

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.207/94

Dt. of order: 8.8.1994

Badrilal Gupta : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.K.L.Thawani : Counsel for applicant

Mr.U.D.Sharma, : 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 Badrilal Gupta has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, seeking a declaration that non-grant of promotion to the applicant to Higher Selection Grade II scale Rs.1600-2660 is illegal and violative of Articles 14, 16 and 20 of the Constitution. He has sought a further direction that the respondents may grant promotion to the applicant in Higher Selection Grade II w.e.f. 1.10.1991.

2. The applicant completed 26 years of service in the Postal Department as a Clerk on 5.7.1956. He was entitled to promotion to Higher Selection Grade II w.e.f. 1.10.91 under the scheme formulated in this regard. The applicant made representation to the Sr.Superintendent of Post Offices, Kota Division, on 23.7.93 regarding non-grant of promotion and the Sr.Superintendent replied vide letter dated 30.7.93 (Annex.A3) that the name of the applicant had been forwarded for consideration in the list due from 1.1.1993 to 30.6.93. However, the applicant was also not granted promotion after 1.7.93 and he made a representation to the Chief Postmaster General Rajasthan Circle on 27.1.94 but he has not received any reply with regard to that. The applicant has further stated that a minor penalty of ^{with-}holding of one increment for 3 years was imposed on him vide order dated 27.6.89, which was current till 1.7.1993. With-holding of promotion is a separate punishment under Rule 11 ^{been} of the CCS(CCA) Rules 1965 and it has not been imposed on him. No major penalty has ever been imposed on the applicant and that a

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minor penalty does not constitute any bar for promotion. In this connection he cited judgments of the Tribunal: ~~Ex~~ 1992(19) ATC 593 CAT, Bombay and 1988(8) ATC 496 CAT Chandigarh. According to him, the full record of the applicant were not considered by the DPC each year or the DPC was misinformed or kept in the dark about the material facts. He has added that the DPC which considered his name on 1.7.92, 1.1.93, 1.7.93 and 1.1.94 are required to be perused.

3. The respondents in their reply have taken a preliminary objection to the maintainability of the application on the ground of limitation. The applicant has sought promotion w.e.f. 1.10.91 but the O.A. has been filed in March 1994. Therefore, the application is now liable to be rejected on this ground alone.

4. They have further stated that the applicant completed 26 years of service on 4.7.82 and as per the provisions of the Scheme his case for promotion was required to be considered by the first DPC held on 1.1.1992, but on the basis of his unsatisfactory record of service, he was not considered fit for promotion by the DPC and the Appointing Authority has accepted the recommendations of the DPC. Further according to them, the case of the applicant was considered by the DPC in their meeting held on 30.9.92 and 4.6.93 but the applicant was not found suitable for promotion on account of his unsatisfactory record of service. At page 5, the respondents have stated that 4 penalties were imposed on the applicant, one each during 1986-87, 1988-89, 1989-90 and 1991-92.

5. The learned counsel for the applicant has stated during the arguments that only one minor penalty was imposed on the applicant and it was not a bar to promotion being granted to him. Apart from the judgments cited by him in the application, as above, he has also cited referred to/ the judgments of the Hon'ble Supreme Court in *Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh* and Ors. 1989(1) ATJ 189 wherein penalty of stoppage of ~~one~~ one increment without future effect was imposed on the appellant, the Probationary Asstt. Engineer. The probationary period was completed

satisfactorily without any extension. Juniors to the applicant were confirmed earlier and the petitioner was made junior in the seniority list. He claimed confirmation earlier than his juniors, which was denied on account of the penalty imposed. It was held by the Hon'ble Supreme Court that such denial amounted to double jeopardy. The appellant was held entitled to be confirmed ~~earlier~~ earlier to his juniors.

6. We have heard the learned counsel for the parties and have perused the records and considered the matter carefully. The applicant was first overlooked for promotion which was due on 1.10.91. This application has been filed in March 1994. The argument of the learned counsel for the applicant is that he had made a representation against his ~~int~~ being overlooked for promotion and this representation was decided by Anxx.A-3 which is undated. It is not clear from this Annexure as to when the representation was in fact made by the applicant. Apparently, therefore, the application is liable to be rejected on the ground of limitation alone. However, we have also considered the merits of the case.

7. While the learned counsel for the applicant stated during the arguments that only one minor penalty was imposed on the applicant, the averments of the respondents at page 5 of the reply show that 4 penalties have been imposed on the applicant between the period 1986-87 to 1991-92. Even if the penalty imposed during 1986-87 could not be considered for promotion, being rather old, ^{were} the other penalties imposed ~~not~~ very much available for consideration by the DPCs which deliberated the applicant's case for promotion as on 1.10.91 and thereafter. Promotion has not denied to the applicant on account of any particular penalty imposed but on account of his over all service record which was considered by the DPCs to be unsatisfactory. In our view, the respondents were fully justified in denying promotion to a person who within a span of about 5 years had attracted 4 penalties. The judgments cited by the learned counsel for the applicant have no applicability to the facts of the present case.

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8. In the circumstances of the case, the application is dismissed at the admission stage.

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

C.K.Khurana
(Copal Krishna)
Member(J).