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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1118 of 1995

2nd June
DATE OF JUDGEMENT: May, 1998

Smt. L.MASTHANAMMA

.. APPLICANT

AND

1. Union of India represented by
its General Manager,
South Central Railway,
Secunderabad,

2. The Divisional Railway Manager,
S.C.Railway,
Secunderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.N.RAMA MOHAN RAO

COUNSEL FOR THE RESPONDENTS: Mr. V.RAJESWARA RAO, Adl.CGSC

CORAM:

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

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

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the letter referred to above. The modified procedure comprises of scrutiny of the service registers and the confidential reports to assess the suitability of the employees for promotion to OS Gr.II. The case of the applicant was considered and she was not found fit for promotion, states the respondents. Accordingly, the memo promoting the staff from Head Clerk to OS Gr.II was issued overlooking the applicant. on 19.8.93/ The applicant was called for the supplementary subsequently on 5.6.95 by the memo dated 22.5.95 (Annexure8 at page 25 to the OA). The applicant did not appear for the said selection on the ground that she should be promoted against the vacancies arisen out of the restructured posts in the cadre as on 1.3.93 itself.

5. This OA is filed for setting aside the memo No.C.P/121/P1/Admn/OS Gr.II dated 20.7.95 by which she was called for the supplementary examination on 5.6.95 by holding the same as arbitrary, unjust and unfair and for consequential direction to the respondents to promote her with effect from 1.3.93 with all consequential benefits such as pay fixation, payment of arrears of salary and allowances, seniority in the category of OS Gr.II etc.

6. A reply has been filed in this OA. The sum and substance of the reply is that the applicant has been charge sheeted for major penalty on 18.9.90 and hence she cannot be promoted during the pendency of the charge sheet. In any case, she cannot be promoted as the Selection Committee did not consider her fit for promotion. The Court or the Tribunal cannot sit on the judgement on

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JUDGEMENT

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

Heard Mr.N.Rama Mohan Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant in this OA was appointed as Junior clerk on compassionate grounds under R-2 on 16.12.66. She was subsequently promoted as Senior Clerk and Head Clerk with effect from 1.10.80 and 1.1. '84 respectively.

3. The applicant was served with a major penalty charge sheet on 18.9.90 and after following the due procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, a penalty of withholding ^{of} increment for a period of one year was imposed vide proceedings dated 17.3.94. Subsequently, in another case also the applicant was imposed the penalty of withholding of one set of privilege pass for one year by the proceedings dated 23.5.94.

4. The Railway Board issued instructions for restructuring the entire categories of ministerial staff in the various departments by the letter dated 27.1.93. Accordingly the posts of Office Superintendent Grade II (OS Gr.II for short) were increased from 10% to 12% of the total cadre strength. Though the selection to the post of OS Gr.II is to be done by a positive act of selection, the upgraded posts were to be filled by the modified procedure as one time exception as instructed by the Railway Board in



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the recommendations of the DPC. Though the applicant was called for supplementary examination on 30.10.93 and 6.5.95 for the vacancies that arose subsequent to the restructuring of the cadre, she did not attend the selections inspite of extending adequate opportunities. She was also informed in clear terms by the letter NO.C.P/121/Pl/Admn/OS Gr.II dated 20.7.95 (Annexure-10 at page 28 to the OA) that in the simplified selection procedure, she was not found suitable for the post of OS Gr.II by the Selection Committee and she was advised to appear for the selection for the subsequent vacancies⁷ which she failed to do. In view of the above, the respondents submit that the OA has no merit and has to be dismissed.

7. It is a fact that the applicant was charge sheeted for the major penalty on 18.9.90. When the DPC met for consideration of the employees for promotion to the post of OS Gr.II for which vacancies had arisen due to restructuring of the cadre, even if the applicant is considered for promotion, she ^{could} ~~cannot~~ be promoted in view of the pendency of the charge sheet. It is a fact that the applicant was considered for promotion against the ~~normal~~ her result restructured posts. ~~normal~~ In the normal course ^{is} to be kept in a sealed cover as she is under cloud by issue of the charge sheet. The sealed cover has to be opened only ^{and} after the departmental proceedings are over, ^{and} if she is exonerated. In case if she is punished, the question of opening the sealed cover does not arise and she has to appear for the subsequent selection as and when called for. As the applicant was punished by withholding of increments by one year by the proceedings dated 17.3.94, even if the

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sealed cover procedure is adopted, that sealed cover need not be opened. But it is stated in the reply that the case of the applicant was considered and the DPC did not recommend her case for promotion and hence she lost her promotion against the vacancies arising out of the restructuring of the cadre.

8. In order to verify the procedural fairness in the selection while rejecting the case of the applicant for promotion, we ~~have~~ called for DPC proceedings. The DPC proceedings were produced.

9. The DPC consisting of the Deputy Chief Personnel Officer, Secunderabad, Senior DEE(M), Secunderabad and the DPO/II, Secunderabad met on 19.6.93 and considered the case of seven employees for promotion as OS Gr.II. The applicant in this OA ~~stands~~ stands at Sl.No.2 among the employees who were considered for promotion. The applicant was "not found suitable" for promotion as decided by the DPC. The DPC considered the CRs for three years i.e., CR of 1990, 1991 and 1992 and also the service record of all the employees. The Bench mark for promotion is two 'good' reports or one 'very good' report combined with blemishless service record. The applicant has got two 'good' reports but her service record reveals two major penalties; ~~was~~ vigilance and DAR case ^{ad} pending against her on 16.3.93. Hence the case of the applicant was rejected for empanelment on the ground that she did not possess blemishless service record.

10. From the above details, we find that the case of the applicant was considered in accordance with the criterion laid down and as she did not fulfil the requisite

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conditions, she was passed over. Hence, it cannot be stated that the case of the applicant for promotion against the restructured vacancies which arose as on 1.3.93 was rejected arbitrarily by the Selection Committee. The Selection Committee acted in accordance with the rules and hence the recommendations of the Selection Committee cannot be questioned. Further no malafide intention has been attributed to any of the members of the Selection Committee

----- In view of the above, the applicant cannot challenge her non-selection for promotion against vacancies which arose due to restructuring of cadre as on 1.3.93.

11. The next question that arises is whether the case of the applicant should be kept in a sealed cover and she should be promoted on par with her juniors after the expiry of her punishment, if she is found fit for promotion by the DPC. This point may not be relevant in this case as she was not found fit by the DPC. However, it is better to note the existing law in connection with the promotion in the circumstances referred to above.

12. The following citations answer the above query:-

13. In the reported case 1995(29) ATC 555 (State of Tamil Nadu v. Thiru K.S.Murugesan), the Apex Court held in para 7 as follows:-

"When promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of ~~time~~ .

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time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution."

14. In the reported case 1998 SCC(L&S) 416 (Union of India v. B.Radhakrishna), it was held that the promotion granted during the currency of the penalty is not valid. Improper promotion rectified by the subsequent order was held proper and promotion was made effective from the date on which punishment ceases to be operative. However, the excess amount received towards pay for the post of Senior Accountant during the period the respondent therein worked as Senior Accountant was restrained from the recovery.

15. In the reported case 1993(2) SLR 509 (Delhi Development Authority v. H.C.Khurana), guidelines to follow the sealed cover procedure were given. Para 8 of that case is worth repeating. It reads as below:-

"The sealed cover procedure was applicable, in cases where the 'disciplinary proceedings are pending' in respect of the government servant; or 'a decision has been taken to initiate disciplinary proceedings'. Thus, on a decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The

reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests of the government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitably by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind, the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

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16. In the reported case AIR 1991 SC 2010 (Union of India v. K.V.Jankiraman), considering the provisions of Articles 309, 310 and 14 of the Constitution of India, the Apex Court had upheld the O.M.No.2011/1/79 Estt(A) dated 30.1.1982 and further held that the sealed cover procedure is to be adopted in case the employee found guilty of misconduct and such employee cannot be placed on par with the other employees. Treating their case differently is not discriminatory. Para 8 of the cited case is reproduced below:-

"It cannot be said that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. The officer cannot be rewarded by promotion as a matter of course even if penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of

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promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion."

17. From the above judgements of the Apex Court, it is evident that when an employee is charge sheeted, he/she cannot be promoted as it would neither amount to double jeopardy nor arbitrary exercise of power. However, when the charge sheet is pending, sealed cover procedure is to

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be adopted. As per the above judgements, an employee cannot be promoted during the pendency of the punishments. Hence, opening of sealed cover when punishment is awarded will not give any benefit to the charge sheeted employee as he/she cannot be promoted. Hence, the sealed cover procedure may not be of any help, if punished. In case he/she is exonerated of the charges, then the sealed cover has to be opened and if he/she is found suitable for promotion he/she should be given promotion on par with his/her juniors with retrospective date. The above instructions of the Govt. of India are in accordance with the observations of the Apex Court.

18. In the present case, the applicant was not found fit. Even though her case should be kept in a sealed cover as the applicant was charge sheeted when she was considered for promotion against the restructured posts, the same was not done but she was declared unfit for promotion. That declaration in no way affects the interest of the applicant. Even if she has been found fit and sealed cover procedure was adopted in her case, she could not be promoted against the restructured vacancies as she was punished.

19. The applicant did not appear for subsequent selections for filling up the vacancies which arose after the selected candidates against the restructured vacancies were promoted. The applicant was called for supplementary selection on 30.10.93 and 6.5.95 for the vacancies that arose subsequently. But the applicant under the mistaken notion that she was entitled for promotion against the vacancies arising out of the restructuring of the cadre, did not appear for selection subsequently. Hence she lost

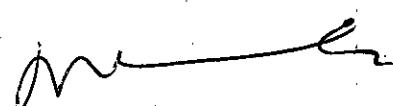
promotion for the vacancies that arose subsequently also. The applicant is solely responsible for not appearing in the subsequent selections.

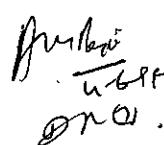
20. In view of what is stated above, we find no merit in the OA. Hence the OA is dismissed. No order as to costs.


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

2-6-98

DATED: 2-6-May, 1998


(R.RANGARAJAN)
MEMBER (ADMN.)


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Copy to:

1. The General Manager, South Central Railway, Secunderabad.
2. The Divisional Railway Manager, South Central Railway, Sec'bad.
3. One copy to Mr. B. Ram Mohan Rao, Advocate, CAT, Hyderabad.
4. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
5. One copy to D.R(A), CAT, Hyderabad.
6. One duplicate copy.
7. ~~One copy to the reporters as per CAT List.~~
14. one copy to DR(J) CAT, Hyd.

YLKR

15/6/98
S.
Reportable case
II COURT

TYPED BY
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 21/6/88

ORDER/JUDGMENT

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

in

D.A. NO. 1118/85

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

