

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 28th August, 2008

ORIGINATION APPLICATION NO. 468/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Anandi Lal Jain son of Shri Keshri Malji Jain, aged about 64 years, resident of 23B, New Grain Mandi, Kota. Retired from the post of HSG-II, (BCR) as Sub-Postmaster, Indira Gandhi Nagar, Post Office, Kota.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director Postal Services, Southern Region, Ajmer.
4. Senior Superintendent of Post Offices, Kota Postal Division, Kota.

.....RESPONDENTS

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

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

"(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to promote the applicant in the cadre of Lower Selection grade from the year 1979 and thereafter in the cadre of higher selection grade II and I from the date juniors so

allowed by quashing letter dated 9/4/2007 (Annexure A/1) with all consequential benefits.

- (ii) That respondents be further directed to pay difference of pay and allowances after due promotion with arrears for service period and thereafter pension and pensionary benefits by revising the same with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was appointed as a Time Scale Clerk in Kota Division on 16.05.1964. He was placed under suspension w.e.f. 21.01.1971 to 10.02.1971. As a result of disciplinary action taken under Rule 14 of CCS (CCA) Rule 1965 by the SSPOs Kota, he was awarded the punishment of withholding of one increment for three months falling due on 01.06.1975 vide memo no. B-267 dated 26.05/19.06.1975. It was also ordered in above order that the period of suspension will be treated as due and admissible leave for which he may apply. Applicant preferred an appeal to the Chief PMG Rajasthan Circle, Jaipur, which was decided vide order dated 14.11.1975 (Annexure A/3) and the case was remitted back to the SSPOs Kota for denovo proceedings by initiating disciplinary action under Rule 16 of CCS (CCA) Rules and to issue separate order for the treatment of the period of suspension. The Disciplinary Authority i.e. SSPOs Kota passed a separate order regarding suspension period treating it as suspension period and limiting pay and allowances for the period to whatever already as subsistence allowance etc. but did not initiate denovo proceedings as it is not mandatory to hold an enquiry under the provisions of Rule 16 of CCS (CCA) Rules, 1965 for imposing minor penalties. The applicant preferred a Revision Petition in this connection after a long gap to the Principal Chief PMG, Jaipur who rejected the same being time barred vide memo NO. Staff 44-3/36/2003 dated 17.02.2007.

3. That later on the applicant filed an OA No. 181/2004 before this Bench. This OA was decided vide order dated 30.05.2006 and this Tribunal held that the disciplinary authority had not proceeded in term of the order passed by the Appellate Authority and no denovo proceedings were held under Rule 16 of CCS (CCA) Rules, 1965 and quashed the order dated 23.11.1976 vide which the suspension period was ordered to be treated as suspension period limiting it to the subsistence allowance etc. already paid and also quashed the order dated 17.02.2004 whereby the Chief PMG, Rajasthan Circle, Jaipur had rejected the revision petition of the applicant and also held that applicant shall be entitled full pay and allowances for period of his suspension w.e.f. 21.01.1971 to 20.02.1971 (actual period 21.01.1971 to 10.02.1971) and the said period shall be treated as spent on duty for all purposes. In compliance of the order passed by Hon'ble Central Administrative Tribunal Bench, Jaipur, the SSPOs Kota issued an order vide memo No. B2/136/ALJ dated 08.11.2004 and the suspension period of the applicant was treated as period spent on duty for all purpose alongwith entitlement to full pay and allowances for the period of suspension and accordingly an arrear of pay & allowances amounting to Rs.2676/- and arrear of pension Rs.434/- was paid to the applicant o.d dated 10.11.2006 and also remitted his pension case to the competent authorities for permanent revision of pension and formal approval of the competent authority has been received.

4. After decision of the aforesaid OA, the applicant again represented to the authorities vides Annexure A/7, Annexure A/9 and Annexure A/10 to give him promotion in the light of the decision rendered by this Tribunal. However, vide impugned order dated 09.04.2007 (Annexure A/1), the representation of the applicant was rejected on the ground that issue regarding promotion w.e.f. 1978 has no relevancy regarding decision rendered by this Tribunal in earlier OA. It was further mentioned that in case the applicant has proof that his case for promotion was with-held on account of his suspension, he

may tender evidence/document in that behalf. It is on these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

5. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have categorically stated that the case of the applicant for promotion was not denied on account of the fact that the matter of his suspension was pending. In fact the applicant was not found fit due to unsatisfactory record of service and he has already represented his case before the competent authority, who has rejected his representation after due consideration but the applicant has concealed this fact in this OA. It is stated that the increment was ordered to be withheld for the period w.e.f. 01.06.1975 to 30.09.1975 and suspension period was decided on 23.11.1976 and thus the above case was not pending during November, 1977 or December, 1978. Later on when the applicant was found fit for promotion in the year 1989, he was granted promotion by the DPC w.e.f. 17.05.1989 and next higher scale under BCR was also granted 01.10.1991. Thus according to the respondents, the applicant has got no case whatsoever.

6. The respondents have also placed on record various Annexures whereby the case of the applicant was rejected. At this stage, we wish to notice some of the Annexures whereby the case of the applicant was rejected. Vide order dated 28.05.1995 (Annexure R/3), the representation of the applicant dated 04.01.1991 regarding his promotion to LSG was rejected by the Postmaster General, Rajasthan Eastern Region, Ajmer. Copy of this order was also endorsed to the applicant. Similarly, the respondents have also placed on record letter dated 29.06.1990 (Annexure R/10) whereby the case of the applicant for promotion under one TOBP Scheme was also rejected. To the similar effect is another letter dated 28.11.1990 (also marked as Annexure R/10) whereby the case of the applicant for promotion in LSG, as rejected by the DPS(E), was considered for promotion on

different dates and the same was also rejected by the Postmaster General.

7. The applicant has filed rejoinder. The fact that the applicant has made representation regarding his promotion and the same was rejected by the competent authority has not been denied by the applicant.

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

9. We are of the firm view that the present OA is wholly misconceived and deserves out right rejection with heavy cost. However, since the applicant is retired employee, as such we are not imposing cost. At the outset, it may be stated that the present OA is barred by the principle of res-judicata. As can be seen from the copy of the judgement passed in earlier OA 181/2004 decided on 30.05.2006, the applicant has prayed for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to treat suspension period 22.1.1971 to 10.2.1971 as spent on duty for all purposes including Pay & Allowances by quashing memos dated 17.2.2004, 14.11.1975 and 23.11.1976 (Annexure A/1, Annexure A/2 and Annexure A/3) with all consequential benefits.
- (ii) That the respondents be further directed to allow due promotion to the applicant in lower selection grade and higher selection grade from the date junior so allowed with all consequential benefits including retrial benefits.
- (iii) Any other order, direction or relief which may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded"

10. Thus from the prayer clause, as reproduced above, it is clear that in relief (ii), the applicant has prayed that he may be allowed due promotion in LSG and HSG from the date junior has been granted

promotion including retrial benefits. This Tribunal has not granted such relief to the applicant. As such, in view of the law laid down by the Apex Court in the case of State Bank of India vs. Ram Chandra Dubey & Others, 2001 SCC (L&S) 3, relief claimed not granted shall be deemed to have been rejected. As can be seen from the operative portion of the judgement in earlier OA (Annexure A/6), the applicant was held entitled to the full pay & allowances for the period of his suspension w.e.f. 21.01.1971 to 20.02.1971 and the said period was treated as spent on duty for all purposes. No relief regarding granting of promotion in LSG and higher selection grade from the date when such promotion was granted to junior was ~~not~~ granted despite specific prayer. It was not open for the applicant to file this OA. Thus on this ground alone, the present OA deserves to be dismissed.

11. That apart in order to see whether the applicant has made any foundation in earlier OA regarding his promotion from the back date, Paper Book of the earlier OA was called from the Registry. From the pleadings made in the OA, it is evident that in fact the entire case of the applicant in earlier OA was regarding treating the period of suspension as spent on duty for all purposes and also to pay full pay & allowances instead of suspension allowance. There was only a passing reference in the OA that since the respondents have not held denovo proceedings under Rule 16 of CCS (CCA) Rules, 1965, the respondents are duty bound to give full pay & allowances by way of regular promotion from the due date with full pay & allowances for the suspension period. In fact from the documents annexed with earlier OA, it is evident that the representation made by the applicant was regarding pay & allowances for the period of suspension and was not regarding his grievance for his promotion. However, the applicant has pleaded his case for promotion on the ground that he has qualified the department examination for 1/3 quota against the vacancy of 1977-1978 vide letter dated 23.05.1979 and as such he was entitled for promotion as no nothing adverse was against him except denovo

proceedings, for the first time in the rejoinder, This part of new averment made in the rejoinder was refuted by the respondents by filing detailed reply to the rejoinder filed by the applicant. At this stage, it will be useful to quote para No. 4.1 of the reply to the rejoinder filed by the respondents in earlier OA, which thus reads as under:-

"That the contents of this para of the rejoinder are not admitted as stated by the applicant. It is submitted that the promotion into LSG is based on the selection and recommendation by the DPC on the overall assessment of service records as per Confidential Reports and availability of vacancy at the time of consideration of DPC. It is submitted that the service records of the applicant was never found satisfactory by the DPCs held from time to time. Besides this, the case reported in the present Original Application. The applicant was charge sheeted under Rule 16 of CCS (CC&A) Rules, 1965 on 26.05.1976 fro late opening of Dadwara Post Officer on 09.01.1974 i.e. for lack of devotion to duty and the same was decided by awarding a penalty of withholding of next increment for a period of six months vide Senior Superintendent of Post Offices, Kota vide its Memo No. B-22 dated 26.05.1977. Again charge sheet under Rule 16 of CCS (CC&A) Rules, 1965 was issued to the applicant on 21.12.1979 for lack of integrity and devotion to duty for unauthorisedly taking payment of Rs.1856.85 at G.D. Road Post Office, which was decided by Senior Superintendent of Post Offices, Kota vide its Memo No. B-2/Misc/4/79-80 dated 12.06.1980 with a punishment of Censure was issued. Another charge sheet to the applicant under Rule 16 of CCS (CC&A) Rules, 1965 on 07.09.1978 for non attendance on duty of SPM IG Nagar and sent a service telegram coded P/1705/7-8-78 with text "self serious AAA" take key from Plot No. 23, N.G. Mandi. It was decided by the Senior Superintendent of Post Offices, Kota vide its Memo No. B-15 dated 16.10.1978 by which the applicant was awarded the punishment for withholding of his increment falling due on 01.06.1979 for two years without cumulative effect. And also directed that he should not be posted as incharge of Post Office for three years from the date of issue of the order. Again the applicant was charged sheeted for major penalty under Rule 14 of CCS(CC&A) Rules, 1965 by Senior Superintendent of Post Offices, Kota vide its Memo No. B-2/A.L. Jain/80-81 dated 14.08.1980 for late attendance on duty on 24.04.1980 and lack of devotion to duty and the same was decided by Senior Superintendent of Post Offices, Kota vide its Memo No. B-15 dated 29.12.1983 by awarding punishment of withholding of next increment for a

period of three years and in appeal it was modified from three years to one year vide Memo No. RD/Staff 2-184/83-84 dated 15.11.1984. Against the same the applicant had also made a revision petition to the Member Posts/D.G. Posts, New Delhi and the same was rejected vide order No. 2/202/86-Vig. III dated 18.09.1986 in this way, it is evident that the service record of the applicant was not found satisfactory by the DPC and the applicant was not allowed promotion on LSG after passing department exams for 1/3 quota. It is pertinent to mention here that the scheme of 1/3 and 2/3 quota of LSG stand abolished on 30.11.1983 on introduction of TBOP scheme and the applicant was allowed to be placed into next higher scale of pay under TBOP scheme with effect from 17.05.1989 on the recommendation of the DPC. The delay so called in due upgradation was all due to the unsatisfactory record of service of the applicant.

Therefore, by merely passing 1/3 LSG Examination or Accountant Examination cannot be reckoned as a valid base for promotion until the applicant is found fit for promotion on overall assessment of service records as per Confidential Reports by the DPC and the DPC did not find him fit and did not recommend for the promotion of the applicant on each and every occasion. The appeal and representation filed by the applicant for LSG promotion issue was considered and rejected by the Post Master General, Rajasthan Eastern Region, Jaipur vide its Memo NO. Staff/3-6/91-92 dated 28.05.1993.

12. In view of the specific stand taken by the respondents in the reply filed to the rejoinder of the applicant, it appears that the applicant has not pressed this point in the earlier OA and as such the finding in the earlier OA was confined only how the period of suspension was to be treated. Be that as it may, since the applicant has specifically prayed for his promotion, which relief has not been granted by this Tribunal, as such the same shall be treated to have been denied in terms of the law laid down by the Apex Court, as stated above. Thus this OA is wholly misconceived and amounts to abuse of the process of the court.

13. That apart even on merit, the applicant has got no case whatsoever. As can be seen from Annexure R/3 and Annexure R/10, it is evident that the representations of the applicant which were made in

the year 1990 and 1991 were rejected in the years 1990 and 1993 respectively. The applicant has neither disclosed this fact in this OA nor has he challenged the validity of these orders in this OA. Even on this count also, the applicant is not entitled for any relief.

14. Still further as can be seen from Para 4.1 of the reply to the rejoinder, as reproduced above, it is evident that the record of the applicant was not up to the mark. He was undergoing various penalties viz. (i) he was issued charge sheet under Rule 16 of the CCS (CCA) Rules on dated 26.05.1976 which culminated into with-holding of one increment for a period of six months vide memo dated 26.05.1977. (ii) Charge sheet under Rule 16 of the CCS (CCA) Rules 1965 was issued to the applicant on 21.12.1979 which resulted into issuance of censure vide memo dated 12.06.1980. (iii) Another charge sheet under Rule 16 of CCS (CCA) Rules dated 07.09.1978 by which the applicant was awarded punishment of withholding of his increment falling due on 01.06.1979 for two years without cumulative effect. (iv) Charge sheet of major penalty under Rule 14 of CCS (CCA) Rules 10765 dated 14.08.1980 which resulted into awarding of punishment of withholding of next increment for a period of three years, which was reduced to one year in appeal by the order passed by the Appellate Authority vide order dated 15.11.1984. The Revision Petition filed by the applicant was also rejected on 18.09.1986. Thus the applicant could not have been promoted. The scheme of 1/3 and 2/3 quota of LSG were also abolished on 30.11.1983. On the face of record, it is evident that the applicant was recommended for promotion by the DPC only on 17.05.1989 when he was granted next higher scale of pay under TBOP Scheme. As already stated, the applicant has not challenged the validity of the order whereby his representation was rejected and also that he did not approach this Tribunal in the year 1979 and thereafter when his case was ignored by the authority. Thus the applicant cannot be permitted to raise this contention at this stage, (even if it is

44

presumed that the second OA, when no relief was granted in earlier OA) on the ground of non satisfactory service record.

15. For the foregoing reasons, the present OA is wholly misconceived, which is dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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