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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.449/95

Date of order: 4.7.1997

Chhanumal Parashar : Applicant

Vs.

1. Union of India through the Secretary to the Govt. of India, Deptt of Posts, Ministry of Communications, New Delhi-110001.
2. Chief Postmaster General Rajasthan Circle, Jaipur-302 007.
3. Senior Supdt. of Post Offices, Alwar Division, Alwar-301001.

...Respondents.

Mr.K.L.Thawani : Counsel for applicant

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHAFMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Chhanumal Parashar has prayed that the respondents may be directed to promote the applicant to Higher Selection Grade-II (HSG) from the due date on completion of 26 years of service. He has also sought a declaration that non promotion of the applicant to HSG-II is illegal and violative of Articles 14 and 16 of the Constitution.

2. The case of the applicant is that he was appointed as Postal Clerk on 3.3.1964 and was promoted to Lower Selection Grade w.e.f. 30.11.1983 under the Time Bound One Promotion Scheme. He was further promoted to the Supervisory Cadre in 1988. The Deptt. of Posts introduced Second Time Bound Promotion Scheme w.e.f. 1.10.1991 under which officials who had completed 26 years of service were entitled to promotion to HSG-II. The applicant completed 26 years of service on 3.3.1990 and was entitled to promotion to HSG-II w.e.f.1.10.91. A representation was submitted by the applicant to the Sr.Supdt of Post Offices, Alwar on 1.2.92 but there was no response

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thereto. He made a representation to the Chief Post Master General on 26.3.1992 in this regard, followed by reminders. He was informed by a communication dated 7.8.92 by the Sr. Supdt. of Post Offices, Alwar that the DPC had not approved the name of the applicant for promotion. Accordingly he filed an O.A No. 1146/92 before the Tribunal on 27.11.92 which was disposed of on 7.9.1994 directing the respondents to consider the case of the applicant for promotion in the light of the fresh orders passed in the disciplinary proceedings initiated against the applicant. However, no further orders have been communicated to the applicant. He filed a Contempt Petition on 24.3.95 which was disposed of by the Tribunal on 16.8.95 (Annex.A5) in which it was held that no case of contempt has been made out against the respondents. The applicant, therefore, filed the present O.A for adjudication of the matter afresh.

2. According to the applicant, there was nothing adverse against him on 1.10.91 which would justify the denial of promotion to him. Further withholding of promotion is a separate penalty provided under Rule 11 of the CCS(CCA) Rules and this penalty has never been imposed on the applicant. No major penalty has ever been imposed on the applicant and a minor penalty imposed on him effective from 23.10.92 cannot be a bar for promotion on 1.10.91. The applicant apprehends that the full record of his service has not been considered by the DPC or the DPC has been kept in dark about the state of affairs just to harm him. He has prayed that the Tribunal should call for and peruse the entire record of the DPC and the ACERs of the applicant for giving justice to him.

3. The respondents in their reply have stated that it was due to unsatisfactory record of his service that he was not found fit for promotion to the next higher grade i.e. HSG-II on completion of 26 years of service. Earlier the Tribunal vide order dated 7.9.94 passed in O.A No.1146/92 had directed the respondents to finalise the set-aside disciplinary proceedings

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and to consider the case of the applicant thereafter for promotion in the light of the fresh order to be passed by the disciplinary authority. The set-aside disciplinary proceedings had already been finalised on 28.10.92 by which the penalty of reduction of pay by three stages for a period of three years was imposed. This was subsequently reduced on 27.3.93 by the revising authority so as to be effective for a period of one year without changing the other terms of penalty. The case of the applicant was again considered for promotion by the DPC in the light of the Tribunal's order dated 7.9.94 but on an overall assessment of his service record the applicant was not again found fit for promotion. The applicant was prematurely retired from service on 21.5.95. Promotion under the Time Bound Promotion Scheme is not given merely on completion of 26 years of service but it depends on satisfactory record of service as well. Since the service record of the applicant was not satisfactory, he was not granted promotion.

4. The applicant has also filed rejoinder to the reply filed by the respondents which has been perused.

5. The learned counsel for the applicant stated during his oral arguments that since promotion to the applicant was due on 1.10.91, his service record, i.e. ACRs, etc. relevant for promotion on that date alone should have been considered by the DPC and not any other service record. He added that there was nothing adverse against the applicant in so far as the service record relevant to promotion w.e.f. the said date was concerned. He further stated that the penalty of reduction of pay was to be effective only for a period of one year. The currency of that penalty would have therefore, expired some time in 1993 i.e. on expiry of a period of one year from the date the impugned order was passed by the disciplinary authority. Therefore, if the applicant's case was considered afresh by the DPC after the Tribunal's order dated 7.9.94, that

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penalty could not have been taken into account for denying promotion to the applicant.

6. The learned counsel for the applicant also cited before us the judgment of the Bombay Bench of the Tribunal in R.M. Kesarkar Vs. Telecom Distt.Engineer, Ratnagiri, (1994) 28 ATC 804. The main thrust of this judgment is that only the record of service relevant to the date on which the official is entitled to promotion is to be considered.

7. The learned counsel for the respondents produced before us the records of the DPCs held which has considered the case of the applicant for promotion and also the ACP folder of the applicant and urged that in view of the totally unsatisfactory record of the applicant, he was not entitled to promotion to HSG-II and was rightly denied such promotion initially and also by the Review DPC.

8. We have heard the learned counsel for the parties, have gone through the material on records, the records produced before us and also the judgment cited before us.

9. Initially the applicant was considered for promotion by the DPC held on 1.1.92 but it did not find the applicant suitable for promotion. Thereafter, he was again considered for promotion by the DPCs held on 30.9.92 and 4.6.93 but was again not found suitable for promotion. The set-aside disciplinary proceedings referred to in the Tribunal's order Anx.A4 dated 7.9.94 had earlier been finally disposed of on 27.3.93 and penalty of reduction in pay for a period of one year was imposed. Thereafter, the DPC which met on 15.7.94 considered the case of the applicant for promotion but it again did not find him suitable for promotion.

10. A perusal of the service record of the applicant shows that the record of the service of the applicant is not upto the mark to justify the grant of promotion to him. Even if it is

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considered that only the service record relevant for the date on which the applicant was due for promotion namely 1.10.91 is to be considered, charge sheets dated 4.3.1987, 10.10.88 and 22.8.89 were issued to the applicant during this period and as a consequence thereof finally penalties were imposed on him on 31.10.1989, 30.11.88 and 29.9.1989. There were also adverse remarks in his ACEs for some of the years during this period. The applicant's record of service is therefore not such as would have justified grant of promotion to him.

11. With regard to the judgment cited by the learned counsel for the applicant, it may be stated that it has no applicability the facts of the present case. Even if it is considered that the service record relevant to the date on which the applicant was initially entitled to promotion namely 1.10.91 is to be considered, we have already pointed out above that there were penalties imposed on the applicant and there were also adverse remarks in his ACE between the period 1986-87 and 1990.

12. In the circumstances we find no merit in the O.A. It is dismissed. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P.Sharma)

Administrative Member.