

34  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

OA.348/91

date of decision : 21-6-1993

Between

S. Srinivasulu : Applicant

and

The Sr. Supdt. of Post Offices  
Hyderabad City Division  
Hyderabad 500 001 : Respondent

Counsel for the applicant : S. Ramakrishna Rao,  
Advocate

Counsel for the respondent : N.V. Ramana, Addl. SC for  
Central Government

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. P.T. THIRUVENGADAM, MEMBER (ADMN.)

Judgement

(As per Hon. Mr. Justice V. Neeladri Ra, Vice-Chairman)

Heard Sri S. Ramakrishna Rao, learned counsel for the applicant and Sri N.V. Ramana, learned counsel for the respondents.

2. The applicant joined service as Postal Assistant on 20-2-1974. The first-time-bound promotion which is after expiry of 16 years of service was due to him on 20-2-1990. Hence, the DPC which met on 24-1-1990 considered the case of the applicant also in regard to his suitability for promotion. The show-cause-notice dated 15-2-1990 was issued for initiating minor penalty disciplinary proceedings. Probably, for that reason the result on the basis of the assessment of the performance of the applicant arrived at by the DPC which met on 24-1-1990 was kept in sealed cover. The disciplinary proceedings as against the applicant in pursuance of the show

show

show-cause-notice dated 15-2-1990 were concluded on 22-5-1990, the date on which the punishment withholding one increment w.e.f.20-2-1991 was awarded. The DPC again met on 15-10-1990 and held that the applicant was not found suitable for promotion.

3. We requested the respondents to produce the sealed cover in which the result arrived at by the DPC which met on 24-1-1990 after assessing the performance of the applicant, <sup>in respect</sup> in order to peruse it for finding out as to whether the said DPC found the applicant fit or unfit for promotion for it will have a bearing to consider whether the second DPC was influenced by the punishment awarded to the applicant in holding that the applicant was not suitable for promotion. The said sealed cover was produced and it was opened in the presence of both the learned counsels. The contents therein disclosed that the DPC which met on 24-1-1990 found <sup>Hence it can be held that</sup> the applicant fit for promotion. <sup>The DPC which met on</sup> 16-10-1980 might have been influenced by the punishment of withholding of one increment when they found the applicant not fit for promotion. DG,P&T letter No.35/9/84-SPB-II, dated 19th May, 1984, which reads as follows :

"Promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this connection a reference is invited to the instructions issued by the M.H.A. in OM No.22011/1/68-Estt.(A), dated the 16th February, 1979, stating inter alia that the punishments of censure, recovery of pecuniary loss and stopping of increment do not constitute a bar to promotion of the official provided, on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post."

*✓* Suggests that the punishment of withholding of increment does not constitute a bar to promotion of official provided on the basis of overall assessment of his record of service,

2003

(36)

the Departmental Promotion Committee recommends his promotion to the next higher post. Then the question arises as to whether the DPC have to again require to consider it or we can act on the basis of the conclusion of DPC which met on 24-1-1990. It is clear from the record that the ~~material available on 15-10-1990~~ would have held on the same material that the applicant is fit for promotion as held by the earlier DPC if it has not taken into consideration the punishment awarded to the applicant. Hence, it is a futile exercise in directing the DPC again to consider the case of the applicant on the basis of the material which was available on 22-5-1990 the date of punishment. So, in view of the material on record it has to be held that it was found by DPC that the applicant was found fit for promotion by the relevant date.

4. The G.I., MHA., DP&AR OM No.22011/2/78-Estt.(A), dated 16th February, 1979 is to the effect that in the case of the employees who have been awarded minor penalty of withholding of increment, promotion can be made only after the expiry of penalty. But the same was held as unconstitutional as being violative of Article 14 & 16 of the Constitution, by Chandigarh Bench of CAT in Parveen Kumar Aggarwal Vs. ICAR and others (1988) 8 Administrative Tribunals Cases 496). The said judgement was followed by this Bench in OA.520/87. The SLP as against the order in the above OA was dismissed on 20-8-1990. Hence, the said instruction dated 16-2-1979 cannot be held as in existence.

5. Hence, the first time-bound promotion to the applicant had to be given w.e.f.15-10-1990 the date on which the second DPC met after the punishment was awarded to the applicant. The applicant is entitled to ~~all~~ <sup>also</sup> the monetary benefits w.e.f. 15-10-1990.

320  
X

(3)

PARA 6 MODIFIED AS PER  
THE JUDGMENT  
DT. 28.6.93  
IN THIS OA.

6. It had to be made clear that in view of the apprehension expressed by the learned counsel for the respondents that this order does not affect the order dated 22-5-1990, imposing a punishment of withholding one increment from 20-2-1990 in the higher post.

7. The OA is ordered accordingly. No costs.

P.T.T.  
(P.T. Thiruvenagadam)  
Member (Admn.)

V.N.R.  
(V. Neeladri Rao)  
Vice-Chairman

Dated : June 21, 93  
Dictated in the Open Court

sk

Deputy Registrar (J)

To

1. The Senior Superintendent of Post Offices,  
Hyderabad City Division, Hyderabad-1.
2. One copy to Mr. S. Ramakrishna Rao, Advocate, CAT. Hyd.
3. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
4. One copy to Library, CAT. Hyd.
5. One spare copy.

pvm

4/10/93  
P.T.T.  
17/7/93

IN  
C  
TYPED BY  
SIGNED BY

COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 21 - 6 - 1993

ORDER/JUDGMENT:

M.A. / R.A. / C.A. NO.

in

O.A. No. 348(9)

T.A. No. (w.p. )

Admitted and Interim directions  
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.

pvm

3/12/93  
X