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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

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O.A.No.255/94.

(per Hon'ble Sri B.S.JAI PARAMESHWAR, Member (J))

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Date: March 27, 1997.

Between:

Gulam Jeelani Applicant.

and

1. The Superintendent,
R.M.S.,
Hyderabad Sorting Division,
2. The Chief Post Master General,
A.P.Circle, Dak Sadan, Abids,
Hyderabad -1. Respondents.

Name of the Counsel for the applicant: Sri Krishna Devan.

Name of the counsel for Respondents. Sri N.R.Devraj, Sr.Standing Counsel for Respondents.

CORAM:

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

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

JUDGMENT.

Heard Sri Krishna Devan, learned counsel for the applicant and Sri W.Satyanarayana for Sri N.R.Devraj, learned counsel for the Respondents.

The applicant in this O.A., was appointed as the Mail Man (Group "D") in the Sorting Division, Hyderabad on 4--11--1976. It is stated that during the year, 1983 the Department of Posts introduced one time bound promotion

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Scheme (in short the OTBP Scheme) to the Cadres of 'C' and 'D' officials who had completed 16 years of service on or after 30-11--1983 for being promoted to the next Higher Post/in higher scale of pay. It is stated that the post of Mail Man is in the cadre of Group "D" and the same is also covered by the said Scheme and the Mail Man who had completed 16 years' of service will be promoted as Jamedar in the next Higher Scale of pay. It is stated that the applicant had completed 16 years of service as on 4-11--1992 and thus became eligible for promotion in the said OTBP Scheme. The applicant states that all the Mail Men working in the same Unit and who had completed 16 years of service have been promoted as and when they became eligible but the 1st Respondent has not considered his case for promotion under the OTBP Scheme. The applicant claimed promotion under the said Scheme by a representation dated 30--7--1993, followed by another representation dated 14--8--1993. On 16--2--1994, the 1st respondent herein by his letter No.B1/Prom/16/Col. iv/ (Annexure 4 to the O.A.) informed the applicant that the 1st respondent was directed by the Circle Office to inform him that during the Currency of the penalty, an official could not be promoted under the OTBP Scheme

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and as the penalty of withholding of the applicant's next increment for three years was current and therefore he could not be promoted till the currency of penalty was over.

Hence the applicant has filed this O.A. , to call for the records relating to the impugned letter dated 16--2--1994, to quash the same, to declare that he is entitled for promotion under the Scheme with effect from 4--11--1992 and to direct the respondents to refix his pay and allowances, consequent to his promotion under the OTBP Scheme and for consequential benefits.

The respondents have filed their counter stating that the applicant was appointed on 4--11--1976, that he completed 16 years of qualifying service on 7-11--1992, that he became eligible for the next higher promotion under the Scheme and, accordingly, his case was placed before the DPC., held on 13--8--1992, that as on that date, the disciplinary proceedings were pending against the applicant, that the DPC., kept its findings in a sealed cover, that in the disciplinary proceedings the applicant was imposed with a penalty of withholding his next increment for a period of three years without cumulative effect vide Proceedings dated 28-9-1992, that his case was again placed before the next DPC held on 8-6-1993, that the DPC., after opening the sealed cover had not recommended the applicant's name for promotion as

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as the penalty imposed on 28-9-1992 was in force. Thus, the applicant was not given promotion under the OTBP Scheme on account of the currency of the penalty. The applicant had preferred an appeal against the said punishment and he was informed that he could only be promoted after the expiry of the period of punishment.

The fact that the applicant was imposed with a penalty of withholding his next increment for a period of three years by an order dated 28-2-1992 is not in dispute. During the currency of the said penalty the applicant cannot be considered for promotion under the Scheme. Now it is submitted that the period of penalty had expired on 4-11-1995 and that his case should be considered, for promotion under the Scheme.

The learned counsel for the applicant submits that if he is not promoted and his increment is also withheld for three years, it would amount to double punishment in terms of the Civil Services (Classification Control and Appeal) Rules. An employee cannot be promoted while he is undergoing punishment and if such a promotion is not given that would not amount to double jeopardy.

The Apex Court in the case of UNION OF INDIA Vs. K. KRISHNAN (reported in 1992(6)SLR(SC)734) observed

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that denial of promotion during the currency of penalty in disciplinary proceedings is not violative of Articles 14 and 16 of the Constitution of India and that to punish a servant and at the same time to promote him during the currency of Punishment may justifiably be termed as self contradictory.

The case of the applicant should be considered for Promotion under the Scheme after the expiry of the punishment. It is submitted that the applicant had completed the punishment on 4-11--1995. The respondents shall verify this factual position and consider his case for promotion under the Scheme and if the applicant is found eligible for promotion, he should be promoted from the said date.

The learned counsel for the applicant submits that the applicant has been promoted from 1-12-1996, but as per our direction his case be considered for promotion from an earlier date i.e., from the date when the currency of punishment expired under the Scheme.

With the above directions, the O.A., is disposed of.

Time for compliance is four months from the date of receipt of the copy of this Order.

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Copy to:-

1. The Superintendent, R.M.S., Hyderabad Sorting Division, Hyderabad-27.
2. The Chief Postmaster General, A.P.Circle, Dak Sadan, Abids, Hyderabad-1.
3. One copy to Mr.Krishna Dewan, Advocate, CAT, Hyderabad.
4. One copy to Mr. N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
5. One copy to DR(A), CAT, Hyderabad.
6. One duplicate copy.

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Returned to CO Sec.

Please find Bldg.
to along with this bundle.

23/3/97

Of CO Sec.

Records

'B' Rule not available
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Records.

Sent
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. AGARWAL : M(A)

AND

THE HON'BLE SHRI D.S. JAI PARAMESHWAR:
M(J)

DATED: 27/3/97

ORDER/JUDGEMENT

R.A/C.P/M.A.No.

in

O.A.No. 255/84

ADMITTED 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

