

O.A.No.565/93

Dt. of order: 25.4.94

Prithvi Lal Meena

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.Akhil Simlot

: Counsel for applicant

Mr.Manish Bhandari

: Counsel for respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Prithvi Lal Meena has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, wherein he has prayed that the respondents may be directed to appoint the applicant on the post of Guard Grade 'C' w.e.f. the date from which he has been declared successful in the selection for the said post.

Booking

2. The applicant a Head/~~XXXX~~ Clerk in the Kota Division of the Western Railway was called for a suitability test for the post of Guard Grade -C scale Rs.1200-2040 (RP) in July 1989. He was declared successful in the suitability test consisting of written test and interview, by order dated 23.2.93(Annx.A2). Thereafter he was sent for training to the Zonal Training School Udaipur. After he had completed necessary training, appointment orders were issued vide order dated 31.5.93 (Annx.A1) in which the applicant did not find his name as one of the official promoted to the post of Guard Gr.-C. It was stated in the said order that since major penalty proceedings are pending against the applicant, promotion is not being granted to him. Although in the O.A. it has been stated that appointment to the post of Guard Gr-C is not a promotion, yet the learned counsel for the applicant during the arguments conceded that they should be treated as a promotion post.

3. The applicant's case is that the result of the suitability test was declared on 23.2.93 but since the applicant had already qualified the suitability test before the issue of the charge

sheet, promotion could not be denied to him on the ground that a charge sheet had been issued to him. Relying upon the judgment of the Hon'ble Supreme Court in Jankiraman's case, 1991(4) SCC 109, it has been contended by the applicant that initiation of disciplinary proceedings can be said to have ^{been} taken place on the date when the charge sheet is issued. On the basis of the disciplinary proceedings which are simply contemplated but no charge sheet is issued, a promotion cannot be with-held.

4. The respondents in their reply have stated that Annx.A-2 dated 23.2.93, in which the names of the employees who are successful in the suitability test have been mentioned does not contain names of employees who have been selected for appointment for promotion. The Annx.A-2 is not the result of the written test and interview both. They have added that suitability of a candidate for appointment to higher post is adjudged in may way and in the circumstances in which disciplinary proceedings are pending against him, the suitability of the applicant for the higher post cannot be adjudged till the proceedings are finalised. It was for this reason that promotion was denied to him vide Annx. A-1. The applicant was issued with a charge sheet on 1.3.93 which was served on him on 19.3.93. When his case was considered for promotion disciplinary proceedings were already pending against him, therefore, he was not adjudged ~~to~~ suitable for promotion.

5. During the arguments, the learened counsel for the applicant stated that the vacancies in this case were of 1989. A charge sheet issued in the month of March 1993 could not be the basis for denying promotion to the applicant against a vacancy which was of 1989. Once a panel of successful candidates had been declared, promotion to the applicant could not be denied on the ground that a charge sheet had been issued to him afterwards. The learned counsel for the applicant drew our attention to judgments of the Hon'ble Supreme Court in Delhi Development Authority Vs. H.C.Khurana (1993) 3 SCC 196 and Union of India Vs. Kewalkumar (1993) 3 SCC 204 in which it had been held that where a decision had already been taken to initiate disciplinary ~~pro~~

proceedings against a government servant though the charge sheet had ~~yet~~ not yet been iss-ued, sealed cover procedure could be adopted in terms of DOP&T OM dated 12.1.88, to keep the result of the deliberations of the DPC held earlier in regard to the government servant concerned in a sealed cover. He stated that it was only in the circumstance where a decision had already been taken to initiate disciplinary proceedings against a government servant, but no formal charge sheet had been issued, ^{that} ~~that~~ ^{could} the result of the deliberations of the DPC ~~be~~ kept in a sealed cover. In the instant case, according to him no decision had been taken by the competent authority to initiate disciplinary proceedings against the applicant at the time when he was adjudged suitable for promotion to the post of Guard Gr.C as per Annx.A-2 dated 23.2.93. He also cited before us the judgment of the Jabalpur Bench of the Tribunal in P.Singh Vs. Union of India & Ors. ATR 1990(1) CAT 58 in which the Tribunal held that a subsequent development like issue of a charge sheet cannot be taken cognizance for with-holding promotion on the basis of a DPC ~~in~~ which had met. earlier and approved the name of the government servant concerned for promotion.

6. The learned counsel for the respondents stated during the arguments that Annx.A-2 dated 23.2.93 is only the result of a suitability test and promotion had to be granted after assessing the service record of the applicant. Since before the date of grant of actual promotion, a charge sheet initiating major penalty proceedings had already been issued to the applicant he was not considered fit for promotion and therefore, promotion was denied to him. ^{As to} the argument of the applicant ~~is~~ that since he had been sent for training and had successfully completed ^{and} the training which was a precondition for the training, ^{and} therefore the applicant was eligible for promotion, the learned counsel for the respondents stated that the training was one of the preconditions for promotion but when the applicant's case actually came up for consideration for promotion, he was not considered fit for promotion on the ground that disciplinary proceedings were pending against him.

7. We have heard the learned counsel for the parties and have gone through the records as also the judgment cited by the learned counsel for the applicant. The learned counsel for the respondents was not able to mention the date on which the applicant's name was actually considered for promotion on the basis of assessment of service records etc. In the circumstances of the present case, it appears to us that Annx.A-2 dated 23.2.93 is the result of the final selection of the candidates for promotion to the post of Guard Gr.C. However promotion was denied to the applicant vide order dated 31.5.93 (Annx.A1) on the basis of a subsequent development namely issue of a charge sheet initiating major penalty proceedings on 1.3.93. The question now is, whether in spite of the fact that the applicant had been adjudged suitable for promotion to the post of Guard Gr.C on a date prior to the date of issue of charge sheet he could ~~still~~ be still denied for promotion on the ground that a charge sheet initiating major penalty proceedings against him had been issued to him before the date of actual promotion. The judgments of the Hon'ble Supreme Court cited by the learned counsel for the applicant are on a different issue. The issue in those cases was whether it was necessary to actually issue a charge sheet before sealed cover procedure could be adopted or whether it was sufficient for adoption of this procedure that a decision should ~~have~~ have been taken to initiate disciplinary proceedings on a date prior to the date of promotion of the government servant concerned. The judgment of the Jabalpur Bench of the Tribunal in P.Singh's case relied upon by the learned counsel for the applicant is relevant to this case.

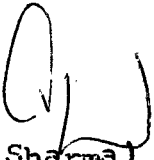
8. We have before us a judgment of the Principal Bench of the Tribunal in Shiv Lal Sagar Vs. Union of India 1993(2) SLJ 208. The case was decided on 15.1.93. In this judgment the issue involved was the same which is involved in the present case. In that case the government servant's case was recommended for promotion by the DPC held on 16.3.92, the promotion orders were issued on 21.4.92 by which his juniors were promoted and he was not granted promotion but it was decided to place the findings


of the DPC in a sealed cover on the ground that disciplinary proceedings had been initiated against him on 30.4.92. The action of the respondents in adopting the sealed cover procedure was up-held in terms of the DOP & T O.M. dated 12.1.88. In this judgment the Tribunal had made a reference to para 7 of the O.M. dated 12.1.88 which laid down that a government servant who is recommended for promotion by the DPC but in whose case any of the circumstances mentioned in para 2 of the O.M. (issue of a charge sheet as in the present case ~~xxxxxxxxxx~~) arises after the recommendations of the DPC are received but before he actually promoted, will be considered as if his case has been placed in a sealed cover by the DPC, and that he shall not be promoted until he is completely exonerated of the charges framed against him and the provisions contained in the O.M. dated 12.1.88 will apply. The Tribunal also took note of the fact that the Hon'ble Supreme Court in the case of Union of India Vs. K.V.Jankiraman had also noticed this provision of the OM contained in para 7 thereof but ~~not~~ had not disapproved it. The Tribunal also noted that the same provision had also been incorporated in the subsequent O.M. dated 14.9.92 which ~~had~~ had been issued after review of the existing instruction on the subject and after taking note ~~again~~ of the judgment of the Hon'ble Supreme Court in Jankiraman's case and in supersession of the earlier instruction on the subject including the O.M dated 12.1.88.

9. The position that emerges is that the action of the respondents in denying promotion to the applicant on account of issue of a charge sheet to him, after his case had been approved for promotion, is in accordance with the instructions contained in the O.M. dated 22.7.88 and 14.9.92, which are applicable to all Departments of the Govt. of India, including the Railways. As held by the Principal Bench of the Tribunal, the relevant provision on the basis of which promotion had been denied was noticed by the Hon'ble Supreme Court in Jankiraman's case but was not disapproved. This judgment of the Principal Bench is dated 15th Jan. 93 and has been delivered after the judgment of the Hon'ble Supreme Court in Jankiraman's case was available, whereas the

judgment of the Jabalpur Bench of the Tribunal relied upon by the learned counsel for the applicant was delivered on 12.6.89. In the circumstances, we hold that the respondents were justified in denying promotion to the applicant on the ground that disciplinary proceedings were pending against him.

10. In the circumstances, we find no merit in the O.A. It is dismissed with no order as to costs.


(O.P.Sharma)
Member(A).


(Gopal Krishna)
Member(J).