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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 520 of 1987.

Date of Order: 15-1-1990

Ms. Alamellu Narasimhan ... Applicant.

Versus

Union of India represented by the
General Manager, Telephones, Saifabad,
Hyderabad. ... Respondent.

Counsel For the Applicant: Sri K.S.R.Anjaneyulu.

Counsel For the Respondent: Sri G.Parameswara Rao, For
Sri P.Ramakrishna Raju, SC For

Income-Tax.

C O R A M:

THE HON'BLE SHRI B.N.JAYASIMHA: VICE-CHAIRMAN.

THE HON'BLE SHRI J.NARASIMHA MURTHY: MEMBER (JUDL.)

(Judgment of the Bench delivered by Hon'ble
Shri B.N.Jayasimha, HVC)

The Applicant is a Telephone Operator in the
office of the A.D.E.T. Computer, Telephone Bhavan,
Hyderabad. She has filed this application aggrieved by
the action of the respondents in not considering her
for time bound promotion on completion of 16 years service.

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✓ The applicant states that she was appointed as Telephone Operator on 1-11-1966 in the Hyderabad Telephone District. She has completed more than 17 years of service as Telephone Operator by 30-11-1983.

The Director General Posts and Telegraphs, New Delhi in letter No. 1-71/83-NGC dated 17-12-1983 directed all Heads of Circles, Telephone Districts and other offices that time bound promotion should be given to all employees who have completed sixteen years of service in the basic grades in Group 'C' and 'D' from 30-11-1983. The applicant was hopeful that she would get time bound promotion to next higher grade with effect from 30-11-1983. She was not promoted along with others who have completed 16 years of service. The applicant states that they were promoted in February, 1984 with retrospective effect from 30-11-1983. She states that a charge memo issued by the A.E.Trunks, Secunderabad under Rule 16 of the C.C.S.(C.C.A.)Rules, 1965 was pending enquiry.

The Assistant Engineer Trunks, Secunderabad by his Memo No. V-I/RMTX/08S/83-84 dated 3-2-1984 imposed punishment of stoppage of next increment for a period

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three years without cumulative effect. The applicant preferred an appeal to the D.E. Phones and Review petition dated 18-12-1984 to the P & T Board, New Delhi. The Member (P) Telecom Services Board, New Delhi by his letter No. 2/98/85-Vig III dated 7-8-1985 rejected the petition.

3. The applicant submitted representations for considering her for promotion under the time bound scheme. She submitted a representation on 12-1-1987 stating that the D.P.C., should have considered her entire service record without relying solely on the punishment imposed in 1984 and given her the promotion. She also got a legal notice issued on 26-3-1987. There has been no reply. The applicant contends that the action of the ✓ respondents causes double jeopardy and is contrary to Article 20(2) of the Constitution of India. The applicant relies on a full bench decision of the Central Administrative Tribunal in T.A. No. 849/86 reported in A.T.R. 1987 (1) 547.

4. The respondents in their counter state that the D.P.C., which met on 4-2-1984 considered the case of the applicant and did not recommend her name for promotion under one time bound promotion scheme as per D.P.C. Proceedings dated 7-2-1984. She was once again considered for one time bound promotion on 4-9-1984.

As per punishment Order No. V.1/RMTX/OBSN/83-84/650

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dated 3--2--1984, the punishment of stoppage of increment for a period of three years without cumulative effect was already operative. Therefore, the D.P.C., did not recommend her name for promotion.

5. The case of the applicant was again considered ~~on~~ during 1985 by the D.P.C., on

~~one time bound promotion~~ during 1985 and 17--7--1986 and did not recommend her name

✓ for promotion as the punishment was still in operation.

However, the D.P.C., which met on 25--8--1987 for one time bound promotion during 1987 recommended her name for promotion with effect from 1--11--1987 the date on which the punishment ceases to be operative.

6. The respondents state that there is no double jeopardy as the D.P.C., met after the imposition of the punishment and the Rulings on the subject are quite clear that no promotion can be given during the currency of punishment.

7. We have heard Sri K.S.R.Anjaneyulu, learned counsel for the applicant and Sri Parameswara Rao, learned counsel for the respondents.

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8. The first contention advanced by Sri Anjaneyulu, learned counsel for the applicant is that as per the decision of the Full Bench reported in 1987(1) ATR 547 that the review D.P.C., should have considered the applicant in regard to her fitness for promotion after imposition of the penalty by the Disciplinary Authority. Sri Parameswara Rao, learned counsel for the respondents states that the D.P.C., in fact met on 4-2-1984 but did not find the applicant suitable for promotion and on subsequent occasions also it considered the applicant. The D.P.C., was of the view that the applicant cannot be permitted as she was undergoing punishment.

9. Sri Anjaneyulu, learned counsel for the applicant relies on the instructions contained in D.G., P&T's no. 105/26/81-Vig.III, dated the 30th March, 1981 ✓ stated that "while normally there will be no need to in which it is/ impose two statutory penalties at a time, the penalty of recovery from pay of the whole or part of any loss caused by an official to the Government by negligence or by breach of order can be imposed along with

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another penalty." It is also stated in the instructions that "The punishing authority should, however, bear in mind that when more than one penalty is imposed, one of which is recovery of pay of the whole or part of loss caused to the Government, the net cumulative effect on the Government servant should not be of such a severity so as to make it impossible for him to bear the strain." Sri Anjaneyulu contends that withholding the promotion of the applicant on the ground that the applicant is undergoing the punishment is, therefore, not correct.

Sri Parameswara Rao, learned counsel for the respondents relies on Government of India's instructions contained in G.I., C.S., (Department of Personnel) ~~GOVERNMENT OF INDIA~~, ~~EXCELSIOR~~ & A.R., O.M.No.22011/6/75-Ests.(D) dated the 30th December, 1976 which reads as follows:

"..... Even where, however, the competent authority considers that in spite of the penalty the officer is suitable for promotion, the officer should not be promoted during the currency of the penalty."

Sri Parameswara Rao contends that ~~since~~ the applicant was undergoing penalty she was denied the promotion during the period of penalty ^{as} ~~that~~ and she was promoted immediately thereafter.

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We have heard the learned counsel for the applicant, Sri K.S.R. Anjaneyulu and the learned Standing Counsel for Central Govt. cases, Shri Parameswara Rao.

The question for consideration is whether the applicant's promotion could be withheld during the currency of the penalty of stoppage of increment. Sri K.S.R. Anjaneyulu, learned counsel for the applicant, refers to the decision rendered by the Chandigarh Bench of this Tribunal in Parveen Kumar Aggarwal Vs. ICAR & Others (1988) 8 Administrative Tribunals Cases 496). The Chandigarh Bench considered the administrative instructions issued in G.I., D.P. & A.R. OMs, dated 13th December 1976 and 16th February 1979 on the subject of promotion of employees on whom penalty has been imposed. The Chandigarh Bench observed "that the condition that in the cases of employees, who have been awarded a minor penalty of withholding of increment/withholding of promotion, can be made only after expiry of the penalty constitutes a real threat to the future career of a delinquent official in as much as it interdicts the Competent Authority from promoting him even though he has been otherwise found suitable and fit for promotion to the next higher post by the Departmental Promotion Committee/Selection Committee, as the case may be. We are unable to find any justification/rationale behind this self-contradictory policy in as much as once a delinquent official, who has been punished for delinquency in the discharge of duties in accordance with the rules and only a minor penalty of the kind mentioned above is imposed on him, has been found to be quite fit and suitable for promotion to the next higher grade, he cannot be punished twice.

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Withholding of promotion is in itself a recognised penalty under Rule 11 of the CCS(CCA) Rules (for short "the Rules"), like the penalty of "withholding of increments of pay". There is no provision in the rules which would warrant imposition of two penalties at the same time. In other words, there cannot be two concurrent penalties. It is true that under Explanation to Rule 11, non-promotion of a government servant whether in substantive or officiating capacity, after consideration of his case, to a Service, grade or post for promotion to which he is eligible, is not a penalty. All the same, when the promotion of a person is withheld on the ground that he is already undergoing another punishment of a minor nature, say "withholding of increment" as in the instant case, it will certainly amount to imposition of two penalties/double jeopardy. Hence the aforesaid instruction directing that even where the competent authority considers that inspite of penalty, the officer is suitable for promotion, the officer should not be promoted during the currency of the penalty is absolutely unwarranted, unjustified and arbitrary in nature. Such an instruction, therefore, will be violative of the principle of equality enshrined in Articles 14 and 16 of the Constitution.

Applying the above decision, we find that the application has to be allowed and we accordingly do so. We direct the respondents to refer the case of the applicant to the Departmental Promotion Committee to consider her case for promotion and if she is found fit for promotion, she shall be promoted accordingly notwithstanding that the period of the penalty has not expired. It is clarified that the respondents ~~are~~ .

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shall be entitled to enforce the penalty of withholding
the increment in the higher post. No costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice-Chairman

M
(J.N.MURTHY)
Member (Judl.)

Dt. 15th January, 1980

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DEPUTY REGISTRAR (J)
12.1.90.

TO:

1. The General Manager, (Union of India), Telephones, Saifabad, Hyderabad.
2. One copy to Mr.K.S.R.Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar, Bakaram, Hyderabad-500 020.
3. One copy to Mr.P.Ramakrishna Raju, Sr.CGSC for Income Tax. (C.A.T) Hyderabad.
4. One spare copy.
5. One copy to P.R.(S) P.A.T: HYDERABAD.

k.j.

Ats. Bala
12.1.90.