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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 7/8/2000

OA 499/97

K.F.Agarwal s/o Shri Hanhaiyalal Agarwal r/o 20, Kailashpuri,
Behind Colimar Garden, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Deptt.of Telecomm.,
Sanchar Bhawan, New Delhi.
2. General Manager Telecom District, Jaipur Telecom
District, Jaipur.
3. Dvl.Engineer Phones (Selection & Establishment) O/o
GMTD, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.F.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.Puneet Sharma

For the Respondents

... Mr.P.C.Sharma, proxy

counsel for Mr.Sanjay Pareek

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals
Act, the applicant makes following prayers :-

- i) to quash and set aside the order dated 7.8.97,
- ii) to promote the applicant in OTBT Scheme w.e.f.
16.2.84 with all consequentail benefits.

2. Facts of the case in brief, as stated by the applicant,

are that he was appointed on 16.2.68 and while serving as Office Assistant in the office of SDO (Phones), Jaipur, he was served with a charge-sheet under Rule-14 of the CCS (CCA) Rules, 1965 (for short, the Rules) and after inquiry vide order dated 27.3.91 a penalty of stoppage of one increment for a period of four years without cumulative effect was imposed upon the applicant. The applicant filed an appeal, which was also dismissed vide order dated 26.7.93. It is stated that the applicant filed OA 612/93, which was decided on 21.10.94. It is also stated that the Department of Telecommunication had introduced OTET Scheme for promotion after completing 16 years of service and ECR Scheme for promotion after completing 26 years of service and according to the OTET Scheme, promotion of the applicant was due w.e.f. 16.2.84 but promotion of the applicant was denied due to the pendency of departmental inquiry against him w.e.f. 16.2.84 (OTET Scheme) and 16.2.94 (ECR Scheme). It is stated that the applicant was given promotion vide letter dated 30.12.94 w.e.f. 1.7.94. The applicant submitted a number of representations for giving him promotion w.e.f. 16.2.84 but promotion to the applicant was given after 28 years of service, which should have been given to him after completing 16 years of service (OTET Scheme) and after completing 26 years of service (ECR Scheme), because of disciplinary proceedings pending against the applicant and thereafter a penalty was imposed upon the applicant. It is also stated that on account of minor penalty, promotion should not have been withheld and on 16.2.84 no punishment was pending against the applicant. Therefore, the applicant filed this OA for the relief as mentioned above.

Indel

3. Reply was filed. It is admitted in the reply that due to pendency of disciplinary proceedings against the applicant his case was kept in sealed cover and thereafter the applicant was awarded a penalty of stoppage of one increment for a period of four years without cumulative effect. It is made clear in the reply that OTBT promotion w.e.f. 16.2.84 could not be given to the applicant because of pendency of the disciplinary case under Rule-14 of the Rules against the applicant. It is also stated that merely having eligibility does not confer any right upon an employee for getting promotion benefit. The case of the applicant was considered in accordance with the terms and conditions of the policy and the applicant was rightly denied the said benefit on the ground of pendency of departmental inquiry/after awarding the penalty in the departmental proceedings. It is stated that the case of the applicant was considered by the DPC but the applicant was not found suitable. The DPC considered the entire record including the penalty imposed upon the applicant and thereafter the DPC came to the conclusion that the applicant is not fit for promotion. It is stated that sealed cover was opened after the expiry of punishment period and the applicant was given promotion w.e.f. 1.7.94. Therefore, the applicant has no case for interference by this Tribunal and this OA is devoid of any merit and liable to be dismissed.

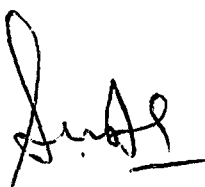
4. Heard the learned counsel for the parties and also perused the whole record.

5. Admittedly, after completing 16 years of service the DPC had considered the case of the applicant for promotion

under OTBT Scheme but due to the pendency of disciplinary case against the applicant the sealed cover procedure was adopted and the case of the applicant was kept in sealed cover. It is also an admitted fact that in the departmental inquiry the punishment, which was imposed upon the applicant, was stoppage of one increment for a period of four years without cumulative effect. The learned counsel for the applicant argued that punishment imposed upon the applicant was a minor punishment and the case of the applicant is squarely covered by the order passed by this Tribunal in OA 102/96 dated 15.2.2000 (Meer Singh v. Union of India & Another). Therefore, he submits that the applicant is entitled to be considered for promotion under OTBT Scheme w.e.f. 16.2.84 and under ECR Scheme w.e.f. 16.2.94. On the other hand, the learned counsel for the respondents has argued that in view of the pending disciplinary proceedings against the applicant and thereafter punishment imposed upon the applicant, the applicant was rightly denied promotion and he was allowed promotion w.e.f. 1.7.94 which is perfectly legal and valid.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. Hon'ble Supreme Court in The Collector of Thanjavur District v. S.Rajagopalan & Others, JT 2000 (3) SC 376, held that Tribunal was in error in thinking that non inclusion of the names of persons who suffered minor punishment would amount to double jeopardy. Hon'ble Supreme Court further held that denial of promotion under the circumstances would not amount to penalty. It is open to authorities to take



into account the punishment imposed during the relevant period. Hon'ble Supreme Court followed the earlier decision given in Union of India and Others v. K.V.Jankiraman & Others, 1991 (4) SCC 109, and clearly pointed out that denial of promotion would not amount to penalty and the Tribunal was in error in granting direction for consideration of promotion ignoring the minor punishment imposed upon the applicant during the relevant period. In the instant case, the respondents in the reply have stated categorically that case of the applicant was considered in accordance with terms and conditions of the policy and the applicant was rightly denied the said benefit on the ground of pendency of departmental inquiry/after awarding penalty in the departmental proceedings. It is also stated in the reply that the case of the applicant was considered by the DFC but the applicant was not found suitable. The DFC has considered the entire record including the penalty imposed upon the applicant and thereafter the DFC came to the conclusion that the applicant is not fit for promotion and after the expiry of punishment period the applicant was given promotion w.e.f. 1.7.94.

8. In our view, on the basis of the judgement given by the Hon'ble Supreme Court in the case as referred supra, we do not find any ground for interference by this Tribunal and in view of the judgement of the Hon'ble Supreme Court we are constrained not to follow our earlier decision. Therefore, this OA having no merits, is liable to be dismissed.

9. We, therefore, dismiss this OA with no order as to costs.

(N.F.NAWANI)

MEMBER (A)

(S.K.AGARWAL)

MEMBER (J)