

12 1

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00660/2014

Order Reserved on 13.01.2015

Pronounced on 30.01.2015

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

...

Gourav Kumar son of Sh. Satnam Rai, Sorting Assistant, Office of Head Record Officer, RMS 'LD' Division, Railway Station, Ludhiana, Punjab, resident of St. No.2, Dera Baba Badri Dass, Bedi Colony, Ferozepur City.

... Applicant

Versus

1. Union of India through the Secretary to Government of India, Ministry of Telecommunication & Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Assistant Director General (DE), Government of India, Ministry of Communications & IT, Department of Posts (Recruitment Division), Dak Bhawan, Sansad Marg, New Delhi-110001.
3. The Chief Postmaster General, Punjab Circle, Sector 17, Chandigarh.
4. The Superintendent, RMS 'LD' Division, Ludhiana-141008.

... Respondents

Present: Sh. Rohit Sharma, counsel for the applicant.
Sh. Darshan Gupta, proxy for Ms. Mohinder Gupta, counsel for the respondents.

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

Re —


- "8(i) Declare the action of the respondents in not allowing him to participate in the Inspector Posts LDCE, 2014 for promotion to the post of Inspector of Post Offices, without any logic and reason as no intimation of the disqualification of the candidature of the applicant has been communicated to him by the authorities till date as the procedure of examination is fully time bound and as his ACRs are above board and a minor penalty of stoppage of increment for three months without cumulative effect w.e.f. 01.7.2013 to 30.09.2013 has already come to an end and thus, there is no impediment in his participation in the examination and as such action of the respondents is illegal, arbitrary, discriminatory and based on extraneous consideration.
- (ii) Issue direction to the respondents to allow him to appear in the Inspector Posts LDCE, 2014 for promotion to the post of Inspector of Post Offices as a minor penalty of stoppage of increment for the three months without cumulative effect w.e.f. 01.7.2013 to 30.09.2013 has already come to an end and there is no adverse remark in any of his ACRs for the last 5 years and if he is successful, he may be promoted with all the consequential benefits."

2. When the matter came up for consideration on 11.8.2014, prayer for interim relief was allowed and the applicant was allowed to file his OMR Sheet for the LDCE. However, it was directed that his final result may not be declared till the decision in this O.A and this position continues till date.

3. Background of the matter is that the applicant was appointed on 27.4.2008 as Sorting Assistant and at present is posted in the Head Record Office, RMS 'LD' Division, Ludhiana. The next promotion is to the post of Inspector of Posts Offices (Group 'B' Non-Gazetted, Ministerial) in the Pay Band-1 of Rs.9300-34800 with Grade Pay of

Rs —

Rs.4200/- which is governed by rules known as Department of Posts (Inspector Posts) Recruitment Rules, 2013 (Annexure A-2). As per these rules, the post is to be filled up 1/3rd by direct recruitment through Staff Selection Commission and 2/3rd by promotion through Limited Departmental Competitive Examination (LDCE).

4. The respondents issued notification dated 3.6.2014 for conducting LDCE for the year 2014 (Annexure A-3) and cut off date was mentioned as 1.1.2014 for calculating 5 years eligibility service and age. Para 9 of the notice provides that the Competent Authority will ensure and certify that (i) No disciplinary action is pending or contemplated against the applicant (ii) no punishment is current against the applicant (iii) no adverse entry in the APAR/ACR in the last five years, before recommending the application of the official for appearing in LDCE. An Addendum was also issued on 5.6.2014 (Annexure A-4). Since the applicant considered himself eligible for appearing in the LDCE, he submitted his application dated 26.6.2014 and also moved representation dated 12.7.2014 that he had applied for the I.P. Examination, 2014 but had not received OMR Form, hence he requested for issuance of the same (Annexure A-5, A-6). Another representation in this regard dated 16.7.2014 was also filed but to no avail. Hence this O.A. 

5. In the grounds for relief the applicant has referred to the following:-

1. Govt. of India, Chief Secretary (Departmental Personnel) O.M. No.21/5/70-Ests.(A) dated 15.5.1971.
2. Government of India, Chief Secretary, (Departmental Personnel) O.M. No.22011/6/75-Ests.(D) dated 30.12.1976.

He has claimed that these help the case of the applicant since there was nothing against the applicant that could be used to deny participation in the LDCE as penalty imposed on 1.7.2013 had come to an end on 30.9.2003 and ACRs of the applicant for the last 5 years i.e. up to 31.1.2013 are to be considered up to the mark. Thus he is eligible to participate in LDCE and is eligible to be considered for promotion as Inspector of Posts.

6. In the written statement filed on behalf of the respondents facts of the matter have not been disputed. It has further been stated that as a result of disciplinary proceedings, the applicant was punished with withholding of next one increment for one year without cumulative effect vide Memo No.B-2/59/Ferozepur/10-11 dated 07.7.2011 (Annexure R-1). The applicant challenged the punishment orders in the appeal, but could not find favour. The Appellate Authority upheld the punishment order dated 07.7.2011 vide order dated 25.10.2011 (Annexure R-2). The revision petition also came to be rejected vide order dated 24.10.2013 (Annexure R-3). In another instance, the applicant was again

As —

inflicted punishment of withholding of next one increment for three months without cumulative effect vide Memo No.D-3/Mail/ARR/FZR/11-12 dated 30.7.2012 (Annexure A-1) for refusing to book an article for a member of the public on the plea that article cannot be booked due to shortage of postage stamps. He refused to book the article even after presentation of same with postage stamps. Copy of the penalty order awarded was placed in the ACR/APAR of the applicant against relevant year, in accordance with Govt. of India, M.H.A. O.M. No38/12/59-Ests(A) dated 23.04.1960. The applicant challenged the punishment orders in the appeal but the Appellate Authority upheld the punishment order dated 30.7.2012 vide Appellate order dated 28.01.2013 (Annexure R-5). The revision petition also came to be rejected vide order dated 29.10.2013 (Annexure R-6).

7. It has also been stated that the penalty imposed upon the applicant had not been set aside or modified by any of the higher authorities and therefore, adverse remarks recorded in APAR remained in operation. The Postal Directorate, after reviewing the existing pattern and syllabus for LDCE for the category of Inspector Posts, revised the same vide letter No.7-14/2011-SPB-II dated 09.3.2011 (Annexure R-8). It prescribes assessment of APAR/ACR for the last five years and the competent authority had to ensure and certify that no disciplinary action is

As ———

pending or contemplated against the applicant; no punishment is current against the applicant and that there is no adverse entry in the APAR/ACR in the last five years, before recommending the applications for participation in LDCE. In order to fill up the vacancies of Inspector of Posts (66.6% departmental quota) for the year 2014, Postal Directorate vide letter dated 03.2.2014 (Annexure A-3) notified for conducting LDCE-2014 scheduled to be held on 20 and 21.9.2014. Para 9 of this notification specified that the competent authority will ensure and certify the following before recommending the application of the aspirants for appearing in LDCE:-

- i. No disciplinary action is pending or contemplated against the applicant
- ii. No punishment is current against the applicant
- iii. No adverse entry in the APAR/ACR in the last five years.

Nodal officers have to verify and ensure that the candidates covered by any of the above should not be permitted to participate in the LDCE even on provisional basis. In view of the adverse entries in the APARs in the case of the applicant, the application of the applicant was not recommended.

8. In the rejoinder filed on behalf of the applicant it has been stated that since currency of punishment was to be considered therefore, right of the applicant to be considered for promotion cannot be denied

As —

hence he was entitled to appear in the LDCE. The following judgments have been cited in this regard:

- i. Kishorechand Chandawat vs. State & Ors. on 19 November, 2012 in the High Court of the judicature for the Rajasthan at Jodhpur order S.B. Civil Writ Petition N.8442/2008.
- ii. Suraj Mal Soni versus State of Rajasthan decided on the April 16, 1992 in the High Court of the Rajasthan.
- iii. Dr. S. Malarkanni M.B.B.S. vs. State of Tamil Nadu on 19 October, 2011.
- iv. The Deputy Inspector General of . . . Vs. Rani on 27th April 2011.
- v. Central Administrative Tribunal, Allahbad in case of Rafat Faizan Vs. Gokulprasad Maniklala Agarwal decided on 7 August, 2013.
- vi. Delhi High Court in the case of Ved Prakash Gupta vs. Municipal Corporation of Delhi on 1 August, 1997.

9. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant reiterated the content of the O.A. and rejoinder. He further stated that as per the notification dated 01.2.2013 (Annexure A-2) Sorting Assistants along with persons from other categories could appear for the LDCE for promotion as Inspector of Posts. No conditionality had been imposed in this notification and hence para 9 of letter dated 03.6.2014 (Annexure A-3) issued regarding conducting of LDCE for promotion to the cadre of Inspector Posts was beyond the Rules. He pressed that administrative decisions/instructions could not override the provisions of statutory rules and hence the applicant was entitled to participate in the LDCE for

Rs —

consideration as Inspector of Posts. Learned counsel also cited judgment dated 27.4.2011 of the Madras High Court in Deputy Inspector General of Police Vs. Rani in this regard and referred to para 28(1, 2, 3, 4 and 5) which reads as under:

"28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadurep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2)

3) The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government



Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4) The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5) Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

10. Learned counsel for the respondents fairly submitted that Department of Posts (Inspector Posts) Recruitment Rules have been notified on 01.2.2013 but Para 9 of the letter dated 17.6.2013 (Annexure R-9) was not supported by any entry in the Rules. Para 9 had been included on account of administrative instructions dated 09.3.2011.

11. We have given our thoughtful consideration to the matter. It appears from the material on record that the application of the applicant for appearing in the LDCE for Inspector of Posts was rejected on the

As —

ground that his APARs were not satisfactory. This provision that was included in the letter dated 03.6.2013 notifying conduct of LDCE is not supported by any entry in the Department of Posts (Inspector Posts) Recruitment Rules, 2013. Since it is settled law that administrative decisions/instructions cannot override provisions of statutory rules, the O.A. is allowed and the respondents are directed to treat the applicant as eligible for appearing in the LDCE notified on 03.6.2014.

12. The O.A. is disposed of with these directions. No costs.


(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 30.1.2015

KR*


(SANJEEV KAUSHIK)
MEMBER (J)