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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. OA 591/95
T.A. No.

199

DATE OF DECISION 11.9.96

Laxmi Narain Marwaria

Petitioner

Mr. C.B. Sharma

Advocate for the Petitioner (s)

Versus

Union of India and others

Respondent

Mr. Zahir Hussain, brief holder for
Mr. M. Rafiq


Advocate for the Respondent (s)

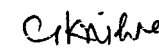
CORAM :

The Hon'ble Mr. Gopal Prishna, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? α
4. Whether it needs to be circulated to other Benches of the Tribunal ? α


(O.P. SHARMA)
ADMINISTRATIVE MEMBER


(GOPAL PRISHNA)
VICE CHAIPMAN

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 11.9.96

OA 591/95

Laxmi Narain Marwaria, Sorting Assistant, SFC, PMS, Jhunjhunu.

... Applicant

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Communication, Department of Posts, New Delhi.
2. Director Postal Services Eastern Region, Jaipur.
3. Senior Superintendent, PMS 'J' Division, Jaipur.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. C.B. Sharma

For the Respondents

..Mr. Zakir Hussain, brief holder for

.. Shri M.Rafiq

O R D E R

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

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Laxmi Narain Marwaria has prayed that order of the reviewing authority dated 21.7.95, communicated through Ann.A-1, be quashed alongwith the order of the appellate authority, Ann.A-5 dated 21.6.89, and that of the appointing authority, Ann.A-3 dated 9.9.87. He has further prayed that any order of the respondents which does not provide promotion to the applicant may be quashed. There is a still further prayer that the respondents may be directed to promote the applicant to the clerical grade (Sorting Assistant) from the date from which his juniors have been promoted, with all consequential benefits.

2. The facts of the case, as stated by the applicant, are that he was initially appointed to a Group-D post in the Postal Department in 1975. He appeared in the departmental examination for promotion to clerical grade on 28.11.82 and was declared successful vide communication dated 5.3.83 (Annexure A-2). He also underwent training for three months for the post in the clerical grade. The process for promotion to the post of Sorting Assistant in the clerical grade started in 1986 and all the persons, senior and junior to the applicant, were granted such promotion between 1.3.86 to 25.10.86, but the applicant was not granted promotion in 1986. The result of the examination declared in 1983 was with regard to the vacancies in

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existence in 1982. The applicant submitted a representation to respondent No.3 against his being superseded in the matter of promotion. The applicant was informed vide communication dated 9.9.87 (Ann.A-3) that a penalty of stoppage of increment for a period of 2½ years was still current and it will be over on 23.9.88 and thereafter the applicant could be considered for promotion. In 1988, respondent No.3 considered the case of the applicant and allowed him promotion in the clerical grade on the post of Sorting Assistant, vide Memorandum dated 11.10.88 (Ann.A-4). The applicant submitted a representation against the action of respondent No.3 to respondent No.2, which was rejected vide communication dated 21.6.89 (Ann.A-5) stating that since the penalty of stoppage of increment was finally over on 31.8.88, the applicant had been granted promotion thereafter. The applicant was also awarded penalty of withholding of promotion for six months vide Memorandum dated 3.3.86 and the currency period of this penalty expired in September' 1986. After September'1986 only one penalty, of stoppage of increment for 2½ years, was in existence. Thus, the denial of promotion w.e.f. 1.10.86 is against the provisions of Articles 14 and 16 of the Constitution of India. Therefore, the Memorandum dated 21.6.89 is liable to be set aside. The applicant's Revision Petition in this regard was also rejected vide communication dated 1.8.95. The applicant's grievance is that no person can be prosecuted and punished for the same offence more than once, as provided in Article 20(2) of the Constitution. Double punishment has been imposed on the applicant. On the one hand, penalty of stoppage of increment for a period of 2½ years has been imposed and on the other hand his promotion has also been withheld. The applicant was entitled to be granted promotion on the basis of passing of the departmental examination and his promotion was not to be based on service record through a selection by the Departmental Promotion Committee.

3. The respondents, in their reply, have stated that since some disciplinary cases were pending against the applicant and penalty of stoppage of increment was current upto 31.8.88, the applicant was granted promotion to the post of Sorting Assistant only w.e.f. 11.10.88, after the expiry of the penalty of stoppage of increment, as per rules/orders on the subject. They have denied that the action of the respondents in denying promotion to the applicant during the period of currency of penalty amounts to imposition of double punishment or double jeopardy. Persons junior to the applicant were granted promotion w.e.f. 1986 because no disciplinary cases were pending against them at that time.

4. During the arguments, the learned counsel for the applicant drew our attention to the judgement of Ernakulam Bench of the Tribunal in T.Koshy v.

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Union of India & Others, (1989) 11 ATC 308, in which also the facts, according to the learned counsel for the applicant, were more or less similar to those in the present case. In that case the applicant had sought promotion to the post of Inspector, FMS, with retrospective effect by virtue of his selection through the examination held in December'1981, results whereof were declared on 23.8.82. The Tribunal noted that the applicant had also been sent for practical and institutional training. The Tribunal observed that when the applicant appeared in the examination, in December'1981, none of the penalty proceedings had been initiated against him. His promotion, therefore, could not even otherwise be withheld because of the subsequent developments. The Tribunal further held that if the applicant was unfit for promotion in spite of his being successful in the examination, he should not have been sent for practical and institutional training. In these circumstances, the application was allowed. The learned counsel for the applicant next cited the judgement of the Principal Bench, New Delhi, in Prem Singh Verma v. Union Of India, ATR 1993 (1) CAT 748, wherein the Tribunal held, inter-alia, that withholding of promotion itself is a minor penalty, as prescribed in Rule-11 of the CCS (CCA) Rules. Therefore, if alongwith the withholding of increments promotion also is to be withheld, it would amount to imposition of double penalty and would result in double jeopardy. The OA was allowed on account of this and other reasons given by the Tribunal in its order. He has also cited before us a judgement of Jodhpur Bench of the Tribunal in L.S. Bhagora v. Union of India and others, decided on 11.9.91, in OA 58/89, and urged that in view of the ratio laid down in the said judgement the action of the respondents in the present case is untenable and, therefore, it should be quashed.

5. We have heard the learned counsel for the applicant and have perused the records and also the judgements cited before us. The accepted position is that a penalty of withholding of one increment for a period of 2½ years was already in force on the date on which applicant's case came up for consideration for promotion, in 1986. The limited question to be decided in this case is whether the applicant should have been granted promotion from a Group-D post to that of a Group-C post i.e. Sorting Assistant, in clerical grade in the Postal Department, in spite of the currency of the penalty already imposed on him. The learned counsel for the applicant has cited before us certain judgements of the Tribunal. In T.Koshy's case the Ernakulam Bench of the Tribunal has held that since the disciplinary proceedings were initiated against the applicant after holding of the examination, which the applicant was supposed to pass before being granted promotion, subsequent disciplinary proceedings cannot stand in the way of his promotion. In Prem Singh Verma's case, the Tribunal has held that

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withholding of promotion during the currency period of penalty of stoppage of increment amounts to imposition of double punishment on the applicant inasmuch as withholding of increment is also a penalty prescribed under the CCS (CCA) Rules. In this connection, however, we would refer to the judgement of the Hon'ble Supreme Court in the case of Union of India and others v. K.V. Jankiraman and others, 1993 SCC (L&S) 387, in which the Hon'ble Supreme Court held that denial of promotion to an employee, who has been penalized, till at least the date on which he has penalized, cannot be said to be imposition of double punishment on him. The Hon'ble Supreme Court further observed that while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it would be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.

6. In view of what has been laid down by the Hon'ble Supreme Court in K.V. Jankiraman's case, we are of the view that none of the judgements of the Tribunal cited before us would be applicable. Although the judgement in Prem Singh Verma's case was delivered on 28.1.93, by which date the Hon'ble Supreme Court's judgement in K.V. Jankiraman case had already been delivered, yet this judgement was not noticed or taken into consideration in Prem Singh Verma's case.

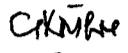
7. The argument of the applicant that promotion is to be granted solely on the basis of passing of the departmental examination and that consideration of record is totally immaterial, is not acceptable. True, passing of the departmental examination is a pre-requisite for grant of promotion but it cannot be said that a person should be granted promotion merely because he has passed the departmental examination regardless of his service record which may include penalties imposed upon him which are still current. The learned counsel for the applicant did not cite before us any rule to show that promotion had to be granted merely on the basis of passing of the departmental examination and that quality of the service record including the penalty imposed upon him is immaterial. As already held by the Hon'ble Supreme Court in K.V. Jankiraman's case, the question of double jeopardy in a case like this does not arise. Also provisions of Article 20(2) of the Constitution of India have no applicability to matters relating

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to the service of the applicant. We have considered the other submissions of the learned counsel for the applicant also and the pleas and averments in the OA and find no merit in the same. In the circumstances, the OA is dismissed at the stage of admission. No order as to costs.


(O.P. SHARMA)

ADMINISTRATIVE MEMBER


(GOPAL KRISHNA)
VICE CHAIRMAN

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