

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.385/2001

Date of order: 14.2.2003

Akshay Kumar Mathur, S/o Sh.Ganganarain Mathur, R/o 14,
Gopalpura Gaon, Tonk Road, Jaipur, working as Assistant
Employees State Insurance Corporation, Jaipur.

...Applicant.

Vs.

1. Employees State Insurance Corporation through its Director General, Panchdeep Bhawan, Kotla Road, New Delhi.
2. The Employees State Insurance Corporation through its Regional Director, Panchdeep Bhawan, Bawani Singh Road, Jaipur.

...Respondents.

Applicant in person.

Mr.U.D.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chaunan, Judicial Member.

PER HON'BLE Mr.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant was initially appointed as LDC with the respondents department. He was promoted as Assistant on ad hoc basis vide order dated 7.5.90 (Annex.A3). While working as such he was served memorandum dated 4.5.93 for his alleged misconduct. During the pendency of enquiry, the respondents held DPC for the post of Assistant on 16.12.93 and subsequently in the year 1995. The case of the applicant was also considered by the DPC but in view of the pendency of the disciplinary proceedings, the recommendation was kept in sealed cover. The applicant was held guilty of the charges by the Enquiry Officer in his enquiry report dated 30.3.2000 and consequently the disciplinary authority awarded punishment of 'Censure' to the

applicant vide order dated 22.5.2000 (Annex.A8). However, the case of the applicant for regular promotion to the post of Assistant was considered by the next DPC which met on 3.7.2000 and the applicant was granted promotion to the said post. Against the order of the disciplinary authority dated 22.5.2000, the applicant preferred appeal before the appellate authority vide representation dated 9.11.2000 (Annex.A10) which was dismissed by the appellate authority vide order dated 18.6.01 (Annex.A2). It is against this order dated 18.6.01, the applicant has filed the present application for quashing and setting aside the order Annex.A2 with the direction to the respondents to promote the applicant from the date persons junior to the applicants were promoted vide order dated 16.12.93 (Annex.A5), 9.2.95 (Annex.A7) and order dated 2.8.95 (Annex.A9).

2. Though the applicant has prayed for setting aside the appellate order dated 18.6.01 (Annex.A2) whereby his appeal against the award of penalty of censure was dismissed but he had not made any challenge for quashing the charge-sheet on account of delay in concluding the enquiry proceedings or to the enquiry proceedings and award of penalty on the ground of violation of the principles of natural justice or any other available grounds. However, the main grounds taken by the applicant in this O.A is regarding denial of promotion to the applicant against the vacancies of 1993 and 1995 when the enquiry proceeding was pending against him on the ground that punishment of 'censure' cannot be taken as adverse to the extent of denying benefit of promotion to the applicant and also that even the punishment of 'censure' is taken as adverse for a candidate then also the said adversity ^{can be} was taken into account

for the promotion of the year 1993. Thus, the applicant should not have been denied promotion for the subsequent years especially when all the employees given promotion in the year 1995 were junior to the applicant.

3. The respondents have contested the case by filing reply affidavit. They have also taken preliminary objection to the extent that the applicant has prayed two reliefs namely for quashing the order dated 18.6.2000 whereby the appeal of the applicant was dismissed by the appellate authority and also other relief seeking promotion w.e.f. 16.12.93, 9.2.95 and 2.8.95; thus the applicant is therefore not entitled to file this O.A seeking plural remedies in view of the provisions of Rule 10 of the CAT (Procedure) Rules, 1987. On merits, it has been stated ^{that} disciplinary proceedings had been initiated against the applicant vide memorandum dated 4.5.93 and when the DPC had been convened on 16.12.93 for considering promotions to the post of Assistant, the case of the applicant was also considered by the DPC but in view of the pendency of the disciplinary proceedings, the recommendations made by the DPC in his case were kept in sealed cover in accordance with the instructions of the Deott.of Personnel & Trng, OM dated 14.9.92. His case was, thereafter reviewed from time to time and since he was awarded the penalty of Censure vide order dated 22.5.2000, the finding of the DPC which was kept in sealed cover could not be acted upon. His case was, therefore, considered for promotion by the next DPC convened on 3.7.2000, consequently he was promoted as Assistant w.e.f. 3.7.2000. Thus, according to the respondents, the applicant has been given promotion properly and correctly vide order dated 3.7.2000. As regards the order dated 18.6.2000, the appeal

preferred by the applicant on 9.11.2000 has been properly rejected after proper and due consideration by the appellate authority. It has further been stated that the delay in finalising the proceeding was solely on the part of the applicant as he has asked for the change of Enquiry Officer and the fact that there was some delay in finalising the departmental proceedings, he was awarded minor penalty of censure by the disciplinary authority. Otherwise the charges against the applicant was of grave ~~in~~ nature as he has misbehaved and used unparliamentary language against the Regional Director. The respondents have further submitted that the sealed cover was not rightly opened in view of the law laid down by the Apex Court in the case of Union of India Vs. K.V. Jankiraman, 1993 SCC(L&S) 387 and also in confirmity with the instructions contained in the OM dated 14.9.92 issued by the Deptt. of Personnel & Training.

4. We have heard the applicant in person and the learned counsel for the respondents and have gone through the material on record.

5. The main question which requires our determination is whether the sealed cover containing the recommendation of the DPC has to be opened even if the delinquent official has not been fully exonerated in the departmental enquiry.

6. The applicant argued that the promotion to the post of Assistant was on the basis of seniority cum fitness and he has only been awarded the penalty of censure and as such the respondents should have opened the sealed cover and acted upon the finding given by the DPC and granted promotion to him from the date when his juniors have been promoted from the year 1993 or 1995. In the alternative the applicant further argued that

in any case even if it is assumed that the penalty of censure is a penalty disentitling him for promotion in that case, he should have been promoted at least in the subsequent DPC held in the year 1995. On the other hand the learned counsel for the respondents contended that the sealed cover containing recommendation of the DPC has to be opened only in those cases where the delinquent official has been fully exonerated in the departmental enquiry and in case where the delinquent officer has been punished in the departmental proceedings the sealed cover is not to be opened and the case of such person has to be considered by the next DPC.

7. We have considered the submissions made by the rival parties. We are of the view that there is a considerable force in the submission of the learned counsel for the respondents and the contention raised by the learned counsel for the respondents is in confirmity with law laid down by the Apex Court in the case of Union of India Vs. K.V.Jankiraman (supra) ~~whereby in para 29 it has been held:~~
~~that-~~

"...On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no

discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in *præsent*i. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, 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 will 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..."

8. From the observations made above, it is clear that any employee held guilty of misconduct cannot be placed on par with other employee and his case has to be treated differently and there is no discrimination when the matter of promotion he is treated differently.

9. The matter is also squarely covered by yet another decision of the Apex Court in the case of State of M.P & Anr. Vs. I.A Qureshi, 1998 SCC (L&S) 1121, in that case, the

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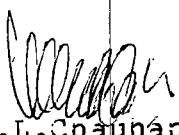
delinquent officer after culmination of departmental enquiry was imposed minor penalty of censure and in his case also the sealed cover procedure was adopted which could not be opened on account imposition of the penalty. The applicant filed application before the State Administrative Tribunal which was allowed and direction was given to the authorities for opening the sealed cover and give effect to the recommendation of the DPC. The Apex court while dealing with the question as to whether the Tribunal was justified in giving direction for opening of the sealed cover and for giving effect to the recommendation of the DPC held that-

"...It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2.5.90. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings" (emphasis supplied).

10. From the ratio as laid down by the Apex Court, we are of the view that the applicant could only be considered for promotion on prospective basis from the date after conclusion of the departmental proceedings and penalty of 'Censure' is one of the minor penalty and denial of promotion is the consequence of the conduct of the applicant for which he has been held
- (b)

guilty in the departmental proceedings. Indeed, it cannot be a grievance of the applicant that even after the conclusion of the departmental proceedings no steps have been taken for holding DPC for considering the case of the applicant for promotion. In fact the departmental enquiry culminated in imposition of minor penalty of censure vide order dated 22.5.2000 and the next DPC for regular promotion for the post of Assistant was held immediately thereafter on 3.7.2000 and the applicant was promoted as such w.e.f. 3.7.2000. Further it is also not a case of the applicant that the charge-sheet/order of punishment should be quashed on any one of the available grounds as permissible under law including that (i) it took about 7 years to complete the departmental proceedings, (ii) also that proper procedure was not followed and (iii) there is violation of the principles of natural justice in conducting the enquiry proceeding which has caused prejudice to the applicant etc, we cannot examine the legality of the order dated 22.5.2000 (Annex.A8) of the disciplinary authority and also the order of the appellate authority (Annex.A2) dated 18.6.01.

11. For the reasons stated above, we see no force in the O.A and the same is rejected with no order as to costs.


(M.L.Chauhan)

Member (J)


(H.O.Gupta)

Member (A).