

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 22<sup>nd</sup> Nov 1991

OA 46/91

P.L. GUPTA

... APPLICANT.

V/s.

UNION OF INDIA & OPS. ... RESPONDENTS.

CORAM:

HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

HON'BLE MR. N.K. VERMA, MEMBER (A).

For the Applicant ... SHRI FRAHLAD SINGH.

For the Respondents ... SHRI U.D. SHARMA.

PER HON'BLE MR. N.K. VERMA, MEMBER (A).

In this OA the applicant, Lower Selection Grade Sorter, has prayed that the respondents be directed to promote him on the post of L.S.G. under the Time Bound One Promotion (TBOP) Scheme w.e.f. 30.11.83 with all consequential benefits.

2. The applicant had entered in the Department of Posts as Sorting Assistant and had completed 16 years of regular and continuous service on 31.10.81 and as per the TBOP scheme he should have been promoted to the Lower Selection Grade on 30.11.83, the date of the introduction of the scheme. However, he was not promoted to that grade till 1990 as per orders on Annexure A-2. His representation in the matter was rejected by Annexure A-1. The applicant has drawn our attention to the Department of Posts' order dated 17.12.83 at Annexure A-3, under which the DPC formalities were to be completed latest by 29.2.84 for considering promotions of all officials, who had completed 16 years of service, to higher scale of pay. The formalities for identification of such officials had to be observed through Departmental Promotion Committee which had to be constituted in accordance with existing instructions to assess the fitness of the identified officials for promotion. According to the prevalent rules of the Posts and Telegraph

Department, the promotions to the Lower Selection Grade are to be regulated on the basis of seniority cum fitness. Any senior official, who was not considered fit, could be passed over. However, it has also been laid down at Annexure A-4 that the punishment of censure, recovery and pecuniary loss and stopping of increment do not constitute a bar to promotion of the official provided on the basis of over all assessment of his record of service, the DPC recommends his promotion to the next higher grade. The applicant claimed that all through his service career there were no adverse remarks against him except for the fact that a charge-sheet was issued to him in the year 1982, against which he was awarded a penalty of withholding of one grade increment for two years without cumulative effect on 27.10.84 and there was another penalty of withholding of one increment for three months on 30.9.85. The currency of withholding of all these increments expired on 1.2.86. The applicant's case is that he should have been promoted w.e.f. 30.11.83 notwithstanding the stoppage of increment in October, 1984 and in September, 1985. In support of this contention he has cited the proposition laid down in 1985<sup>(1)</sup> SLR 536 in the case of Laxmi Narain Vyas v. State of Rajasthan, by the Division Bench of the Rajasthan High Court, that no promotion could be withheld during the pendency of the enquiry and as a matter of fact he should have been promoted straightway on 30.11.83.

3. In their reply the respondents have taken the plea that the OA is hit by the period of limitation. Besides, the OA is not tenable in view of the fact that the applicant was duly considered for promotion under the TBOP Scheme by the DPC held in March, 1984 but on the basis of over all assessment of his service records he was not recommended for promotion. The respondents also say that it is not correct that the promotion of the applicant could not be withheld on the basis

of the penalty of stoppage of increments and it was the DPC's recommendation not to promote him on the basis of over all assessment. Since the DPC in March, 1984 did not recommend his promotion, he was bypassed. The effect of the stoppage of increment was over only on 2.2.97. His candidature was considered for promotion by the successive DPCs thereafter, but due to his unsatisfactory service record he was not recommended for promotion by those DPCs also. Ultimately, the applicant was recommended by the DPC held on 13.7.90 and was accordingly promoted w.e.f. 31.10.90.

4. During the hearing Shri Prahlad Singh, learned counsel for the applicant, prayed this bench to look into the DPC proceedings and service records of the official to satisfy whether bypassing of the applicant was done according to the procedure. Accordingly, minutes of the DPC were obtained for the perusal by us. It was observed therein that the DPC held in February, 1984 had kept the recommendations in regard to the applicant in a sealed cover, as per the procedure prescribed for officials in whose cases a disciplinary case is under way. We opened the sealed cover to find out the recommendations regarding the applicant. Normally, sealed cover proceedings are resorted to in regard to an official undergoing a charge-sheet or a penalty, only when a positive recommendation is made. If such official is found unsuitable, there is no question of keeping the recommendations under the sealed cover as it would not give any advantage to anybody. On our opening the sealed cover it was found that the applicant was found suitable for promotion subject to the outcome of the charge-sheet pending against him. In normal circumstances, the next DPC, which was convened in the same year in <sup>December</sup> ~~October~~, 1984, should have opened the sealed cover and taken a decision thereon in respect of the applicant. However, the next DPC did not resort <sup>to</sup> to this procedure and found him unsuitable on

the basis of the punishment order dated 27.10.84. This procedure of the DPC was highly irregular both from the point of view that it did not take into account the sealed cover recommendations and also the fact that it took <sup>debar</sup> ~~reports~~ to take cognizance of the punishment order which had not been recorded in the ACR for the year 1984-85 at the time of the DPC meeting when the ACR for the year 1984-85 ~~have~~ to be written on or after 31.3.85. Their reliance on the punishment order without the remarks complimentary or otherwise of the reporting officer, caused prejudice to the applicant inasmuch as he got rejected in the fitness selection for the post of LSG. The DPC held in <sup>December</sup> ~~October~~, 1984 also erred in over-looking the ACRs of the applicant for the previous five years which certainly were not adverse to have rendered him unfit for promotion. The effect of the penalty of stoppage of increment could not have washed off <sup>the</sup> ~~all~~ the stipulations of Annexure A-1. The DPC further erred in the subsequent years as well when it found the stoppage of another increment for three months, a bar for considering the applicant fit for promotion.

5. During the arguments, the learned counsel for the applicant also brought to the notice that the applicant was allowed to cross the efficiency bar during the same time in November, 1984 by the respondents. The learned counsel for the applicant brought to our notice the provisions under Rule 270 of the P&T Manual Vol.IV, which lays down the conditions for grant of efficiency bar. One of the stipulations is;

"In respect of the clerks and sorters in whose scales of pay there are two efficiency bars, the following points should be taken into consideration in determining whether an official, should be allowed to cross the bars. In regard to the first bar it should be considered whether he is fit for the work he has been doing and has general fitness for the duties required of him. In regard to the second bar it should be considered whether he has worked well and shown promise of being capable of filling a higher appointment. In the case of time-scales where only one efficiency bar has been prescribed, before an official is allowed to cross it, it should

be considered whether he has worked well and is considered fit for holding more responsible appointment in the same cadre (including independent charge of time scale post offices)."

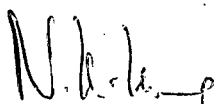
It is amply clear from these provisions that an official is allowed to cross the efficiency bar on the basis of assessment that he has worked well and is considered fit for holding more responsible appointment in the same cadre. Having allowed the applicant to cross the efficiency bar under the stipulation made in Rule 270 of the P&T Manual Vol.IV does not lie in the mouth of the respondents now to say that the DPC found him unfit for promotion not only during one year but also during the successive years after 1984.

6. We have carefully considered the matter. A perusal of the confidential report of the applicant has revealed that except the two incidences of stoppage of increments, of which the currency expired in February, 1987, according to the respondents, there was no other adverse entry against the applicant. The promotion to the TBOP, as the name itself suggests, is not a promotion in the real sense of the term. Scheme was aimed on giving a higher scale of pay to officials who were stagnating in one time scale or grade for long periods without any prospectus of promotion. Normally, everybody had to be promoted according to seniority ~~and~~ the minimum service of 16 years. Only persons declared or identified as unfit were required to be denied this promotion. The DPC held in February, 1984 had declared the applicant to be fit for promotion and this recommendation was kept in a sealed cover. Once the penalty of stoppage of increment was imposed on the official, a review DPC should have been convened to determine the suitability of the applicant after opening the sealed cover and in the light of the penalty imposed. The learned counsel for the respondents was not able to state ~~that~~ any certainty ~~was~~ such an action was taken. The DPC for

all other eligible candidates was held in December, 1984, wherein no mention was made that this sealed cover was opened by the D.P.C. members. This fact is not controverted since the sealed cover was opened by us ourselves during the course of hearing. It is, therefore, quite evident that the proper procedure for holding the review D.P.C. was not observed by the respondents. We are satisfied that the gradings given by the several reporting officers to the applicant do not warrant him to be declared as unfit during the subsequent D.P.Cs.

7. In the circumstances of the case, the O.A. succeeds. The applicant must be given his promotion to the higher scale of pay in the T.B.O.P. Scheme from the date when it became due to him as per prescribed procedure and give him the ante-date of seniority in the TROP LSG grade in the light of our observations. All consequential benefits of salary etc. will also be given from such date to be determined.

There will be no order as to costs.

  
( N.K. VERMA )  
MEMBER (A)

  
( D.L. MEHTA )  
VICE CHAIRMAN