

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

CIRCUIT AT INDORE

Date of Decision : 4.9.2003

O. A. No. 444/98.

Abdul Rafiq S/o Abdul Hatiz, aged 37 years, Occupation-Service, R/o 67, Madina Nagar, Indore.

... Applicant.

v e r s u s

1. Union of India through Secretary Tele Communication Department, New Delhi.
2. Member (P) Postal Services Board, Ministry of Communication, Department of Post, New Delhi.
3. Senior Superintendent, City Division Post Offices, Indore.
4. Assistant Superintendent City Division Post West, Indore.

... Respondents.

Ku. Vandana Kasrekar, counsel for the applicant.
Shri S. A. Dharmadhikari, counsel for the respondents.

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Hon'ble Mr. V. K. Majotra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

The applicant, Shri Abdul Rafiq, has inter alia prayed for quashing the orders dated 4.10.96, 26.12.96 and order dated 28.7.97 and has further prayed for a direction to the respondents to appoint the applicant on the post of Postal Assistant W.e.f. 29.02.1996 with all consequential benefits.



2. The factual matrix necessary for adjudication of the controversy involved in the instant case are that the applicant was initially appointed to the post of Male Attendant on 09.01.1983. He got an opportunity to appear in the examination for promotion to the post of Postal Assistant/Sorting Assistant, which was held on 30.07.95. He appeared in the same and was successful, finding his place at Sl.No. 6 of the merit. He was also sent for the training which was scheduled to commence from 01.01.1996 and completed the same on 23.03.1996 successfully.

3. The further case of the applicant is that the candidates who passed the aforesaid training along with the applicant were given appointment/promotion to the post of Postal Assistant vide order dated 29.02.1996 (Annexure A-4). The applicant was not so promoted and he made number of representations to the respondents. Subsequently, he was issued with a charge sheet on 17.05.1996. He submitted the reply and the disciplinary proceedings culminated into imposition of the penalty of withholding of one increment without future effect. It is averred that as per the rules in case of minor penalty also, the procedure laid down in Sub Rule (3) to (23) of Rule 14 is also required to be followed but the same was not followed. The allegation against him were not covered under the head of mis.conduct. He preferred an appeal as well as revision which resulted in dismal failure. It is also averred that non submission of the information of his formal arrest in a bailable offence is a bonafide mistake and he has not committed any mistake. It is also averred that on 29.02.96, there was

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no reason for not promoting the applicant to the post of Postal Assistant since no charge sheet was issued to him on that date. It is only on 24.4.98, the applicant has been promoted to the post of Postal Assistant and he has joined on 6.5.98.

4. The Original Application has been filed on a number of grounds. The main grounds on which the applicant has reckoned his claim are that on 29.02.96 there was nothing adverse against him and he has been discriminated. He has also submitted that the procedure has laid down in Rule 14 for imposition of the penalty has not been adhered to and this resulted in delaying the promotion of the applicant for about 2 years.

5. The respondents have contested the case and have filed a detailed reply to the same. It has been submitted that the applicant was arrested by the Police and in that incident disciplinary case was pending/contemplated on that date against him. Subsequently he has been awarded penalty of stoppage of one increment for a period of one year without cumulative effect. After that he has been given the appointment. A criminal case was also pending against him and that is why he has not been promoted. It is also submitted that he has been given the reasonable opportunity to defend his case and he had failed to intimate the factum of his arrest and the alleged act falls within the parameters of misconduct. Thus, the applicant has no case for interference.

6. A rejoinder has been filed on behalf of the applicant annexing thereto a copy of the order dated 24.11.98 passed

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by the Criminal Court wherein the applicant has been acquitted of the charges.

7. We have heard the learned counsel for the parties at a considerable length and have bestowed our earnest consideration to the submissions, pleadings and the records of this case.

8. The Learned Counsel for the applicant has reiterated the facts and grounds raised in the pleadings and have stressed that as on 29.02.96 the applicant had absolutely nothing adverse against him so as to obstruct his promotion inasmuch as there was no disciplinary proceeding pending against him, since the very charge sheet was issued to him on 17.05.96. He has also submitted that even in the criminal case the applicant has been acquitted and, if at all, his promotion could not be released due to the criminal case, after acquittal, his case ought to have been considered. However, the Learned Counsel for the applicant has not advanced any argument relating to the penalty imposed on the applicant and regarding the prayer No. 5) i). On the contrary, learned counsel for the respondents have strived very hard to countenance their stand and justify the action of the respondents as indicated in their reply. Learned Counsel for the respondents have submitted that because of the pendency of the disciplinary proceeding as well as the criminal case, the case of the applicant was not considered for promotion and the applicant himself should be held responsible for the whole episode. The respondents have not committed any illegality or impropriety and their action was very much consonance with the rules in force.

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9. We have considered the rival contentions raised on behalf of the parties.

10. As far as the general facts of the case are concerned, there is hardly any quarrel. However, there is a little variation in regard to the pendency of the disciplinary proceeding against the applicant or the criminal prosecution on the date the candidates who passed along with the applicant were promoted to the post of Postal Assistant i.e. on 29.2.96. It is admitted position of the case that the applicant was issued with a charge sheet on 17.5.96 and the criminal case was instituted in the year 1995 itself. The number of criminal case is 1712/95, that means that the cognizance of the offence was taken in the year 1995 itself and we can safely infer that a prosecution of the criminal case was pending against the applicant on the said date i.e. 29.2.96.

11. Now adverting to the fact of pendency of the prosecution for criminal charge and the relevant provision regarding following the procedure of sealed cover has been enunciated in OM dated 14.9.92, wherein it has been laid down that the sealed cover procedure is required to be adopted in the following circumstances :-

- "(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."

From the perusal of the above, we find that the applicant's case fell in Item No. (iii) above and as per

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rules, his case ought to have been kept in sealed cover. For a moment we consider that the case of the applicant was kept in sealed cover in accordance with the aforesaid provision, the question which arises is that what is the effect of the acquittal in the said criminal case on the promotion of the applicant. The law on this point is well settled by the Hon'ble Supreme Court in the case of U.C.I. vs. K. V. Janki Raman 1991 SC 2010, wherein their Lordships have categorically held that in case of exoneration in the disciplinary proceeding or in case of acquittal in criminal case, the sealed cover is required to be opened. Thus in the present case, the sealed cover is required to be opened. Incidentally it was brought to our notice by the learned counsel for the respondents that in the present case they have not followed the procedure of the sealed cover since he has already passed the requisite training for promotion and while passing the final order we shall take care of this situation.

12. Lastly even though the learned counsel for the applicant has not stressed the arguments for grant of Prayer No. 5) i) but we would like to deal with the same. The primary contention raised in the OA is that the procedure for conducting the disciplinary procedure as envisaged in Rule 14 of the CCS (CCA) Rules ought to have been followed, even in case where the charge sheet was issued under Rule 16 of the CCS(CCA) Rules. The Rule 16 of the CCS (CCA) Rules lays down specific procedure of imposition of the minor penalty and we do not find that any deviation has been made in the matter. The scope of the judicial review in the disciplinary proceedings is very limited and no such ground have been made out for calling our indulgence in the disciplinary proceeding or in the penalty orders.

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13. As regards the subsequent events of initiation of disciplinary case followed by imposition of penalty, the same do not come in the way in view of the law position laid down by the Supreme Court in Delhi Jal Board vs. Mohinder Singh JT 2002 (10) SC 158 wherein their Lordships have held that in such cases the result of first sealed cover will be opened on exoneration in case where 2nd charge sheet is issued subsequently. A similar position has been held in the case of Bank of India and another vs. Degala Suryanarayana (1999) 5 SCC 762. Para 14 is relevant which is extracted as under :-

"However, the matter as to promotion stands on a different footing and the judgements of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service juris-prudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary, criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India vs. K. V. Jankiraman SCC at PP. 114-115 : AIR at P. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the tag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the ~~the~~ benefit of the promotion earned on 1-1-1986."

14. In view of what has been said and discussed above, the Original Application is partly allowed. The respondents

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