

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00340/2014

Reserved on- 05.09.2017.

Date of pronouncement 14.11.2017

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]

Hon'ble Shri J.V. Bhairavia, Member [J]

1. Bhup Narain Sharma, S/o late Kamla Kant Sharma resident of Mohalla-Shiv Nagar Colony, P.O.- Gaya, R.S. District-Gaya.

.....Applicant

By Advocate : Shri J.K.Karn

Versus

1. The Union of India through the Secretary cum D.G. Department of Post, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna
3. The Director of Postal Services (Hq) O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Asst. Director (Staff & Recruitment) O/o the Chief Postmaster General, Bihar Circle, Patna.
5. The Sr. Superintendent of Post Offices, Gaya Division, Gaya.

.....Respondents

By Advocate: Shri Bhuneshwar Pandey

ORDER

Jayesh V. Bhairavia, M [J]:

This is the third round of litigation. The applicant is aggrieved by the order dated 15.04.2014 passed by Sr. Superintendent of Post Offices, Gaya Division, Gaya. By the said order, the said authority has reviewed the case of the applicant pursuant to the directions issued by this Tribunal vide order dated 19.02.2014 in OA No. 151 of 2014 and the competent authority came to the conclusion that the applicant is not even fit for *ad hoc* promotion (Ann. A/7 refers).

2. The basic necessary facts in short leading to this third round of litigation are that the applicant was an employee of the Department of Posts. He was initially appointed on 18.01.1979 as Class IV employee. In the year 1983, the applicant qualified for the post of Postman and joined the post of Postman in the month of June 1983. On 16.04.1984, a criminal case No. 46 of 1984 under Sections 409, 419 and 420 of IPC was lodged against some of the employees of the

department including the applicant for defalcation of Money Orders for the period from 05.09.1983 to 26.11.1983. The charges were framed by the Judicial Magistrate First Class, Gaya, against the applicant on 30.05.1992 (Annexure A/1 refers). In the meantime, disciplinary proceedings were also initiated against the applicant, in which punishment of Censure was awarded upon the applicant vide order dated 23.05.1990. Thereafter, the applicant was permitted to appear in Limited Departmental Competitive Examination (LDCE) for promotion to the post of Postal Assistant cadre, in which the applicant was declared successful vide order dated 14.08.1990. On completion of training, he was permitted to join the post of Postal Assistant, but subsequently was reverted due to pendency of criminal case against him. Aggrieved by his reversion, the applicant preferred OA NO. 319 of 1994 and prayed for a direction to consider him for promotion to the post of Postal Assistant. By order dated 4.2.2000, this Tribunal disposed of the said OA on the ground that the respondents had made it clear due to pendency of criminal case against the applicant, according to the departmental rules 156(1) of the Post and Telegraph Manual, Vol.III, promotion in such circumstance cannot be considered and the same shall be considered by the DPC on the conclusion of the criminal trial and appropriate decision regarding promotion shall be taken in accordance with law. Accordingly, this Tribunal finally came to the conclusion that application is not entitled to the relief as prayed for in that OA and disposed of the said OA NO. 319 of 1994 (Ann. A/3 refers). The applicant was granted first financial upgradation on completion of 16 years service in Postman cadre under TBOP Scheme w.e.f. 25.07.1999 and thereafter vide order dated 21st April, 2012 second financial upgradation under MACP scheme had been granted to the applicant (Ann. A/4 refers). The applicant was continuously making request for consideration of further promotion. However, it was not considered. Again, the applicant preferred OA No. 151 of 2014 before this Tribunal and prayed for direction upon the respondents to open the seal cover relating to his promotion to Postal Assistant cadre, pursuant to result originally declared vide memo dated 14.08.1990. After, considering the facts and circumstances of the case, the said OA was disposed of on 19.02.2014 with a direction to the concerned respondents to review the case of the applicant for consideration of promotion in the light of instructions of the government and

observations made in the order. This Tribunal observed that it will be appropriate for the respondents authorities to review the matter and at least consider granting ad-hoc promotion to the applicant (Ann. A/6 refers). Pursuant to the this order, the competent authority of the respondents had re-considered the case of the applicant and came to the conclusion that the applicant was not even entitled for ad-hoc promotion for the reasons stated therein vide order dated 15.04.2014 communicated by order dated 25.04.2014 (Ann. A/7), which is the impugned order in the present OA..

3. It was argued by learned advocate for the applicant that once the employee is exonerated in the departmental enquiry, then no action can be taken on the basis of subsequent conviction; that the respondents considered the total period of service rendered by the applicant and granted the benefit of financial upgradation to the applicant; that the rules/instructions of the department as well as DOP & T on the point of promotion and financial upgradation are one and same; that the applicant has been allowed successive financial upgradation but his candidature for promotion to the PA cadre was kept under sealed cover; that the reasons assigned by the reviewing authority are not proper.

4. The respondents have filed their written statement and resisted the prayers made in the OA..

[4.1] Learned advocate for the respondents submitted that the applicant had defalcated Money Orders for the period from 05.09.1983 to 26.11.1989 and for which, a case against the applicant had been lodged in Belaganj Police station bearing case No. 46 of 1984. Since the outcome of the criminal proceedings was awaited, the applicant not could be considered for promotion. It was further submitted that the applicant was also proceeded departmentally in accordance with Rule 16 (CCS/CCA) Rules 1965, in which the punishment of censure was awarded upon him. It was next submitted that the revisional authority reviewed the case of the applicant and concluded that the reasons stated for not considering the case of the applicant for grant of promotion are just and proper and also in accordance with the rules 156(1) of the Post and Telegraph Manual, Vol.III. Further, that the

applicant has been retired from the service. Based on these set of facts, the respondents have prayed that the OA be dismissed.

5. No rejoinder is filed by the applicant to the written statement filed by the respondents.

6. Heard the learned advocates for the parties and considered the material available on record. The applicant has challenged the decision dated 15.04.2014 of respondent No. 5 by which the said authority has considered the claim of the applicant for considering his case for promotion in light of the instructions of the department in vogue and observations made in the order dated 19.02.2014 passed by this Tribunal in OA NO. 151 of 2014 and did not find any merit in the case of the applicant even for *ad hoc* promotion. For arriving at this conclusion, the competent authority gave reasons namely that the subsequent DPC is competent to open the sealed cover containing the grading awarded by the previous DPC only on the conclusion of the criminal prosecution and then the required action may be taken for promotion; that so far as to consider the case of the applicant for ad hoc promotion, it is decided by the authority that the promotion to the applicant would be against the public interest as he is involved in the defalcation of the public money; that the charges were grave enough to warrant continue denial of promotion; that there is a likelihood of completion of the criminal case in near further, which is pending against the applicant in the court of law and lastly that there is likelihood of misuse of official position if the applicant is granted promotion. These reasons are cogent enough for denying the promotion to the applicant. The said reasoning cannot be in any way said to be unjust, as the same were based on relevant considerations.

7. In view of the above, no interference is called for in the impugned order. The OA is meritless and deserves to be dismissed. It is dismissed. No costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/

