

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.

(१०) Day of December, two thousand three.

O.A. No. 302/2002.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.
The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Pushplata,
W/o Late Shri R.L. Airun
R/o Gandhi Chowk
Nasirabad. : Applicant.

Mr. P.N. Jatti : Counsel for the applicant.

Versus

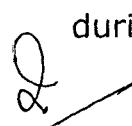
1. Union of India, through the
Secretary to the Government of India,
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi.
2. The Chief Post Master General,
Rajasthan Circle, Jaipur -7
3. Post Master General, Ajmer.
4. Superintendent of Post Offices, Beawar.
5. Miss Kishni Himtani P.A. Nasirabad H.O.

Mr. N.C. Goyal : Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri R.L. Airun, has filed this O.A and he expired
during the pendency of the O.A and his wife Smt. Pushplata has

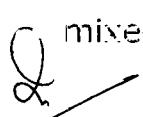


been substituted as Legal Representative of the deceased applicant. The late Shri R. L. Airun has made the following reliefs in this O.A.

"That by a suitable writ/order or direction the impugned order dated 06.09.2001 with the order dated 28.06.99 Annex. A.1 and Annex. A.8 be quashed and set aside and the respondents be directed to allow the promotion to the applicant with effect from 03.10.94. With all the consequential benefits or but the date of his junior."

2. The material facts, which are relevant in resolving the controversy involved in the instant case, are that Shri R.L. Airun was initially appointed as Postal Assistant in 1978 and he completed 16 years of service on 03.10.94. He was served with a charge sheet on 02.03.94 under Rule 16 of the CCS (CCA) Rules, which was culminated into the imposition of penalty of withholding increments for a period of two years without cumulative effect. On petition to the higher authorities the punishment was reduced to that of "censure" vide order dated 08.07.96. Thereafter the applicant submitted a representation to the competent authority to review his case for promotion. However, he was informed vide letter dated 13.10.97, that he was not found fit for promotion. He preferred an appeal but the same remained undecided.

3. The further case of the applicant is that he was allowed the benefits of TBOP vide order dated 28.06.99 with effect from 03.10.97, but he was not given the said benefit from 03.10.94. The O.A has been filed on a number of grounds, which are intermixed with the facts. It has been averred that the case of the

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applicant for promotion on completion of 16 years of service has not been considered as per the Rules. He was eligible for promotion under the TBOP scheme with effect from 03.10.94. It is stated in the application that at the relevant point of time there was no adverse remarks against the applicant and no currency of any penalty. It is also stated that he has not been communicated with any adverse remarks except Annex. A.2

4. The respondents have filed an exhaustive reply to the O.A and submitted that the applicant was not found fit for promotion on completion of 16 years of service due to currency of punishment of withholding of increment for a period of two years. When the punishment was revised into that of "censure" a review DPC was held and the applicant was not found fit for promotion for the years 1994-95 and 1996 and he was found fit only with effect from 03.10.97. His representation was rejected as per the rules. It is also averred that as per the Scheme of granting benefits under TBOP scheme the case will be considered by DPC and the promotion would be subject to found fit by the DPC. The applicant was communicated with adverse remarks for the years 1994 & 1995 as per Annex. R.1. Therefore the respondents have prayed for dismissal of the O.A.

5. A short rejoinder has been filed wherein the facts mentioned in the O.A have been reiterated. It is also stated that no adverse remarks were communicated to him up to 04.10.94.

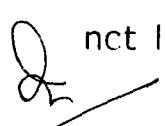
 A reply to the rejoinder has also been filed regarding the

communication of adverse remarks and other entries for the earlier years.

6. With the consent of the parties the matter was taken up for final disposal at the stage of admission. We have heard the learned counsel for the parties and carefully perused the pleadings and records in this case.

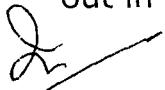
7. The learned counsel for the applicant has invited our attention to Annex. A.12 and submitted that the applicant had completed the qualifying service on 03.10.94 and as per his seniority he was required to be granted TBOP benefits.

8. On the other hand, the learned counsel for the respondents has took us through the TBOP scheme and he invited our attention to para 4 of the Scheme and laid stress on the assertion that this benefit was to be granted subject to the individual being found fit by the DPC and the normal rule of promotion would apply. He has contended that rule of promotion is required to be followed and the officer should be adjudged as fit by the DPC, which the review DPC has done. He had also submitted that the scope of judicial review over the DPC findings by the Courts is very limited and in the instant case there is no allegation of any malafide or ignoring any relevant material or considering irrelevant material for not granting the applicant the benefits of TBOP scheme and this Tribunal would not like to take a course of judicial review. The adverse ACR

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relates to the imposition of penalties which are admitted by the applicant.

8. We have considered the rival contentions raised on behalf of the parties. At the very out set, the material facts in this case are not disputed. There is no dispute that there were certain adverse entries may be relating to imposition of penalties against the applicant and there is no dispute that the applicant's case has been considered by the Review DPC and promotion was accorded on him from a later date. The rule of granting of benefits of promotion under TBOP makes it clear that the said promotion is to be done on being found fit by a DPC. We have perused Annex. A.12. This is a circular, which relates to criteria in assessing the suitability of incumbents and the date of their appointment to the upgraded posts. This circular has absolutely no application in the instant case. Since TBOP is a distinct promotion than the benefits of upgradation. In our opinion, making of reference to the said circular seems to ex-facie misplaced and mis-conceived. As regards the contention of the learned counsel for the respondents, especially with regard to scope of judicial review by the Courts in the matter of recommendations of the DPC, the law position is well settled by now and Courts cannot subscribe their views over the recommendations of the DPC and the Courts cannot sit as an appellate authority over the recommendations of the DPC. In the instant case, there is no allegation of malafide against any member of the DPC and also no perversity has been pointed out in the action of the respondents.

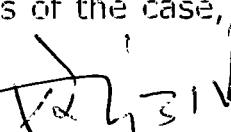


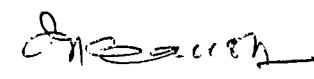
9. On the other hand we find that the respondents have made a clean breast of the facts and have been consistent in their stand. They gave detailed reasons in the impugned order and no one can by any stretch of imagination say that the action of the respondents is illegal or arbitrary or unjust. Admittedly, in the present case the applicant was imposed penalty of withholding of increment for a period of six months and censure also during the period taken into consideration by the DPC for promotion to OTBP. The law is well settled on the preposition. The Hon'ble Supreme Court further observed that while considering an employee for promotion his old record has to be taken into consideration and if promotion committee takes into consideration the penalties imposed upon the employee and denies promotion, such denial is not illegal and unjustified. See:

Union of India and others vs. K.V. Janakiraman and others
[1993 SCC (L&S) 387].

10. In our considered opinion, we do not find any infirmity in the action of the respondents and therefore there is no force in the O.A and the impugned order cannot be faulted with.

11. In the result, we are left with no option except to dismiss the O.A, and we do so. However, in the facts and circumstances of the case, the parties are directed to bear their own cost.


(A.K. Bhandari)
Administrative Member.


(J.K. Kaushik)
Judicial Member.

Jsv.