
Date of Decision: 23.5.94.

OA 102/94

ASHOK KUMAR RAJAWAT

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

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

For the Applicant

... SHRI K.L. THAWANI.

For the Respondents

... SHRI U.D. SHARMA.

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

Applicant Ashok Kumar Rajawat has filed this application u/s 19 of the Administrative Tribunals Act, 1985, wherein he has prayed that order Annexure A-1 dated, by which he was informed that since disciplinary proceedings u/r 14 of the CCS (CCA) Rules were pending against him, promotion in High^{er} Selection Grade -II under BCR scheme will not be allowed until approval of the competent authority is received, may be quashed as being illegal and violative of Articles 14 and 16 of the Constitution. He has further prayed that the respondents may be directed to promote the applicant to Higher Selection Grade-II as per orders dated 10.1.94 issued by the Director, Postal Services, Jaipur, and received by the applicant on 12.1.94.

2. The case of the applicant is that he joined the Postal Department as a Clerk on 1.9.67 and was promoted to Lower Selection Grade in 1983, in which position he is working at present. The Department introduced Biennial Cadre Review scheme, under which a second time bound promotion to the next higher grade was to be given to the employees who had put in 26 years of satisfactory service. The applicant completed 26 years of satisfactory service on 1.9.93 and therefore the Departmental Promotion Committee (DPC) considered the case of the applicant

for promotion to the next higher grade (HSG-II) Rs.1600-2660 and found him fit for promotion and accordingly recommended him for promotion. On the basis of the recommendations of the DPC the Director, Postal Services, Jaipur issued order for promotion of the applicant on 10.1.94, ordering his promotion w.e.f. 1.1.94. In spite of these clear orders the Supdt. of Post Offices, Sawai Madhopur Division, did not promote the applicant. The applicant made representations in regard to his grievance in January and February, 1994 but no action has been taken thereon. However, vide letter dated 8.2.94 the Supdt. of Post Offices, Sawai Madhopur Division, informed the applicant that the applicant had not been promoted, because a disciplinary case under rule 14 of the CCS (CCA) Rules has been pending against him. A charge-sheet u/r 14 of the CCS (CCA) Rules bearing date 18.1.94 has been issued to the applicant after the date of his promotion namely 10.1.94. The charge-sheet has also been issued on presumptions and conjectures and the applicant has done nothing wrong to justify the issue of charge-sheet to him. Since charge-sheet was issued on 18.1.94, much later than the date on which the case of the applicant was considered for promotion by the DPC, promotion cannot be denied to him on the ground of the charge-sheet issued to him subsequently. A number of judgements have been cited in support of the stand taken by the applicant.

3. The respondents in their reply have stated that the promotion of the applicant vide order dated 10.1.94 (Annexure A-2) was subject to the condition, amongst others, that no disciplinary case was pending/contemplated against him, and it was further directed in the aforesaid order that the Supdt. of Post Offices, Sawai Madhopur, would ensure fulfilment of this condition. A fraud had been conducted when the applicant had been holding the charge of Sub-postmaster, Sahu Nagar, and th

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7

preliminary investigation shows that the applicant was involved in it and therefore it was decided to initiate disciplinary proceedings against the applicant on 28.12.93. The formal charge-sheet u/r 14 of the CCS (CCA) Rules was issued on 18.1.94 (Annexure A-6). Thus, when the order dated 10.1.94 ordering promotion of the applicant was issued, disciplinary proceedings were contemplated against the applicant and therefore he was not entitled to promotion in view of the specific condition contained in the order dated 10.1.94.

4. During the arguments, the learned counsel for the applicant cited before us a number of rulings to suggest that the action of the respondents in denying promotion to the applicant, in the circumstances of the present case, was totally untenable. The first case relied upon by him is R.D. Madan Vs. Union of India & Ors., (1988) 7 AIC 894, decided by the New Delhi Bench of the Tribunal. Paras 8, 9 and 10 of this case are relevant, according to the learned counsel for the applicant. In this case ~~it was held by the Tribunal that~~ a formal decision to initiate disciplinary proceedings had been taken but the charge-sheet had not yet been served on the employee concerned. In between the recommendations of the DPC about the applicant's promotion were put in a sealed cover. The Tribunal relying on a Full Bench judgement cited therein held that resorting to sealed cover procedure in respect of the employee before the charge-sheet was served upon him should not be legally sustained. The next case cited by the learned counsel for the applicant was S.S. Damle Vs. Union of India & Ors, 1992 (2) ATJ 315, decided by the Jabalpur Bench of the Tribunal. The facts of this case were that the employee concerned, a ~~Sorting~~ Sorting Assistant in the Postal Department, was not promoted on account of the charge-sheet issued on 31.7.94. He had already completed 16 years of service before the issuance of the charge-sheet,

9

The time bound promotion scheme was effective from 30.11.83. The Tribunal noted that the applicant had already been granted promotion under the time bound scheme w.e.f. 21.9.84 but appeared to be entitled to time bound promotion w.e.f. 1.11.93 with consequential benefits of arrears etc. They accordingly recommended to the respondents the reconsideration of the matter relating to the promotion of the ^{said} applicant. The next case relied upon by the learned counsel for the applicant is that of Union of India Vs. K.V. Jankiraman & Ors., 1993 SCC (L&S) 387. According to the learned counsel for the applicant, the principle laid down by the Hon'ble Supreme Court was that disciplinary proceedings could be said to be initiated against a Govt. servant when a charge-sheet was issued to him. Further, sealed cover procedure with regard to his promotion could not be adopted until a charge-sheet has actually been issued to the Govt. servant. The last case relied upon by the learned counsel for the applicant is T.K. Hallaperumal Vs. Director General of P&T New Delhi & Ors., (1989) 10 ATC 570, decided by the Ernakulam Bench of the Tribunal. In this judgement the Tribunal held that the pendency of a vigilance case against a Govt. servant is not enough to withhold his promotion unless it culminates in initiation of disciplinary proceedings against him. In view of the ratio of the judgements cited above, the learned counsel for the applicant pleaded that the action of the respondents in not allowing the applicant actual promotion in spite of issue of promotion orders may be declared illegal and the applicant may be allowed to join the promotion post.

5. The learned counsel for the respondents cited before us the judgement of Hon'ble Supreme Court in Union of India Vs. Iqbal Kumar, 1993 (2) SLR 554. In this judgement, according to the learned counsel for the respondents, the Hon'ble Supreme Court have held, amongst others, that when the competent

authority takes a decision to initiate a disciplinary proceeding against the Govt. servant, he cannot be given promotion unless exonerated, even if the Govt. servant is recommended for promotion by the DPC, on being found suitable otherwise. According to him, this case directly covers the controversy in the present case. Since in this case after the recommendations of the DPC, a decision was taken to initiate disciplinary proceedings against the applicant, he could not be granted promotion until exonerated of the charges framed against him. The issuance of the charge-sheet on a subsequent date was immaterial. Although an order regarding promotion of the applicant had been issued on 10.1.94 vide Annexure A-2, the promotion order was subject, amongst others, to there being no disciplinary case pending/contemplated against the applicant. Since a disciplinary case was contemplated against the applicant actual promotion was denied to him in spite of the fact that the promotion orders have been issued on 10.1.94, effective from 1.1.94.

6. The learned counsel for the applicant, at this stage, intervened and asserted that the judgement cited by the learned counsel for the respondents in Kawal Kumar's case had no applicability to the facts of the present case. In the present case, it was not merely that the DPC had cleared the applicant's case for promotion, but till the date of issue of the actual promotion orders no charge-sheet had been issued to the applicant. Therefore, the applicant could not be denied promotion. After
Z a charge-sheet has been issued to the applicant, the respondents are entitled to pass any penalty order including reversion of the applicant on a later date if he is found guilty of the charges against him and these are established during the disciplinary proceedings. At this stage, however, they are not entitled to deny promotion to the applicant when orders of promotion have already been issued.

7. We have heard the learned counsel for the parties and have perused the records and gone through the judgements cited before us.

8. A decision to initiate disciplinary proceedings against the applicant was taken on 28.12.93, as seen from the reply of the respondents and their Annexure R-1. The promotion orders were issued on 10.1.94, to be effective from 1.1.94. There is a condition stated in the promotion order that this will be subject to any disciplinary case, contemplated or pending against the applicant. Even if this condition, attached to the promotion order, is ignored, the question to be decided by us is whether the applicant should be granted the actual benefit of promotion orders dated 10.1.94 in spite of the fact that a decision to initiate disciplinary proceedings against him was taken on a date prior to the date on which the promotion orders and the charge-sheet were issued.

9. The issue in this case is not whether the sealed cover procedure should be adopted or not. Sealed cover procedure is ordinarily adopted where on the date of holding of the DPC, disciplinary proceedings have been initiated against a Govt. servant, and under this procedure the findings of the DPC with regard to the Govt. servant concerned are kept in a sealed cover to be opened on conclusion of the disciplinary proceedings. In this case, the decision to initiate disciplinary proceedings was taken on 28.12.93 and promotion orders were issued on 10.1.94, to be effective from 1.1.94. Although the date of holding of the DPC is not available, it can be safely assumed that on the date of holding of DPC no decision had been taken to initiate disciplinary proceedings against the applicant; otherwise the promotion orders in pursuance of the recommendations of the DPC would not have been issued, but the findings of the DPC would have been kept in a sealed cover. We have therefore to examine

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the validity of the action of the respondents in taking into consideration developments taking place after the holding of the DPC and denying promotion to the applicant on the basis of such developments until the conclusion of disciplinary proceedings against him on a future date.

10. None of the judgements cited by the learned counsel for the parties have direct applicability to the issue under consideration. R.D. Madan's case has no applicability here because the issue involved therein was whether sealed cover procedure could be adopted where charge-sheet had not yet actually been issued till the date on which the DPC met. Damle's case has also no applicability to the present case for more or less the same reasons for which Madan's case is not applicable. Jankiraman's case was also cited by the learned counsel for the applicant to support the view that sealed cover procedure could not be adopted until a charge-sheet had actually been issued. Although the judgement of the Hon'ble Supreme Court in Jankiraman's case does not simply lay down what the learned counsel for the applicant has stated, yet if the learned counsel for the applicant wants to rely on it to argue that the sealed cover procedure cannot be adopted in respect of the findings of the DPC until a charge-sheet is issued, it has no applicability to the facts of the present case. Mallaperumal's case is not even remotely applicable to the facts of the present case because promotion in the applicant's case has not been withheld merely on the ground that a vigilance case was pending against the applicant without its ripening into a formal charge-sheet. Kewal Kumar's case, cited by the learned counsel for the respondents, also deals with the issue whether a Govt. servant whose name has been recommended for promotion by the DPC can be granted promotion notwithstanding the fact that a charge-sheet ^{was} issued later, after the holding of the DPC meeting, but decision to initiate disciplinary proceedings had been taken before the holding of the DPC meeting. This case

12

will also therefore have no applicability to the facts of the present case.

11. The judgement directly applicable to the present case is of New Delhi Bench of the Tribunal in Shival Sagar Vs. Union of India, 1993 (2) SLJ (CAT) 202. In this judgement the Tribunal have held that if any of the circumstances referred to in the Department of Personnel & Training O.M. dated 12.1.88 for adopting the sealed cover procedure arise after holding of the DPC, but before grant of actual promotion the Govt. servant cannot be promoted till exonerated. The circumstances mentioned therein include initiation of disciplinary proceedings. The Tribunal noted that para-7 of the O.M. dated 12.1.88 which prohibited grant of promotion on account of the circumstances taking place after the holding of the DPC had been taken note of the Hon'ble Supreme Court in Jankiraman's case but not been struck down. In the present case, even though the development relating to the decision to initiate disciplinary proceedings against the applicant took place after the holding of the DPC, but before the benefit of actual promotion was given to the applicant, the applicant could not be granted promotion till exonerated of the charges, in view of the aforesaid judgement of the Tribunal.

12. Taking all the facts and circumstances into account, we are of the view that the applicant is not entitled to promotion till the disciplinary proceedings against him are concluded and he is exonerated of the charges framed against him. The OA is dismissed at the admission stage, with no order as to costs.

(O.P. SHARMA)
MEMBER (A)

(GOPAL PRISHNA)
MEMBER (J)