

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR
JAIPUR JAIPUR

O.A. No. 527/2001

199

~~E.A. No.~~

DATE OF DECISION 17/9/2002

P.C. Bhatia

Petitioner

Mr. P.N. Jatti

Advocate for the Petitioner (s)

Versus

The Union of India and Ors.

Respondent s

Mr. N.C. Goyal

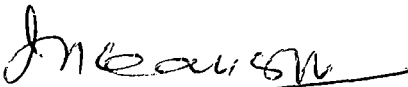
Advocate for the Respondent (s)

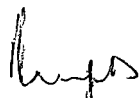
CORAM :

The Hon'ble Mr. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. J.K. KAUSHIK, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(J.K. Kaushik)
Judl. Member


(A.P. Nagrath)
Adm. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: 17.8.02

OA 527/2001

P.C.Bhatia, HSG S.A. O/o Railway Mail Service, 'J'
Division, Ajmer.

... Applicant

V/s

1. Union of India through Secretary, Department of
Posts, Sanchar Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle,
Jaipur.
3. Post Master General, Southern Region, Ajmer.
4. Supdt., Railway Mail Service, 'J' Division,
Ajmer.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

For the Applicant ... Mr.P.N.Jatti

For the Respondents ... Mr.N.C.Goyal

O R D E R

PER HON'BLE MR.J.K.KAUSHIK, JUDL.MEMBER

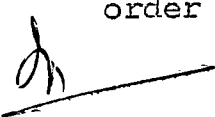
Applicant, P.C.Bhatia, has filed this OA u/s 19
of the Administrative Tribunals Act, 1985 praying for
quashing the impugned order dated 6.9.2001 (Ann.A/1)
and to issue a suitable writ, order or direction to
the respondents to issue a further order for allowing
him the higher pay scale of BCR Rs.5000-150-8000



w.e.f. 4.12.99, the date on which the applicant has completed his 26 years service.

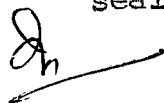
2. The facts of the case, as narrated by the applicant in the OA, are that he was appointed on a Group-D post on 30.11.67 in the Department of Posts & Telegraphs. After passing the requisite examination he was promoted and appointed as Sorting Assistant on 4.12.73. Since then he has been working smoothly and there is no cause of complaint against the work and conduct of the applicant.

3. The applicant was issued with a charge-sheet dated 2.11.99 under Rule-16 of the CCS (CCA) Rules. The applicant replied to the same and the matter was finalised vide letter dated 21.2.2000 (Ann.A/2). He was imposed with the penalty of 'Censure'. On the other hand, the applicant was completing 26 years of service on 4.12.99 and he became due for grant of promotion under BCR Scheme in the higher pay scale of Rs.1600-2660, as per the DOP letter dated 1.11.91 (Ann.A/3). It has been further submitted that the applicant made a representation for grant of his benefit under BCR Scheme w.e.f. the due date i.e. 4.12.99 but there was no reply to the same. He reminded the matter vide letter dated 18.9.2000 but no action was taken on the same. The applicant has been granted the benefit of promotion to the next scale of pay Rs.5000-8000 under BCR Scheme w.e.f. 1.7.2001 vide order dated 6.9.2001 (Ann.A/1).



4. The OA has been filed on number of grounds inasmuch as it has been submitted that the applicant completed 26 years of service on 4.12.99, whereas the benefit of grant of promotion under BCR Scheme has been extended to him only w.e.f. 1.7.2001. There was no punishment against the applicant on the date he completed 26 years of service. He submitted number of representations but there was no response. Hence this application.

5. The respondents have filed counter reply to the OA, which was accepted on payment of costs of Rs. Two hundred only vide order dated 11.7.2002 through an MA decided separately. The facts and grounds raised in the OA have been controverted in the reply. It has been submitted that there was a disciplinary case pending against the applicant, which culminated into imposition of penalty of Censure. Even in the year 2001 the applicant was awarded the penalty of stoppage of increment for three months and i.e. the reason the applicant was not granted promotion from the so called due date i.e. 4.12.99. As per the rules in force, officials completing 26 years of service between 1st January to 30th June are to be given promotion under BCR Scheme w.e.f. 1st July of every year and in case of such completion between 1st July to 31 December, the said benefit is to be given from 1st January of the next year. The case of the applicant was kept in sealed cover and the matter moved from one office to

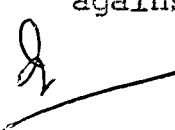


another. Finally, he has been given the benefit of promotion under BCR Scheme w.e.f. 1.7.2001. Further, it has also been submitted that in the year 2000 the applicant was imposed a penalty of stoppage of increment for three months and after the currency of the penalty was over, he was promoted w.e.f. 1.7.2001. The learned counsel for the applicant did not consider expedient and necessary to file any rejoinder to the reply and submitted that the case could be heard on merits at the admission stage itself.

6. We have heard the learned counsel for the parties and have perused the records of the case carefully


7. The facts involved in this case are generally not in dispute rather they have been admitted. It has been admitted that the applicant completed 26 years of service on 4.12.99. He was issued with a charge-sheet under Rule-16 of the CCS (CCA) Rules vide letter dated 2.11.99 and the disciplinary proceedings culminated into imposition of penalty of Censure vide letter dated 21.2.2000. As regards the imposition of penalty of stoppage of increment for three months, a letter dated 12/16.6.2000 was submitted and this is the date on which the penalty was imposed. The same is taken on record.

8. The learned counsel for the applicant has argued that the pendency of the disciplinary proceedings against an employee is no bar for grant of promotion



under BCR Scheme on completion of 26 years of service. As per the scheme in vogue, the said benefits are to be extended on the basis of seniority-cum-suitability and the suitability is to be adjudged on the basis of service record. There was absolutely nothing against the applicant at the relevant time so as to obstruct his promotion. It has further been submitted that even if the pendency of a disciplinary case was a bar, though not conceding, the disciplinary proceeding was over on 21.2.2000 and he was imposed with a penalty of Censure. His case ought to have been considered for grant of the said benefit w.e.f. 21.2.2000 and there was no reason for granting him the said benefit w.e.f. 1.7.2001. Further, it has been submitted that withholding of increment for three months, vide order dated 12/16.6.2000, is a subsequent event and has no relevancy to the present case. On the other hand, the learned counsel for the respondents has reiterated the stand taken in the reply to the OA.

9. Primarily, two issues are involved in this case namely; whether pendency of a disciplinary case, specially the minor penalty charge-sheet, is a bar to grant the benefit under the BCR Scheme; secondly, whether the applicant ought to have been granted the said benefit from the date the disciplinary case was over and the penalty of Censure was imposed on 21.2.2000. As regards the first issue, the learned counsel for the applicant has placed reliance on a judgement in the



case of Anil Chandra Nath v. Union of India, OA 88/96, decided on 30.6.97 by the Guwahati Bench of the Central Administrative Tribunal, reported at 281 Swamy's CL Digest 1997/2. This judgement makes reference of the judgements in K.V.Janakiraman's case, decided by the Apex Court, and V.V.Kamath's case, decided by the Ernakulam Bench of this Tribunal. On the other hand, the learned counsel for the respondents has submitted that as per O.M. dated 14.9.92 the sealed cover procedure is required to be used in the following three cases :

- (i) Government servants under suspension
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

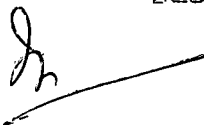
The Office Memorandum does not make any distinction regarding the major or minor penalty and it has been specified that once the charge-sheet has been issued the case is required to be kept in sealed cover. In this view of the matter, the case of the applicant was to be kept under sealed cover. Further, the cases on which the learned counsel for the applicant has placed reliance are distinguishable on facts inasmuch as in these cases the charge-sheet was issued on a subsequent date to the date of completion of 26 years of service.

10. We have carefully considered the contentions of both the parties on the issue whether ~~the~~ pendency of



disciplinary case is a bar for grant of benefit under the BCR Scheme on completion of 26 years of service. We have perused the judgement of Ernakulam Bench in V.V.Kamath's case, wherein the case was that the applicant therein completed 26 years of service much before the service of notice in connection with the disciplinary proceedings. Not only this, even the judgement of the Apex Court in Union of India & Ors. v. K.V.Janakiraman was not brought to the notice of the Ernakulam Bench of this Tribunal while deciding the case of V.V.Kamath. In the case of K.V.Janakiraman the Apex Court has held that;

"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 praesenti. 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."

Even in the case of Anil Chandra Nath, on which the reliance has been placed by the learned counsel for the applicant, the applicant became due for grant of the benefit under BCR Scheme w.e.f. 2.12.94, whereas the charge memo was issued on 2.2.95 and that is the reason the impugned order in that case was quashed because at the time when the applicant was due for grant of the said benefit there was nothing so as to obstruct his promotion but in the present case the charge-sheet was issued earlier to the due date i.e. on completion of 26 years of service. We have also given our anxious consideration to the provisions of OM dated 14.9.92, wherein it has been specifically submitted that the sealed cover procedure is to be used when the charge-sheet has been issued and the disciplinary proceedings are pending. It nowhere makes any distinction as regards whether the charge-sheet for major penalty has been issued or the charge-sheet for minor penalty has been issued. Thus, in our considered opinion, the law laid down by the Apex Court in K.V.Janakiraman's case is required to be followed even in the case of promotion under the BCR Scheme and the cases which have been referred to by



the learned counsel for the applicant are distinguishable on facts and the ratio of the judgements therein has no application to the present case. Thus, the first issue is decided against the applicant.

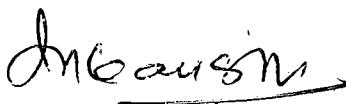
11. As regards the second issue i.e. whether the promotion under BCR Scheme on completion of 26 years of service is required to be granted on the day when the penalty of Censure has been imposed. On this issue, the learned counsel for the respondents has vehemently argued that the case is required to be considered by the subsequent DPC and that too the benefit can be extended only w.e.f. 1st of July or 1st of January as per the averments made by ~~him~~ in the ~~reply~~ to the OA. However, he has not been able to support his contention by any law or rule. The things cannot be left on whims or fancy of the authorities. Once it is ^{bound} a time/~~xx~~ promotion, it has to be considered on completion of the specified period of service. In the present case, the applicant became due for grant of benefit under BCR Scheme on completion of 26 years of service w.e.f. 20.2.2000 when he was imposed the penalty of Censure and there remained absolutely nothing so as to obstruct the same. His case was required to be considered from this date. The DPC may be held on subsequent dates but the consideration date cannot be changed. In this view of the matter, the claim of the applicant for grant of benefit under BCR Scheme has not been considered from the due date i.e.

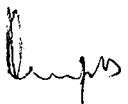


20.2.2000 and release of his promotion from 1.7.2001 is not reasonable there being no rational for the same. The contention of the learned counsel for the applicant that the applicant was ~~at least~~ entitled to grant of his promotion under BCR Scheme on completion of 26 years of service at least from 20.2.2000, when the disciplinary proceedings culminated into imposition of penalty of Censure. The contention of the learned counsel for the applicant has force and the second issue is decided in favour of the applicant.

12. In view of the foregoing discussions, the OA is partly allowed and the impugned order, so far as it relates to grant of benefit of promotion to the next higher scale of Rs.5000-8000 under BCR Scheme w.e.f. 1.7.2001, is quashed. The applicant shall be entitled to grant of the said benefit w.e.f. 20.2.2000. He shall also be entitled to all the consequential benefits. The respondents are directed to comply with this order within a period of three months from the date of receipt of a certified copy of this order.

No costs.


(J.K. KAUSHIK)
MEMBER (J)


(A.P. NAGRATH)
MEMBER (A)