal Services,
Western Region, Jodhpur.
5. Superintendent of Post Offices,
Sikar Division, Sikar.

* Respondents

Mr. Shiv Kumar, counsel for the applicant
Mr. U.D. Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN RAJESH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN RAJESH: MEMBER (JUDICIAL))

Applicant Shri D.K.Sharma has filed this
application under Section 19 of the Administrative
Tribunal's Act, 1985, to seek a direction against the
respondents to promote the applicant to the post of
PSC Gr.II from due date and allow all consequential
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benefits at par with his next junior after modifying impugned orders as at Annexure A-1 dated 24.3.1992 and Annexure A-2 dated 31.3.1992 with a further direction to quash the impugned order dated 1.7.1992 (Annexure A-3) rejecting the applicant's representation.

2. Facts which are not largely in dispute between the parties are that the applicant was initially appointed on the post of Clerk on 17.9.1962 at Singhana in Jaipur Division and in due course was promoted to the post of L.S.G. At the time of filing the OA he was employed as L.S.G. P. A. (Postal Assistant) at Sri Madhopur.

3. It is the case of the applicant that the Director General, Department of Posts, New Delhi issued a policy to promote L.S.G. (Postal Officials) who have completed 26 years of satisfactory service in the Postal Assistant Cadre to the next higher scale of pay Rs. 1600-2660 under the 1989 Biennial Cadre Review (for short 'BCR') Scheme w.e.f.

1.10.1991. The applicant completed 26 years of service on 17.9.1988 and became eligible for the aforesaid promotion w.e.f. 1.10.1991. It is further the case of the applicant that the applicant was duly considered and respondent No.2 on the basis of the recommendations of the DPC ordered the promotion of the applicant to the grade of Rs.1600-2660 vide order dated 16.3.1992 (Annexure A-1) wherein his name was placed at serial No.146. It is the grievance of the applicant that in consequence thereof,
OR the third respondent i.e. Post Master General,

Western Region, Jodhpur issued promotion/posting orders in respect of the DPC recommended candidates vide order dated 24.3.1992 (Annex. A-1) which did not contain any reason for with-holding the promotion of the applicant. Subsequently also vide order dated 30.3.1992 the respondent No.5 also issued another order of promotion/posting for implementing the order of the third respondent dated 24.3.1992 vide Annex.A-2. It is the grievance of the applicant that this order also did not contain the applicant's name and no reasons were disclosed for with-holding his promotion, whereas, a number of juniors to him were allowed promotion. He made representation on 5.5.1992 (Annex.A-7) which was rejected by the fifth respondent vide its letter dated 1.7.1992. It is further the case of the applicant that however he was issued a charge-sheet by the respondents under Rule 14 of the C.C.S. (CC4) Rules, 1965 by respondent No.5 vide its Memo dated 30.3.1992 (Annex.A-5). Feeling aggrieved that the subordinate authorities have no jurisdiction to with-hold the applicant's promotion ordered by respondent No.2, he has approached this Tribunal to claim the aforesaid reliefs.

4. The respondents have opposed this application by filing a written reply to which no rejoinder has been filed. It is the stand of the respondents department that the names of persons included in the Memo dated 18.3.1992 (Annex.A-4) promoting the LSG Officials in the Postal Assistant Cadre to the next higher scale of pay of Rs. 1600-2660 under the B.C.R. Scheme was subject to the conditions laid down in paras 3 & 4 of it

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and since disciplinary proceedings were contemplated against the applicant, he suffered from this disability and was not entitled for promotion. It has also been averred by the respondents that before the issuance of the charge-sheet dated 30.3.1992 to the applicant, disciplinary proceedings were under contemplation and as on 31.3.1992 disciplinary proceedings were pending against the applicant, applicant's name did not find place in the promotional order dated 31.3.1992 (Annex.A-2). It has further been averred that the applicant's representation has been rejected on proper and valid grounds in view of condition No.4 of the said Memo dated 18.3.1992 (Annex.A-4). It has, therefore, been urged that this application deserves rejection.

5. We heard the learned counsel for the applicant and for the respondents at great length and examined the record in great detail.

6. The only point for determination in this OA is whether an employee of the Postal Department can claim as of right promotion to the Postal Assistant Cadre in the higher scale of pay Rs. 1600-2660 after completion of 26 years of service under the B.C.R. Scheme even though the disciplinary proceedings are under contemplation or initiation against such an employee ?

7. It has been vehemently argued by the learned counsel for the applicant that since the applicant has been served with a charge-sheet only on 30.3.1992, whereas, the order of promotion has been

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issued by respondent No.2 vide his order dated 18.3.1992 (Annex.A-4), the subordinate authority i.e. respondent No.5 i.e. Superintendent of Post Offices, Sikar Division, Sikar has no competence to with-hold the promotion of the applicant under the BCR Scheme to the promotional post of ~~MP~~ Postal Assistant Cadre.

8. As against this, it has been argued by the learned counsel for the respondents that although the charge-sheet was served on the applicant on 30.3.1992, but the initiation of disciplinary proceedings had ^{place} taken earlier than it and a decision to initiate disciplinary proceedings against the applicant was taken as early as on 10.3.1992 which is evident from the record made available at the time of arguments by the respondents. It has, therefore, been urged that since the decision to initiate disciplinary proceedings had been taken much before the service of the charge-sheet on the applicant, in view of decision of Hon'ble the Supreme Court in the case of Union of India Vs. Kewal Kumar, 1993(2) SLR 554, the respondents department was within its right not to issue any promotional order in respect of the applicant in pursuance of the order dated 18.3.1992 issued by respondent No.2. The learned counsel has also drawn our attention to Clause (iii)&(iv) of the aforesaid Memorandum dated 18.3.1992 (Annex.A-4).

9. We have given anxious thought to the arguments addressed to by the learned counsel for *JO*

the parties and have examined the record in great detail as also the authority relied upon by the learned counsel for the respondents.

10. At the outset, it would be beneficial to reproduce the conditions No.3 & 4 laid down under order dated 18.3.1992 (Annex.A-4) by which a number of L.S.G. Officials (Postal) were ordered to be promoted to the Postal Assistant Cadre under the E.C.R. Scheme w.e.f. 1.10.1991. They read as under:-

"3. The promotion of the selected officials will be subject to the terms and conditions contained in the Directorate letter referred to above and also subject to the condition that the punishment against any of the official is not current.

4. The promotion/posting of the selected officials will also be subject to the conditions that no disciplinary case is pending against them which will be ensured by the Regional Postmasters General concerned before issue of posting orders."

From a perusal of the aforesaid conditions incorporated in the order of promotion ordered by the Post Master General, Rajasthan, Circle, Jaipur, it is clear that the promotion/posting orders of the selected officials will be subject to the condition that no disciplinary case is pending against them and it has to be ensured by the Regional Postmasters General concerned before issuance of posting orders. A similar question was also under consideration before Hon'ble the Supreme Court in the case of Union of India Vs. Kewal Ram (supra). Hon'ble the Supreme Court while considering

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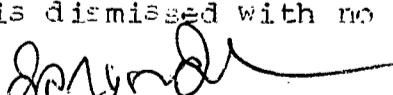
the promotional case of the respondent therein observed as under:-

"When the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the government servant, he cannot be given the promotion, unless exonerated, even if the government servant is recommended for promotion by the D.P.C., being found suitable otherwise."

The above ratio laid down by Hon'ble the Supreme Court in the case of Kewal Kumar (supra) squarely covers the issue raised in this O.A. As stated above, a decision has already been taken by the respondent for initiation of disciplinary proceedings under Rule 14 of the C.C.S.(C.C...) Rules, 1965 as early as on 10.3.1992; it, therefore, cannot be said that on the date of the order of promotion dated 18.3.1992 (Annex.A-4) no disciplinary proceedings were contemplated or initiated against the applicant.

11. In view of above, we are of the considered opinion that there has been no infirmity or illegality in the issuance of the impugned order as at Annexure A-1 dated 24.3.1992 and at Annexure A-2 dated 31.3.1992 and further in rejecting the representation of the applicant vide their order dated 1.7.1992 (Annex.A-3).

12. For all the aforesaid reasons, our answer to the issue raised above is in the negative. Accordingly, there being no merit in the O.A., the O.A. is dismissed with no order as to costs.


(RATAN PRAKASH)
MEMBER (J)


(O.P.SHARMA)
MEMBER (A)