

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 21/2000

DATE OF ORDER: 02-7-2002

P.S. Jaiswal son of Shri Kalyan Mal aged about 52 years resident of Mann Town, Jatwara Colony, Sawai Madhopur (Rajasthan) and working as Accounts Officer, Office of the Telecom district Manager, Sawaimadhopur (Rajasthan).

....Applicant.

VERSUS

1. Union of India through the secretary to the government of India, Department of Telecommunications, New Delhi.

2. Member (Finance), Telecommunications, Sanchar Bhawan, New Delhi.

3. Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.

4. Dayanand Singh, Accounts Officer, office of the Telecom District Manager, Jhunjhunu (Rajasthan).

....Respondents.

Mr. K.L.Thawani, Counsel for the applicant.

Mr. R.L. Agarwal, Proxy counsel for

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM


Hon'ble Mr. M.P. Singh, Member (Administrative)

hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Shri P.N. Jaiswal has filed this OA u/s 19 of the Administrative Tribunal's Act for quashing the order dated 25.8.99 (Annexure A/1) and also for seeking a direction to the respondents to issue appropriate order to promote the applicant Accounts Officer on regular basis w.e.f. 14.12.95 i.e. the date his next junior has been promoted.



2. The factual matrix of the case is that the applicant was initially appointed as Postal Clerk on 10.9.67.

After passing the prescribed examination for promotion to the post of Jr. Accounts Officer, the applicant was promoted and appointed as JAO on 10.2.87. He has been further promoted to the post of Assistant Accounts officer w.e.f. 12.7.90. He was further promoted as Accounts Officer on ad-hoc basis in officiating capacity in July 95 vide Annexure A/3 and was continued to work as such till 31.12.98 when he was appointed on regular basis on the said post of accounts Officer.

3. Further the case of the applicant is that his next junior, Shri Dayanand Singh, Respondent No. 4, was similarly appointed in officiating capacity on ad hoc basis to the post of accounts Officer and his said promotion has been regularised w.e.f. 14.12.95 whereas the applicant has been regularised w.e.f. 31.12.98. The applicant submitted representations by letter dated 29.1.99 and 14.4.99 with a request to regularise his promotion at least at par with his next junior. But the representations of the applicant have been rejected vide letter dated 25.8.99 (Annexure A/1). It has been said that his case was considered by the DPC in 1995 and he has been found unfit by the DPC. The applicant has also mentioned in the OA that he had nothing adverse against him so as to debarred him from promotion on the date when the DPC was held and his non promotion on the due date is going to adversely affect his future promotion and other retiral benefits. Hence this application.

4. The respondents have filed the detailed reply to the OA and have controverted the averment made in OA. It has been submitted that the applicant was given only ad hoc officiating promotion as per the rules in force. It has also been said that a charge sheet was issued to him under Rule 16 of the CCS(CCA) Rules, 1965 vide Memo dated 14.12.93 and due to pendency of the same, the DPC did not recommend the case

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of the applicant for promotion as Accounts Officer w.e.f. 14.12.95, whereas Shri D.N. Singh, Respondent No. 4, was recommended for promotion by the same DPC. After completion of the inquiry pursuant to the charge sheet dated 14.12.93, the penalty of 'Censure' was awarded to the applicant and thereafter the case of the applicant was considered in the next DPC held in the year 1997, which recommended the name of the applicant for promotion. The applicant was given promotion from 31.12.98. Thus the case of the applicant cannot be compared with Shri D.N. Singh, Respondent No.4, It has also been averred that the promotion to the cadre of Accounts Officer is on the basis of the recommendations of the duly constituted DPC and there is no provision to communicate reasons for not considering a person fit for promotion. A vigilance case was pending against the applicant at the time of DPC in which he was finally awarded the punishment of 'Censure' vide order dated 10.1.95. Further it has also been stated that the reason for non promotion of the applicant to the post of Accounts Officer is non recommendation of his name for promotion by the DPC based on the grading in the ACR. The entries in ACR entitles an officer to recognition and suitable reward by way of promotion. It is also stated that the case of the applicant was duly considered by the DPC in the year 1995 but not recommended his case for promotion. Therefore, the question of his promotion at par with his junior does not arise.


5. The applicant has filed rejoinder to the reply and has controverted the stand of the respondents made in the reply. It has been submitted that if a disciplinary case were pending against him, sealed cover procedure ought to have been resorted to. Post of Accounts Officer is a non selection post and is to be filled on basis of seniority cum fitness. Penalty of 'Censure' also does not come in the way of promotion. The applicant was very much senior to the private respondent but instead of keeping the recommendation in sealed cover, the respondents have declared him unfit merely on the ground that charge sheet under Rule 16 was pending.



6. We have heard the learned counsel for the parties and have gone through the records.

7. The learned counsel for the applicant has reiterated that there was absolutely nothing adverse against him on the date when the DPC was held. On the other hand, the learned counsel for the respondents have drawn out attention to Para 4.5 of their reply wherein it has been stated that the charge sheet dated 14.12.93 under Rule 16 of the CCS(CCA) Rules was pending against the applicant on the date the DPC was held and due to the pendency of the said charge sheet, the DPC did not recommend the case of the applicant for promotion to the post of Accounts officer w.e.f. 14.12.95. On the other hand, Shri D.N. Singh, Respondent No. 4, was recommended for promotion and applicant could be promoted after completion of the inquiry of the said charge sheet wherein penalty of 'Censure' was awarded. It is strange to observe that penalty of 'Censure' was awarded vide order dated 10.1.95 whereas the DPC recommended the case of respondent No. 4 w.e.f. 14.12.95. On 14.12.95, there was nothing adverse against the applicant in as much as the penalty of censure was awarded much earlier i.e. 10.1.95. The averment made by the respondents are self contradictory.

8. We are constrained to observe that the matter has made complicated and have not been correctly projected before this Tribunal by any of the party in as much as in the rejoinder filed on behalf of the applicant, it has been stated that the respondents ought to have use the sealed cover while recommending the promotion of respondent No. 4 w.e.f. 14.12.95. It is not understood as to how the sealed cover procedure could be adopted when no adverse case was pending against the applicant. From the respondents' side also, no plausible reasons could be given as to why his case was not considered by the DPC held somewhere in month of December, 1995 when there was no disciplinary case was pending against the applicant in as much as the so called disciplinary case was over as early as 10.1.95 when the



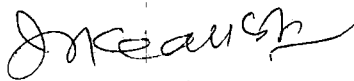
disciplinary proceedings culminated into imposition of penalty of 'Censure.' The respondents have been travelling in confusion with misconstrued notions and have not come out fairly and have not given fair treatment to the applicant. After all the respondents have to be rationale and reasonable, but they have not been so in the present case.

9. From the facts narrated above, it is amply evident that the case of the applicant has not at all been considered for promotion to the post of Accounts officer on the date when the DPC was held in which the case of his next junior, Shri D.N. Singh, Respondent No. 4, was considered w.e.f. 14.12.95. The contradictory stand has been taken in as much as it has been mentioned in the impugned order that the applicant was found unfit for promotion in the year 1995 for the post of Accounts Officer. On the other hand, it has been said that the DPC did not recommend the case of the applicant for the said post of Accounts officer due to the pendency of the disciplinary proceedings. We are of the firm opinion that the matter has been dealt with neglect and his case has been completely ignored. He is denied for consideration for promotion to the post of Accounts Officer from the due date on which his next junior was considered/promoted without any cogent reason. It is a settled position of law that consideration of promotion is a fundamental right under Article 16 of the constitution of India and in the present case the same has been infringed. Thus there is force and substance in the OA of the applicant.

10. Consequently the OA is allowed the impugned order dated 25.8.99 (Annexure a/1) is hereby quashed. Respondents No. 1 & 2 are directed to hold the review DPC and considered the case of the applicant for promotion to the post of Accounts Officer on the due date i.e. 14.12.95. In case the applicant is found fit for grant of the said promotion, he shall be allowed all consequential benefits including the salary, pay fixation, revision of pensionary benefits etc. This orders shall be complied within a period of three months

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from the date of receipt of a copy of this order. No costs.



(J.K. KAUSHIK)

MEMBER (J)



(M.P. SINGH)

MEMBER (A)

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