

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 191 of 2000

Jabalpur, this the 15<sup>th</sup> day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

C.L. Sharma,  
S/o Shri U.C. Sharma,  
aged about 54 years  
Senior Superintendent of  
Post Offices, Sagar Division,  
Sagar(M.P.)

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,  
through its Secretary,  
Department of Post,  
Sanchar Bhawan,  
New Delhi.
2. The Director General (Posts),  
Dak Bhawan,  
Parliamentary Street,  
New Delhi.
3. Union Public Service Commission  
through its Chairman,  
New Delhi.
4. Chief Post Master General  
M.P. Circle, Hoshangabad Road,  
Bhopal(M.P.).
5. Shri I.D. Shukla,  
Ex-Chief Post Master General  
C/o CPMO, M.P. Circle,  
Hoshangabad Road,  
Bhopal(M.P.)
6. Shri Rameshwar Lal,  
Indian Postal Services Group-A,  
(JTS), through Director General,  
(Posts) Dak Bhawan,  
Parliament Street,  
New Delhi.

RESPONDENTS

(By Advocate - Shri P. Shankaran for official respondents  
None for private respondents.)

ORDER

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

"(a) summon the relevant record from the respondents for its kind perusal. Also summon the alleged appellate order dated 10.2.1999 and quash the same;

(b) Set aside the order dated 4.10.1995 (Annexure-A-4) Charge-sheet dated 20.12.93 (Annexure-A-2) including disciplinary proceedings;

(c) direct the respondents to provide all consequential benefits to the applicant as if the impugned charge-sheet is never issued against him;

(d) Direct the respondents to convene the review D.P.C. for the post of Group-A for the applicant without taking into consideration the punishment of censure dated 4.10.95".

2. The brief facts of the case are that the applicant was working as Senior Superintendent of Post Offices, Sagar Division, Sagar. A DPC was held on 1.9.89, the applicant was promoted in Group-B services by order dated 1.11.89. He was holding the post of Group-B from 30.8.91 to 10.1.96 and Group-A(JTS) from 11.1.96 basis on adhoc/which is higher than Group-B post, continuously by order dated 1.12.95. A charge sheet dated 20.12.93 was issued to him after about six years from the date of alleged incident. The applicant had submitted his reply dated 25.7.94 denying the charges levelled against him. The applicant contended that without holding any enquiry, the punishment order dated 4.10.1995 was passed by the respondents. Against the aforesaid order the applicant had preferred an appeal on 1.12.1995 and the appellate authority has not yet decided the appeal of the applicant. In the meantime, it is learnt that some DPC took place on 26/27/28th June, 1998 for Group-A services. The applicant was within the zone of consideration being a Group-B employees. Certain annual confidential reports were also communicated against the applicant belately after a period of two years of adverse C.R. dated 8.8.95(Annexure-A-6). The applicant had preferred a representation against the said ACRs, the said representation of the applicant has been turned down by / vide order dated 30.6.1998.

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The respondents have passed the order dated 23.7.98 (Annexure-A-7) whereby the juniors of the applicant have been promoted. Therefore, the applicant had earlier filed an OA No.484/99 which was disposed of in limine directing the respondents to pass a speaking order on the representation of the applicant. In pursuance of the order of the Tribunal the respondents passed the order dated 30.11.99 (Annexure-A-8). On perusal of the order dated 30.11.99, the applicant came to know that his appeal stood rejected against the censure on 10.2.1999. However, the appellate order has not been served on the applicant till date. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs..

3. Heard the learned counsel for the applicant, and respondents.

4. The learned counsel for the applicant has stated that a charge sheet was issued by the respondents on the applicant after about 6 years of the alleged allegations and the order passed on 4.10.95 imposing the penalty of censure was not in accordance with law and it was malafide to further argued with hold the due promotion of the applicant. It is / that in the order dated 30.11.99 whereby rejecting the appeal of the applicant on 10.2.1999 against censure is not in accordance with the rules. The learned counsel for the applicant has further stated that during the pendency of this OA, the applicant has been promoted vide order dated 21.1.2002(Annexure-A-10) while the adverse remark in ACRs was turned down on 30.6.1998 and the punishment of censure had not attained finality due to pendency of the appeal. Therefore, there was no reason not to consider the promotion of the applicant whereas his juniors were promoted on 23.7.98 and the applicant was promoted vide order dated 21.1.2002 and further stated that in pursuance to the amendment in Art.16-4-A and 16-4-B of the Constitution, the DOPT issued an O.M. dated 21.1.2002, whereby it

is directed that the decision shall be effective from 17th June, 1995 and the employees who got accelerated promotion being a reserved category candidate, shall carry their seniority alongwith their accelerated promotion. Therefore, the applicant is entitled for due promotion with retrospective effect. The learned counsel for the applicant has drawn our attention towards the judgment of the Hon'ble High Court in the case of A. Verma Reddy Vs. Controller General of Defence Accounts, New Delhi & Ors., 2002 (1) ATJ 342, in which it has been held that "promotion-censure-promotion based on seniority-cum-fitness - An employee cannot be denied consideration for promotion on the ground that he was awarded the punishment of censure". He has further argued that though the punishment of censure was awarded at a very belated stage i.e. more than six years of the alleged incident that too on malafide-grounds, the respondents cannot take adverse effect on the promotion of the applicant in view of the above judgment of the Hon'ble High Court (supra).

5. The learned counsel for the respondents argued that as far as the promotion of the applicant is concerned, he was considered for promotion to the post of Junior Time Scale of Indian Postal Services Group-A during the year 1998 but he was not found selected by the DPC to the aforesaid post. Promotion to Group-A post is a selection process and those employees who got higher merit naturally will find a place in the select list based on the number of vacancies and those employees who are at bottom of the merit may not find a place in the select list based on the selection norms adopted by DPC. He has also stated that according to the applicant's own admission that the appeal against the order of punishment of censure was pending, hence on this ground also his promotion could not have

been considered. Moreover, the appeal of the applicant against the order of punishment of Censure has been dismissed. The applicant was promoted to Junior Time Scale of Group-A vide order dated 21st January, 2002. The learned counsel for the respondents further argued that the claim of the applicant to regain his seniority with reference to his junior in pursuant to the amendments to Article 16.4A and 16.4B of the Constitution of India and instructions issued subsequently there to vide OM dated 21.1.2002 is not tenable, as it is applicable to the employees belonging to SC/ST to retain the seniority in case they have been promoted by virtue of rule of reservation prior to general candidates. In other words, the candidates belonging to general category promoted later to SC/ST category candidates will be placed junior to SC/ST employees who have been promoted to higher grade by virtue of the rule of reservation. The applicant is not fit in this category as he was not promoted to Junior Time Scale Group-A prior to his juniors and as such his contention for claiming benefit of ante-dated promotion from 23.7.1998 when his juniors were promoted is baseless and has no substance.

6. After hearing the learned counsel for the parties and also on perusal of the relevant ACR dossiers and DPC proceedings, we find that in the DPC proceedings the name of the applicant is mentioned at serial No. 164 while the name of the respondent No. 6 Shri Rameshwar Lal is mentioned at serial No. 167. Both the candidates belong to SC category. According to the aforesaid serial numbers the respondent No. 6 was junior to the applicant but he was promoted because he was graded very good while the applicant was graded only good. As stated by the respondents in the additional reply the promotion to the



Group-A post is selection on merit and those who gets higher merit finds a place in the select list based on the number of vacancies and those employees who are at the bottom of the merit list do not find a place in the select list in accordance with the existing policy existing on the subject and adopted by the DPC. Hence the applicant was not considered and was not promoted with effect from 23.7.1998. As regards the punishment of Censure that it was awarded after a lapse of 6 years, the applicant was given the opportunity of filing the appeal against the order of 4.10.1995. The appeal was also dismissed on 10.2.1999, which is discussed in the order dated 30.11.1999. For consideration for promotion to a Group-A post, the performance of the employee is considered for past 5 years. In the present case the DPC does not find the applicant suitable for promotion. Hence there is no reason for us to interfere with the orders passed by the respondents.

7. Accordingly, we are of the considered opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as devoid of any merit. Hence the Original Application is dismissed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

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पूर्णांकन सं. ओ/व्या. जबलपुर, दि. जबलपुर, दि.  
 परिविविध वाचो विवर:—  
 (1) संपित्र, राज्य व्यापार व वात एसोसिएशन, जबलपुर  
 (2) शास्त्रेश्वर श्री/श्रीमती/कु. के कांगड़ाल S. Paul  
 (3) प्रस्तुवी श्री/श्रीमती/कु. दे कांगड़ाल R. Shankaran  
 (4) गंगापाल, कै.जा.जा. जबलपुर न्यायपीठ R. P. O.  
 सूचना एवं आवश्यक कार्यवाही हेतु