

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD  
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O.A. 1066/94.

Dt. of Decision : 25.1.95.

Karan Syal

.. Applicant.

Vs

1. The Secretary,  
Ministry of Communications,  
Department of Posts,  
Dak Bhawan, New Delhi-1.

2. The Member (P)  
Postal Services Board,  
Dak Bhawan, New Delhi-1.

.. Respondents.

Counsel for the Applicant : Mr. MP Chandramouli

Counsel for the Respondents : Mr. NR Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A.No.1066/94

Dt. of decision: 25 -1-1995

JUDGEMENT

{ As per Hon'ble Justice Sri V. Neeladri Rao, V.C. }

Heard.

2. The applicant is a direct recruitee of Indian Postal Service. On the basis of his performance in the examination conducted in 1977 the applicant joined service in the Department on 12-7-78 and he was posted as SSPO on completion of training. The applicant was promoted as Director of Postal Services w.e.f. July, 1990.

3. According to O.M.No.19/1/86 PP, dt.14.8.87 of the Ministry of Personnel, PG and Pension, selection grade posts in all Group-A Central Services were created and the number of the same is prescribed as equal to 15% of the duty posts. Member of the service shall be eligible for appointment to the above non-functional selection grade after he enters the 14th year of service on 1st July of the year calculated from the year following the year of examination on the basis of which the member was recruited. It is conceded even for the respondents that the applicant was due for consideration for <sup>promotion</sup> ~~appointment~~ to the non functional selection grade as on 1.7.91.

4. Charge Memo dt.7.9.92 was issued to the applicant. The DPC met on 30.10.92 for consideration of eligible officers including the applicant as on 1.7.91 for selection for <sup>promotion</sup> ~~appointment~~ to the non functional selection grade.

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It is stated for the respondents that as the disciplinary proceedings against the applicant was pending by 30.10.92, the date on which the DPC met, the recommendations in regard to the applicant was placed in sealed cover. The disciplinary proceedings against the applicant ended on 26.4.1993 the date on which an order of censure was issued as penalty.

5. The contention for the respondents is that as the disciplinary proceedings against the applicant ended in penalty, the recommendation which was placed in the sealed cover cannot be acted upon in view of the O.M. dt.14.9.92.

6. But the case of the applicant is that as it is a case of Time Bound Promotion, if vacancy is available, and as it is admitted that the applicant was due for consideration for the vacancies in the non functional selection grade as on 1.7.91 and as no disciplinary proceedings was pending against the applicant as on that date, the case of the applicant has to be considered on the basis of <sup>the</sup> ACRs which existed by 1.7.91, and the disciplinary proceedings against the applicant subsequent to 1.7.91 which was pending by the date the DPC met should not be taken into consideration, and if the applicant is <sup>bound</sup> ~~not~~ suitable has to be given appointment to the non functional selection grade w.e.f. 1.7.1991, the date from which such appointments were given to the juniors of the applicant.

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7. The learned counsel for the respondents relied upon Para 17.6.2 of the Guidelines issued on DPC vide Dept. of Posts - 4/89-SPB.II, dt.26.7.88 to support the contention that as the disciplinary proceedings against the applicant ended in penalty, the recommendations as per the sealed cover procedure cannot be acted upon.

8. Para 17.6.2 is as follows:

" If any penalty is imposed on the govt. servant as a result of the disciplinary proceedings, the findings of the sealed cover shall not be acted upon. His case for promotion may be considered by the next D.P.C. in the normal course and having regard to the penalty imposed on him."

9. A promotee has no right to claim promotion from the date on which the vacancy had arisen. As such normally the order of promotion is given after the recommendation is made by the DPC/Selection Committee. In such a case the promotee comes into the promotion cadre on the date on which he assumes the promoted post. Hence, even <sup>when</sup> though there was no disciplinary proceeding against the employee by the date the vacancy existed or even by the date the steps were taken for convening the DPC, the sealed cover procedure has to be followed if the officer was facing disciplinary proceeding by the date the DPC meets. If ultimately the disciplinary proceedings culminated in penalty, the recommendation placed in the sealed cover <sup>can</sup> need not be acted upon, as referred to in Para 17.6.2.

10. But the question is as to whether the said Para is applicable even in a case <sup>as</sup> where there is provision <sup>one type of</sup> for time bound promotion. There is ~~a~~ time bound promotion <sub>the</sub>

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whereby an officer is entitled to promotion from the date of completion of the period prescribed or if any relevant date of the year is referred to, from that date, if he is found suitable and the same does not depend upon any vacancy in the higher cadre. Promotion under ECR Scheme of Postal Department is such time bound promotion. There is another category of time bound promotion which depends upon the vacancies in the higher category. In such a case also an officer is entitled for promotion from the date on which he completes the period prescribed or the date in the year as specified, if he is found suitable and if vacancy exists. The promotion envisaged under O.M. dated 14.8.87 is this type of time bound promotion. But in either case the promotion is given from the date as mentioned even though the DPC meets later for consideration of the suitability of the officer for such promotion.

13. Learned counsel for the respondents referred to the Fax message received at 18.40 on 24.1.95 wherein it is stated that by order dt. 4.7.94 the applicant was given the non functional selection grade from a date immediately after conclusion of the disciplinary proceedings. But the learned standing counsel has not drawn our attention to any rule, O.M. or circular to show that in case of time bound promotion, the promotion has to be given from the date on which the disciplinary proceeding was concluded, when it ended in penalty.

14. The only point that has to be considered is as to whether in the case of time bound promotion the sealed cover procedure has to be followed or not when

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there was no disciplinary action against the officer by the due date of promotion while there was such disciplinary action by the time the DPC met for consideration for such promotion. If sealed cover procedure has to be followed and if the disciplinary proceeding culminated in penalty, the recommendation placed in the sealed cover cannot be acted upon. But if the sealed cover procedure cannot be followed, then the time bound promotion has to be given from the due date if the officer is found suitable, even if the disciplinary action initiated subsequent to that due date ended in penalty. But there is no provision to that effect that there was no disciplinary action by the due date and if the latter disciplinary action which was pending by the date DPC meeting ended in penalty, the promotion has to be given from the date on which the disciplinary proceeding was concluded. Thus it has to be held that there is no basis for giving time bound promotion from the date on which disciplinary proceeding was concluded.

15. We feel that the crucial date on which the fact as to whether disciplinary action existed or not for considering as to whether sealed cover procedure has to be followed or not, is the due date of promotion in case of time bound promotion and it is not the date on which the DPC meets. In case of time bound promotion, ACRs upto due date of promotion will be considered, while in normal promotion ACRs upto the date of year of meeting of DPC will be considered. Promotion will be given w.e.f. due date, in case of time bound promotion, if DPC meets subsequent to the due

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To

1. The Secretary, Ministry of Communications,  
Department of Posts, Dak Bhavan, New Delhi-1.
2. The Member(P) Postal Services Board,  
Dak Bhavan, New Delhi-1.
3. One copy to Mr.M.P.Chandramouli, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

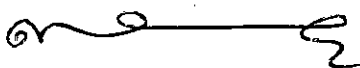
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date, while in case of other promotions, they will be generally given from the date selection is made a later date. Further time bound promotion is non functional. An officer does not assume higher responsibilities on having time bound promotion. It is one of getting benefit of higher scale and fixing pay in higher scale. As such it is just and proper to hold that sealed cover procedure should not be opted if disciplinary action was initiated after due date of promotion.

16. As there was no disciplinary action against the applicant by the due date for giving non functional selection grade promotion the sealed cover procedure <sup>WY</sup> should have been followed. As such the applicant has to be given non-functional selection grade promotion from 1.7.91, the due date if he is found fit for such promotion. It is clear from the Fax message received on 24.1.95 that the applicant was found fit and that the applicant was recommended for promotion to non-functional selection grade as on 1.7.1991.

17. In the result, the respondents are directed to advance the date of promotion of the applicant to non-functional selection grade to 1.7.91 and he has to be given the arrears from that date. The OA is ordered accordingly. No costs./

  
 ( R. Rangarajan )  
 Member (A)

  
 ( V. Neeladri Rao )  
 Vice Chairman

Dt. 25-1-1995  
 OPEN COURT DICTATION

*For New*  
*3.2.95*  
 Deputy Registrar (C) C

TYPED BY

CHECKED 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. R. RANGARAJAN : M(A.B.E)

DATED: 25-1-1995

ORDER/JUDGEMTN:

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

in

O.A.No. 1066/94

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

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

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Central Administrative Tribunal  
DESPATCH  
13 FEB 1995  
HYDERABAD BENCH.  
*G. K.*