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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD
AT HYDERABAD

ORIGINAL APPLICATION NO.475 of 1995

DATE OF ORDER: 18th November, 1997

BETWEEN:

MOHD. IMTIYAZ HUSSAIN

.. APPLICANT

AND

1. The Superintendent of Post Offices,
Mahaboobnagar,

2. The Director of Postal Services,
Office of Postmaster General,
Hyderabad Region,
Hyderabad.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.K.VASUDEVA REDDY

COUNSEL FOR THE RESPONDENTS: Mr.K.BHASKAR RAO, Adl.CGSC

CORAM:

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

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

JUDGEMENT

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

None appeared for the applicant. The applicant was also absent when this OA was taken up for hearing. Heard Mr.K.Bhaskar Rao, learned standing counsel for the respondents. /

2. While the applicant was working as SPM, Hanumanpura (TSO-Mahboobnagar), a minor penalty charge Memorandum dated 16.4.90 was served on him alleging that he

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desisted the APM (Mails) from discharging or performing his official duties. It was alleged that he committed the said misconduct while he was working as Postal Assistant in Mahboobnagar Postal Division. The applicant submits that he was the Divisional Secretary of the Employees' Union and had to represent the employees sometimes before the higher authorites. The applicant submitted his explanation to the charge memorandum.

3. The SPO, Mahboobnagar Division, who had issued the charge sheet accepted the explanation of the applicant and dropped the disciplinary proceedings vide Memorandum No. B7-3/MDI dated 30.7.1990 (Annexure-1). The Director of Postal Services reviewed the case of the applicant and issued the show cause notice for imposing the punishment of stoppage of an annual increment for a priod of two years. It appears that the Director of Postal Services considering the explanation imposed the said punishment on the applicant. The applicant challenged the said punishment before this Tribunal in O.A.NO.1146/91. On 5.11.93 this Tribunal set aside the punishment giving liberty to the respondents to continue the disciplinary proceedings from the stage after the applicant submitted his explanation.

4. Thereafter the Director of Postal Services, Hyderabad Division, imposed ^{the} a penalty of withholding the next increment of the applicant for a period of two years vide his proceedings dted 3.6.1994 (Annexure-2 at page 12 of the OA). It is submitted that the penalty of withholding the annual increment imposed ^{earlier} during May, 1992

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had already been implemented and it was over during 1994.

5. The applicant submits that he is the seniormost official and he is eligible for promotion to LSG. The ~~applicant submits that he is eligible for promotion to LSG.~~ charge memorandum dated 1.4.93 and the same is pending.

6. The department invited volunteers for aptitude test to work on PC based counter machines. The applicant volunteered and qualified himself in the test. It is stated that he stood second in the list of qualified candidates. However, he was not posted to work at PC based counter machines. It is submitted that the said post carried a special pay of Rs.100/- per month and was unjustifiably denied to him. He refers to the letter of CPMG wherein he had observed that it was not proper to prevent the officials against whom the disciplinary action is initiated/pending (Annexure-6 to the OA) and left the same to the discretion of the Divisional head.

7. During August, 1984 the post of IPO(C) fell vacant and the same was to be offered to one who was senior and was below 40 years of age. It is submitted that the applicant was denied the said post also and his junior ~~was~~ ^{was} posted. Then the applicant submitted a representation dated 15.8.94 (Annexure-7) to which he was informed that his case was not considered as a disciplinary proceeding was pending against him. He submitted a representation dated 22.8.94 to the Director of Postal Services inviting his attention to Rule 157 of P & T Manual, Vol-III.

[Signature]

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8. Further during August, 1994, the SPM deputed six officials who were juniors to the applicant to work on the PC based counter machines introduced in Mahboobnagar Division.

9. Hence he has filed this OA for the following reliefs:-

(i) To declare that the applicant is entitled to hold the Allowance Post and Higher posts in officiating capacity after 3.6.94;

(ii) To declare that the action of the respondents in denying the applicant the Allowance Post and higher posts in officiating capacity is illegal, arbitrary and vindictive in nature; and

(iii) To direct the respondents not to overlook the applicant's claim for the Allowance Post and any higher posts in officiating capacity, as per his turn and seniority and grant him monetary and other consequential benefits by posting him in such posts from the date on which his junior was posted and grant any other relief as deemed fit and proper in the circumstances of the case.

10. The respondents have filed reply stating that the applicant was served with a minor penalty charge memorandum on 16.4.90 for his failure to maintain official decency and decorum in the public office, that the disciplinary authority taking into consideration of the representation of the applicant, dropped the charge sheet, that the

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reviewing authority reviewed the order of the disciplinary authority dated 30.7.90. The reviewing authority (R-2) after reviewing the case issued a notice on 18.1.91 proposing imposition of penalty of withholding an increment for a period of two years without cumulative effect, that as per the directions of this Tribunal in OA 1146/91, the second respondent imposed the penalty of withholding one increment for a period of two years vide his proceedings dated 3.6.94, that earlier the punishment imposed on 29.5.92 was annulled by the order dated 5.11.93 of this Tribunal, that in view of the order of the tribunal one increment which was withheld was restored and the resultant arrears were drawn but the applicant declined to receive the payment, that the applicant was not promoted not because of his Trade Union activities as alleged by him, that the DPC held on 1.2.95 considered his case and did not recommend the case of the applicant for promotion under TBOP scheme on account of the punishment of withholding increment for a period of two years was current, that though the applicant had qualified in the aptitude test for selection of officials to work on PC based counter machines, he was not sent for training as his record of service was found ^{to be} not satisfactory, that the applicant has not suffered any monetary loss because of withholding of increments on the first occasion, that the case of the applicant for holding the Allowance Post and for officiation in the higher posts was examined and rejected in accordance with the rules and that the OA is liable to be dismissed with costs.

11. The case of the respondents is that the DPC considered the claim of the applicant and not recommended

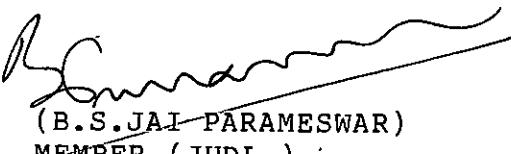
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... by the authorities after complying with the directions passed by this Tribunal in OA 1141/91 was current. Further, the respondents submit that the case of the applicant for higher post of LSG was considered and he was not found suitable, due to his unsatisfactory service records. We are not convinced to hold that the respondents have harrassed the applicant due to his union activities.

12. The applicant has not chosen to refute the averments made by the respondents in their reply nor filed ~~joinder~~ any reply.

13. In view of the above, we have to accept the averments made by the respondents with regard to the imposition of punishment on the applicant and their version relating to promotion of the applicant to higher cadres. The respondents submit that the DPC considered the case of the applicant and his service was not found satisfactory for considering his case for officiation in higher posts.

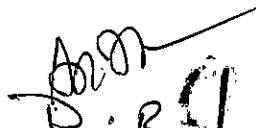
14. In that view of the matter, we are unable to give any reliefs to the applicant and the OA is liable to be dismissed. Hence the OA is dismissed. No order as to costs.


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


(R.RANGARAJAN)
MEMBER (ADMN.)

18.11.97

DATED: 18th November, 1997
Dictated in the open court.


D.R.

6/12/97

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TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

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

Dated: 18/11/97

ORDER/JUDGMENT

O.A./R.A./C.A./NO.

in
O.A. NO. 475/95

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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II Court

