

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 11-05-04

Original Application No.457/2002.

Lajpatrai Sharma s/o Gattulal aged about 56 years, resident of Near Adarsh Vidya Mandir, Fatehpur Shekhawati and working as Head Postmaster, Fatehpur Shekhawati.

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Ministry of Communications, New Delhi 110 001.
2. Chief Postmaster General, Rajasthan Circle, Jaipur 302 007.
3. Postmaster General, Rajasthan Western Region, Jodhpur 342003.
4. Director Postal Services, Jaipur Region, Jaipur 302 007.
5. Superintendent of Post Offices, Sikar Division, Sikar 332 001.
6. Shri Veer Bhan Kakkar, Postmaster Head Post Office Deeg, Distt. Bharatpur.
7. Shri Ashok Kumar Rajawat, Postmaster, Head Post Office, Ratangarh, Distt. Churu (Rajasthan).

... Respondents.

Mr. C. B. Sharma counsel for the applicant.
Ms. Rajeshwari proxy counsel for
Mr. N. C. Goyal counsel for the respondents No.1to5.
None is present for respondent NO.6&7.

CORAM

Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. A. K. Bhandari, Administrative Member.

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: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

The applicant has filed this Original Application thereby praying for the following reliefs:-

(i) That the respondents be directed to promote the applicant to HSG-I cadre from the date his juniors have been promoted. The applicant is already working on the post of Postmaster Fatehpur Shekhawati which has been upgraded to HSG-I post.

(ii) That the Hon'ble Tribunal may be pleased to issue directions or appropriate orders that since the applicant is working on upgraded post of HSG I he should be paid pay and allowances of HSG-I.

(iii) Any other relief which this Hon'ble Tribunal thinks just and proper in favour of the applicant including costs."

2. The facts of the case are that the applicant at the relevant time was working as HSG-II with the respondents. A charge sheet against the applicant for minor penalty was issued on 01.08.2001. The Departmental Promotion Committee for promotion to HSG-I cadre was held and the said committee recommended 57 officials for promotion to the cadre of HSG-I whereas the name of the applicant was ignored. It is further averred that officials junior to the applicant, Respondent NO.6 and 7, were also promoted vide memo dated 19.12.2001 (Annx. A-1). The applicant has further stated that the name of these two, respondent NO.6 and 7, find placed at Sl. No. 135 & 137 of the gradation list dated 01.01.1997 (Annexure A-7), whereas the name of the applicant find mention at Sl. No.133. Thus according to the applicant his name ought to have been recommended. It is further averred that there was nothing adverse against the applicant till 23.08.2001, the date on which the post of HSG-II were upgraded to that of HSG-I and also on 19.12.2001 when the order of promotion to HSG-I were issued. Even if the DPC has

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finalised the recommendations in between 23.08.2001 and 19.12.2001, therefore, the recommendation of the applicant should be kept in a sealed cover.

3. It is on the basis of these facts, the applicant has stated that the department ought to have adopted the sealed cover procedure and the pendency of charge sheet under Rule 16 of CCS (CCA) Rules cannot be the basis for denial of promotion of the applicant.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the Ministry of Communication, Department of Posts, New Delhi, ordered for upgradation of 57 posts of HSG-II (Postal) to HSG-I. Accordingly, the DPC was convened for selection of officials for promotion to HSG-I. As per recruitment rules, the officials with three years of service in the cadre of HSG-II are eligible for promotion in HSG-I. HSG-I is a selection post and the selection from HSG-II to HSG-I is to be made on the basis of seniority cum selection. Thus the officials of 'good' benchmark in the zone of consideration were to be selected up to number of vacancies. It is, however, stated that the applicant was in the zone of consideration for promotion to HSG-I and his name was placed before the DPC held on 07.11.2001 and 19.11.2001 for consideration for the promotion. The applicant was duly considered by the DPC but the name of the applicant could not find place in the selection list drawn by the DPC due to the pendency of disciplinary case as reported in special report submitted by the Superintendent of Post Offices, Sikar, letter dated 14.08.2001. Due to the pendency of the disciplinary case, the assessment of the DPC held on 07.11.2001 and 19.11.2001 were kept in sealed cover.

5. The respondents have further stated that the disciplinary case against the applicant was decided

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by the Senior Superintendent of Post Office, Sikar, vide memo dated 31.10.2001. The Superintendent Post Offices, Sikar, awarded a penalty of recovery of Rs.1000/- from the pay of November 2001. But the above fact could not be placed before the DPC for want of information from Superintendent of Post Offices, Sikar. Had the facts been placed before the DPC, recommendation would not have been placed in the sealed cover and he would have not been recommended for promotion because of adverse records of service due to penalty. When the facts of deciding the disciplinary case came in notice, a review DPC was convened on 08.08.2002 and after going through the record of the relevant year, the review DPC did not find the applicant fit for promotion to HSG-I. So the junior officials who were having better service records and found fit for promotion were promoted to HSG-I. The applicant has filed the rejoinder, thereby reiterating the statement made in the OA.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. The undisputed facts of this case are that the applicant was issued a charge sheet under Rule 16 of the CCS (CCA) Rules on 01.08.2001 and the DPC for promotion to HSG-I were held on 07.11.2001 and 19.11.2001. It is also not disputed that when the meeting of DPC were held, the applicant was imposed with the penalty of recovery of Rs.9000/- vide memo dated 31.10.2001 (Annexure A-8) and the recovery was to be effected at the rate of Rs.1000/- from the month of November 2001. Since the fact of imposition of penalty was not brought to the notice of the DPCs, for want of information from Superintendent of Post Offices, Sikar, the DPC proceeded on the assumption that the enquiry against the applicant is still pending and as such they adopted the procedure of sealed cover and the findings were kept in a sealed cover. Subsequently, when this fact came to the

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notice of the respondents, a review DPC was convened on 08.08.2002 and after going through the records of the relevant year, the review DPC did not find the applicant fit for HSG-I due to unsatisfactory performance of the applicant. So the junior official who were having better service records and found fit for promotion were promoted to HSG-I. Thus, we do not find any infirmity in the action taken by the respondents.

8. The contention raised by the applicant in the OA that the sealed cover procedure was not adopted by the DPC is factually incorrect. In fact, the DPC has adopted the sealed cover procedure though such a procedure was not required to be adopted, as when the meeting of the DPC was held the applicant was already undergoing the punishment pursuant to order dated 30.10.2001 (Annexure A-8). Learned counsel for the applicant has argued that there was no justification for the respondents to hold the review DPC thereafter and the recommendation made by the DPC on earlier occasion should have been ~~accepted~~ ^{accepted}. The submission made by the learned counsel for the applicant deserves out right rejection. As can be seen from the facts as stated above the respondents have wrongly resorted to sealed cover on the assumption that the charge sheet against the applicant is pending. The applicant cannot made basis of recommendation made by the DPC which was kept in a sealed cover for granting relief to him, inasmuch as the sealed cover containing the recommendation of DPC is to be opened only in those cases where the delinquent officer has been fully exonerated by the departmental enquiry. Such recommendations cannot be given effect to where the employee concerned has not been fully exonerated. This is the view which has been held by the Apex Court in the case of State of M.P. vs. I.A. gureshi (1998) 9 SCC 261.

In view of the law laid down by the Apex Court, the applicant is not entitled to any relief, even if

we accept the argument of the learned counsel for the applicant that the sealed cover procedure was rightly adopted. So far as the contention of learned counsel for the applicant that the department should not have held the review DPC cannot be accepted as the review DPC was convened only on the basis that fact regarding imposition of penalty was not brought to the notice of the DPC, which was relevant factor for granting promotion to HSG-I. Since the applicant was held guilty in the departmental proceeding and the order of punishment/recovery of Rs.9000/- at the rate of Rs.1000/- p.m. starting from November 2001 was still operative, when the meeting of DPC for promotion to HSG-I was held, as such he could not be promoted on the post of HSG-I. HSG-I is a selection post. Viewing the matter from any angle, the applicant is not entitled to any relief either on the basis of adopting the sealed cover procedure or by convening the review DPC, as in any case he was not entitled for promotion in view of the reasons stated above.

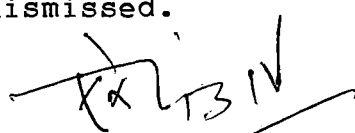
9. Learned counsel for the applicant has argued that action of the respondents is arbitrary as one Shri Ram Kumar Bairwa was also allowed promotion vide memo dated 19.12.2001 on the recommendation of the meeting of DPC held on 07.11.2001 and 19.11.2001, despite the fact that a disciplinary case was pending against him and subsequently he has been imposed penalty of withholding of increments w.e.f. 01.01.2002. The applicant has stated this fact by filing affidavit subsequent to the filing of the rejoinder and this point was never raised by the applicant in this OA. As such, notice of this fact cannot be taken. However, the respondents have filed the reply. In the reply, it has been stated that when the DPCs meeting was held on 07.11.2001 and 19.11.2001 information regarding disciplinary case against Shri Ram Kumar Bairwa was not brought to the notice of the DPC. As such necessary promotion order was issued. In this case the promotion order was

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given to the applicant only after the currency of the penalty. It has however, been stated by the respondents that the case of the applicant is not identical to that of Shri Ram Kumar Bairwa, as in the case of applicant, he has already suffered with the penalty when the meeting of DPC was held whereas in the case of Ram Kumar Bairwa the penalty was imposed after the issuance of promotion order.

10. According to us, this fact cannot form basis for giving relief to the applicant. Admittedly, when the DPC was held, the punishment was already imposed on the applicant and the currency of the punishment was not over. As such, he could not have been promoted. Further, merely because promotion was given to some other person wrongly will not make the action of the respondents arbitrary and discriminatory within the ambit of Article 14 of the Constitution of India, as Article 14 is a positive concept which cannot be enforced in negative manner.

11. In view of the reasons stated above, the OA is dismissed.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)