

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 291/00175/2015**

**ORDER RESERVED ON: 30.03.2015**

**DATE OF ORDER : 1.4.2015**

CORAM :

**HON'BLE MR. JUSTICE HARUN UL-RASHID, JUDICIAL MEMBER**  
**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Mohd. Hanif son of Late Shri Noor Mohammad, aged about 54 years, resident of Quarter No. 4, Postal Officers Colony, Shastri Nagar, Jaipur, Rajasthan.

... Applicant

(By Advocate: Mr. Tanveer Ahmed)

Versus

1. Union of India through the Secretary, Department of Post, Ministry of Communications, Information & Technology, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Postal Circle, Sardar Patel Marg, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA praying for the following reliefs:-

1. The action/omission of the respondents in not relieving /withholding relieving of the applicant/committing delay in relieving applicant may be declared as arbitrary and illegal and accordingly be ordered to be set right.
2. The respondent no. 2 may kindly be directed to issue relieving order of the applicant in pursuant to the order of promotion dated 26.02.2015 and the order of posting dated 09.03.2015 with immediate effect in the interest of justice.
3. The Tribunal may kindly be pleased to pass any other just and suitable order in favour of the applicant as deemed fit.

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2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed on the post of Postal Assistant on 10.10.1980 and he was promoted from time to time. That vide order dated 19.11.2012 (Annexure A/2), the applicant was allowed ad hoc promotion in the IPOS Group 'A'. The applicant is working as Senior Superintendent Railway Mail Services (SSRMS), Jaipur Division, Jaipur.

3. The applicant was continued on ad hoc promotion from time to time after a break.

4. That in continuance of the ad hoc promotion in Indian Postal Services Group 'A', the applicant was ordered to be regularly promoted vide order dated 26.02.2015 (Annexure A/7). He has been allotted to Punjab Circle. That Shri S.L. Patel was ordered to be posted vice applicant vide order dated 03.03.2015 (Annexure A/8).

5. That on 04.03.2015, a News Item was published (Annexure A/9) which was factually wrong. That on the next day of the publication of the news item, the arrangement which was made for relieving the applicant to Punjab Circle from his present place of posting was modified by way of issuance of another order dated 05.03.2015 (Annexure A/10) in which it was ordered that Shri S.L. Patel who was posted

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vice the applicant, his movement shall be kept in abeyance until further orders.

6. The learned counsel for the applicant submitted that a FIR was lodged against the applicant on 08.05.2014 (Annexure A/11) and this fact was in the knowledge of the DPC which met for the purpose of granting promotion. That in the said FIR, no charge sheet has been filed in the Criminal Court and besides it; there is nothing on record against the applicant. No charge sheet has been issued to the applicant in the departmental inquiry till date. That no other condition except settled by the Hon'ble Supreme Court can be taken into consideration for delay/withholding of benefit of promotion.

7. The learned counsel for the applicant also submitted that a reference has been made in the order of promotion dated 26.02.2015 to the office Memorandum dated 14.02.1992. According to Memorandum dated 14.02.1992, a promotion can be withheld if a charge sheet in the criminal case has been filed in the Criminal Court of law or a charge sheet has been served in a disciplinary case or if a officer is under suspension. In this particular case, there no criminal charge against the applicant in the Criminal Court nor the applicant has been served with a charge sheet in the disciplinary proceedings nor the applicant is under suspension. The mere pendency of the FIR is not a bar for promotion. The promotion of the applicant has not been kept under the sealed cover after due application of mind and as such there is no bar in executing the order of

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promotion. However, without any justification and reasoning the respondents in a most arbitrary manner have not relieved the applicant to join Punjab Circle.

8. Since the junior to the applicant, namely Shri Yashpal Singh & Others, have been given promotion on 03.03.2015 in pursuance to the order of promotion dated 26.02.2015, therefore, the applicant is also entitled to get the benefit of promotion with effect from the date the junior to the applicant has been provided the benefit of promotion to the Indian Postal Services Group 'A'.

9. The learned counsel for the applicant further submitted that it is not permissible in the eye of law that after issuance of the order of promotion if any action is taken subsequently that could debar or deprive the right of the employee, which has already been accrued to him. Therefore, the applicant is entitled for promotion. That if the applicant is not allowed to join prior to 31.03.2015, then the further career prospects of the applicant would be adversely affected because the position as on 01<sup>st</sup> April of every year is seen for further promotion on the post under Senior Time Scale. Thus the juniors to the applicant, who have been given benefit of promotion under the same order, will become entitled for senior time scale before one year than the applicant.

10. The learned counsel for the applicant also relied upon the judgment of the Hon'ble Supreme Court in the case of **Union**

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**of India & Others vs. Anil Kumar Sarkar** (Civil Appeal No. 2537/2013 decided on 15.03.2013) (Annexure A/8) and judgment of the Hon'ble Supreme Court in the case of **Union of India & Others vs. K.V. Jankiraman**, 1991 (4) SCC 109.

Therefore, he submitted that the respondents be directed to allow the applicant to join at a new place of posting in Punjab Circle on promotion immediately.

11. On the other hand, the respondents have filed their reply. In their reply, they have stated that the applicant was promoted on ad hoc basis in Group 'A' cadre and posted as APMG (Staff & Vig.) O/o the CPMG Rajasthan Circle, Jaipur w.e.f. 19.11.2012. While he was working as APMG, a misappropriation of Government money to the tune of Rs.90,67,0001/- was detected at MBC Ajmer RMS in 'J' Division Ajmer. Shri Mohd. Hanif, the then Supdt. RMS J Dn. Ajmer was identified as subsidiary offender in the said fraud case and an FIR has been lodged in CBI against him. Resultantly, Shri Mohd. Hanif who was working as APMG (S&V) on ad hoc basis was shifted from sensitive post and posted as SSRM JP Dn. Jaipur on 15.05.2014.

12. That the applicant was working in the capacity of SSRM JP Dn. Jaipur (Ad hoc) basis w.e.f. 15.05.2014 to 16.03.2015.

13. That now a proposal to initiate disciplinary action for the lapses noticed on the part of the applicant, the then SRM J Dn.

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Ajmer in fraud case of MBC Ajmer RMS has been received from PMG Southern Region Ajmer on 05.03.2015. Accordingly the competent Disciplinary Authority i.e. CPMG Jaipur has ordered to initiate disciplinary action under Rule 16 of the CCS(CCA) Rules, 1965 against him on 09.03.2015 after reverting the officer.

14. That in view of the disciplinary action pending, he has been reverted from JTS Group 'A' cadre (ad hoc) to his parent cadre of PPS Group 'B' cadre and posted a Superintendent Posts (Mfl. Dn.) Jaipur vide respondent no. 2 order dated 17.03.2015.

15. That vide order dated 26.02.2015, the applicant has been promoted to the Junior Time Scale (JTS) of Indian Postal Service (IPOS) Group 'A' on regular basis and on promotion he was allotted Punjab Circle. In the order of promotion dated 26.02.2015, it was made clear that:-

"3. Vigilance/Disciplinary case if any:-

In case any Vigilance/Disciplinary case of the type referred to in the DOP&T OM No. 22011/4/91-Estt.(A) dated 14.09.1992 circulated vide Postal Directorate Memo No. 25-19/88-SPG dated 13.10.1992 is pending against any of the officer, he should not be relieved for posting without obtaining specific orders from Directorate. The officers against whom any punishment is current except censure and recovery should not be promoted before expiry of currency of punishment. A report in this regard should be submitted immediately."

However, in pursuance of order dated 26.02.2015, the CPMG, Punjab Circle by order dated 09.03.2015 issued posting to the applicant along with other officials but in view of

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modified para 2(c) of DOP&T letter dated 21.06.2013, which provides that the "vigilance clearance shall not be withheld unless orders for instituting disciplinary proceedings against the officer have been issued by the Disciplinary Authority provided that the charge sheet is served within three months from the date of passing such orders", vigilance clearance has been withheld against the applicant i.e. Shri Mohd. Hanif, and therefore, the promotion order issued by DG Posts, New Delhi vide order dated 26.02.2015 in respect of the applicant has not been implemented, keeping in view of pendency of vigilance/disciplinary case against the applicant.

16. The respondents have also stated in their reply that Para 7 of DOP&T OM No. 22011/4191-Estt.(A) dated 14.09.1992 provides that:-

"A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

As such the case of the applicant comes under the purview of Para 7 of these instructions and in such case, the sealed cover procedure shall be considered as if the case of the applicant had been placed in a sealed cover.

17. The respondents have further submitted in their reply that since the order for initiating disciplinary proceedings under

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Rule 16 of the CCS (CCA) Rules, 1965 have been issued on 09.03.2015 by the Disciplinary Authority; the applicant is not entitled to get relieved on promotion for his new place of posting for Punjab Circle. The respondents have also submitted that the applicant has approached the Central Administrative Tribunal without exhausting the departmental remedy available with him. That he had submitted a representation dated 13.03.2015, which was received in the office of the respondents on 17.03.2015 but the applicant approached the Hon'ble Central Administrative Tribunal simultaneously without awaiting the decision of the competent authority on the representation. Therefore, the OA is premature and deserves to be dismissed.

18. With regard to the judgment of the Hon'ble Supreme Court in the case of K.V. Jankiraman (supra), as relied upon by the learned counsel for the applicant, the respondents have stated that under the facts & circumstances of the present OA, the ratio laid down by the Hon'ble Supreme Court in K.V. Jankiraman (supra) is not applicable since the DPC has already recommended the applicant for promotion and it is only due to withholding of vigilance clearance that the applicant has not been relieved. Thus, the action of the respondents in respect of not relieving the applicant is just and proper. Therefore, the OA has no merit and it should be dismissed with costs.

19. The learned counsel for the applicant submitted that he does not wish to file rejoinder and the case be heard on merit.

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Therefore, with the consent of the parties, the case was heard on merit.

20. It is an admitted fact that the applicant was approved for promotion by the DPC and vide order dated 26.02.2015 (Annexure A/2), the applicant was promoted to the Junior Time Scale (JTS) of Indian Postal Services, Group 'A' on regular basis w.e.f. the date of assumption of charge and until further order. In the same promotion order, Para 3 states that:-

**"3. Vigilance/Disciplinary case, if any:**

In case any Vigilance/Disciplinary case of the type referred to in the DOP&T OM No. 22011/4/91-Estt.(A) dated 14.09.1992 circulated vide this office Memo No. 25-19/88-SPG dated 13.10.92 is pending against any of the officers, he should not be relieved for posting without obtaining specific orders from this office. The officers against whom any punishment is current except censure and recovery should not be promoted before the expiry of currency of punishment. A report in this regard should be submitted immediately."

21. The respondents have stated in their reply that while the applicant was working as APMG, a misappropriation of Government money to the tune of Rs.90,67,001/- was detected at MBC Ajmer, RMS in 'J' Division Ajmer. That the applicant, who was the then Superintendent RMS J Division, Ajmer was identified as subsidiary offender in the said fraud case and an FIR has been lodged in CBI against him. Moreover, now a proposal to initiate disciplinary action for the lapses noticed on the part of the applicant has been received from PMG, Southern Region, Ajmer on 05.03.2015. Accordingly, the competent Disciplinary Authority i.e. CPMG, Jaipur has ordered

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to initiate disciplinary action under Rule 16 of the CCS(CCA) Rules, 1965 against the applicant on 09.03.2015 after reverting the officer. The applicant has been reverted from JTS Group 'A' cadre (ad hoc) to his parent cadre PSS Group 'B' cadre and posted as Superintendent Posts (Mfl. Dn.) Jaipur vide respondent no. 2 office order dated 17.03.2015. The respondents drew our attention to office Memorandum dated 21.06.2013. In Para 2(c) of this office memorandum, it has been mentioned that vigilance shall not be withheld unless orders for instituting disciplinary proceedings against the orders have been issued by the Disciplinary Authority provided that the charge sheet is served within three months from the date of passing such orders. In view of the fact that Disciplinary Authority has taken a decision to institute disciplinary proceedings against the applicant under Rule 16 of the CCS (CCA) Rules, 1965, therefore, the vigilance clearance was not given in the case of the applicant even though he was promoted by the DPC vide order dated 26.02.2015. The promotion order dated 26.02.2015 itself provides that though these officers have been promoted but in case vigilance/disciplinary case of the type referred to in DOPT OM No. 22011/4191-Estt. (A) dated 14.09.1992 is pending against any of the officer, he should not be relieved for posting without obtaining specific orders from this office.

22. From the perusal of the promotion order of the applicant dated 26.02.2015 (Annexure A/2), it is clear that according to Para 3 of this order, which deals with the cases relating to

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Vigilance/Disciplinary cases, it has been directed that in case any Vigilance/Disciplinary case of the type referred to in the DOP&T O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992 circulated vide this office memo No. 25-19/88-SPG dated 13.10.92 is pending against any of the officers, he should not be relieved for posting without obtaining specific orders from this office. Since the vigilance clearance has not been given in favour of the applicant and he has not been relieved for posting though no charge sheet in the disciplinary case has been served upon him and no charge sheet has been filed against him in the Criminal case, therefore, respondent no. 2 is directed to refer the case of the applicant to respondent no. 1 within three days from the date of receipt of copy of this order for obtaining specific order regarding relieving of the applicant to enable him to join his place of posting on promotion. The respondent no. 1 is directed to decide the reference so received from respondent no. 2 within fifteen days from the date of receipt of reference from respondent no. 2. The applicant has also filed a representation dated 13.03.2015 to respondent no. 2 (Annexure A/1). The respondent no. 2 is also directed to send this representation of the applicant along with his comments to respondent No. 1 along with the reference, as stated above. The respondent no. 1 shall decide the said representation of the applicant within 15 days from the date of receipt of a copy of the representation along with comments of respondent no. 2. While deciding the case of the applicant, the respondent no. 1 shall also consider the case law, as referred to by the learned counsel for the applicant that is judgments of

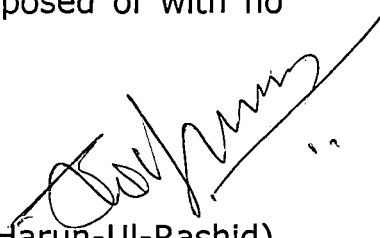
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the Hon'ble Supreme Court in the case of K.V. Jankiraman  
(supra) and Anil Kumar Sarkar (Supra).

23. With these observations, the OA is disposed of with no  
order as to costs.

  
(Anil Kumar)  
Member (A)

  
(Justice Harun-Ul-Rashid)  
Member (J)

Abdul