

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.702 of 1993

DATE OF ORDER: 5th November, 1996

BETWEEN:

K.SATYANARAYANA

.. APPLICANT

AND

Union of India represented by:

1. The Chief Postmaster General,
Hyderabad,
2. The Postmaster General,
Visakhapatnam,
3. The Superintendent of Post Offices,
Vizianagaram.

.. Respondents

COUNSEL FOR THE APPLICANT: SHRI KSR ANJANEYULU

COUNSEL FOR THE RESPONDENTS: SRI NV RAGHAVAREDDY, Adl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDICIAL)

JUDGMENT

ORAL ORDER (PER HON'BLE SHRI B.S.JAI PARAMESHWAR,
MEMBER (JUDICIAL))

Heard Shri KSR Anjaneyulu and Shri N.V.Raghava
Reddy, learned counsel for the parties.

2. The applicant has filed this Original Application
praying this Tribunal to call for the records resting with
the case and to declare the order dated 1.8.92 of the
Respondent No.3 (Annexure 5) rejecting his request for

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promotion to HSG-II as arbitrary, illegal and further direction to the respondents to consider the case of the applicant for promotion to the cadre of HSG-II in the scale of pay of Rs.1600-2660 under BCR Scheme (Annexure-I) from the date his next junior was promoted with all consequential benefits and to give such other reliefs.

3. The case of the applicant is that the Director General, Posts, New Delhi vide letter NO.22-1/89-PEI dated 11.10.91 (Annexure-I) issued orders for promotion of officials who had completed 26 years of service to the next higher cadre under the Biennial Cadre Review (BCR) effective from 1.10.91, that he had completed 26 years of service as on that date, that he was, therefore, eligible for consideration for promotion to the next higher scale, that no disciplinary action was pending against him as on that date, that his work was satisfactory, that the criterion for promotion was eligibility of 26 years of satisfactory service in terms of seniority-cum-fitness as laid down in Annexure-I, that he having fulfilled all the conditions he should have been promoted to the next higher post effective from 1.10.91, that there was no justification to ignore his case and no valid reasons have been given. Further he states that the action of the respondents was arbitrary and that he was constrained to file the Original Application No.524/92 before this Tribunal, that on 3.7.92 this Tribunal directed the respondents to dispose of his representation dated 21.4.92 (Annexures 4 and 3) considering his case for promotion and

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reserving liberty to him to approach this Tribunal in case he felt continued to be aggrieved.

4. In the reply, the respondents have submitted that the applicant was due for promotion after completion of 26 years of service effective from 1.10.91, that his case was considered from January 1992 along with the other officials, that his case was not recommended by DPC as the applicant was identified in the month of September 1991 as a Subsidiary Offender in SB/RD/TD frauds committed by the Branch Post Master, Jarajapupeta and orders were issued promoting all other eligible officials to BCR with effect from 1.10.91 in which officials junior to the applicant were promoted. It is submitted that the applicant made a representation dated 21.4.92 requesting them to consider his case for promotion, that his representation was finalised by CPMG, Hyderabad and he filed the OA No. 524/92 before this Tribunal. It is further stated that the representation of the applicant was considered and he was informed by the letter dated 7.8.92 that he was not recommended by the DPC for promotion under BCR Scheme. Thus the respondents submit that in view of the fact that the applicant ^{was} ~~is~~ a Subsidiary Offender his case for promotion was considered and not recommended.

5. Till to this date, the respondents have not filed any charge sheet or initiated any disciplinary proceedings against the applicant for his alleged involvement in the said fraud case. The learned counsel for the applicant

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relied upon a decision of the Calcutta Bench of the Central Administrative Tribunal in the case of "Bhabha Ranjan Roy v. Union of India [(1993(1) AISLJ (CAT) 40]" wherein the Hon'ble Tribunal directed the respondents to consider the case of the applicant for promotion on the basis of his Annual Confidential Reports upset 30.8.89. Further the Hon'ble Tribunal held that pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have no impact upon his right to be considered for promotion. The above decision of the Calcutta Bench of the Tribunal is based on the verdict of the Hon'ble Supreme Court in the case of "Union of India v. K.V.Janakiraman" reported in AIR 1991 SC 2010.

6. In view of the principle enunciated by the Central Administrative Tribunal, Calcutta Bench, we are of the view that the respondents shall have to consider the case of the applicant for promotion in accordance with the scheme formulated under BCR. The learned counsel for the respondents submitted that the applicant can be promoted only if his services are satisfactory. He further submitted that as charges are contemplated, his services cannot be considered as satisfactory. But in view of the pronouncement made by the Calcutta Bench of the Tribunal, whether his services are satisfactory or not can be considered only after charge sheet is issued or the applicant is placed under suspension. Since no charge sheet has been issued nor has he been suspended, it cannot be said that the applicant's services are not satisfactory just because there was contemplation of issuing a charge


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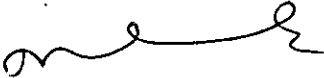
sheet to the applicant for certain omissions and commissions.

7. In view of the above, the Original Application is allowed. The applicant has to be considered for promotion from the post of HSC Gr II in the scale of pay of Rs. 1600-2660 on the date when he completed 26 years of service on the basis of his Annual Confidential Reports and other service records by a Review committee. In case he is found fit for promotion, he should be promoted from that date with all consequential benefits such as arrears, seniority etc.

8. It is submitted that the applicant has already retired from service, his pensionary benefits should be calculated on that basis. But the above direction will not stand in the way of the respondents to initiate disciplinary proceedings in accordance with the rules if they deem it fit to initiate such proceedings.

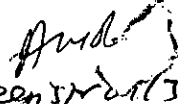
8. The OA is disposed of accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 5th November, 1996
Dictated in open court

vsn


Dy. Registrar (3)

27/11/96

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DA 702/93

Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)
Hon. Mr. B. S. Jai Prakash M(J)

DATED: 27/11/96

ORDER/JUDGEMENT
R.A./C.P./M.A.NO.

D.A.NO. 702/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

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II COURT

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
विवरण/DESPATCH
27 NOV 1996
हैदराबाद न्यायपीठ
HYDERABAD BENCH