

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00537/2018

DATED THIS THE 08TH DAY OF JANUARY, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

Y.N. Chamaraj
Age: 52 years,
S/o Late Y.K. Nagaiah,
Working as SPM,
Chintamani Market S.O – 563 125
Chikkaballapur District
Residing at: 4th Cross,
Opp: Kishore Vidya Bhavan,
Bangalore Road,
Anjani Extension,
Chintamani – 563 125

.....Applicant

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India
Represented by Secretary,
Department of Post,
Dak Bhavan,
New Delhi

2. Post Master General,
S.K. Region,
Bangalore – 560 001

3. Chief Postmaster General,
Karnataka Circle,
Bangalore – 560 001

4. Superintendent of Post Offices,
Kolar Division,
Kolar– 563 102

....Respondents

(By Shri N. Amaresh, Counsel for the Respondents)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

Heard. Apparently applicant was a Sub Postmaster who had been cleared by the DPC after examining all the details pertaining to him including the alleged lapse against him that while he was working as a Sub Postmaster he had not brought to the notice of the higher authorities the imperfections in the role of a Branch Postmaster. Applicant would say that he had repeatedly brought it to the notice of Superintendent of Post Office who did not take any action. However, even though DPC cleared him and a posting order was issued to him to the promoted post on 24.05.2018, the Superintendent of Post had not relieved him to join the promoted post on the ground that applicant was considered as a subsidiary offender and a sum of Rs.1,22,550/- is being recovered from him in installments. Therefore, being in the currency of the punishment, the respondents says that applicant is not posted out. The matter seems to be covered by the judgment of Hon'ble Apex Court reported in (2010) 4 SCC 558 which we quote:

"ORDER

1. Leave granted. Heard the parties. By order dated 24.1.2005, the appellant was promoted to the post of Technical Assistant Grade-I by the respondents. The said promotion was cancelled by office order dated 23.3.2005 and he was continued in the pre-promotional post of Technical Assistant Grade-II. No reasons were assigned in the order dated 23.3.2005 for cancelling the promotion. Nor was the appellant heard before cancellation of the promotion. Feeling aggrieved, the appellant approached the High Court in CWP No. 5026 of 2005 for quashing the cancellation dated 23.3.2005.

2. The High Court, by order dated 16.2.2006, allowed the writ petition and quashed the cancellation order dated 23.3.2005, as being opposed to principles of natural justice. Liberty was reserved to the respondents to pass fresh orders in accordance with law, by observing

the rules of natural justice, if so advised.

3. *Thereafter, the respondents reconsidered the matter and passed an order dated 20.4.2006. The said order stated that when the case of the appellant was considered for promotion on 8.11.2004, the Zonal Promotion Committee had by inadvertence, without noticing the pendency of a minor penalty proceeding (initiated by issue of a charge-sheet dated 9.6.2004), had recommended his promotion; that in pursuance of it, the order of promotion was issued on 31.1.2005; that the said minor penalty proceeding was decided On 3.1.2005 holding him guilty and imposing a penalty of token recovery of Rs. 5,000/-; that as the minor penalty proceedings was pending when his case was considered for promotion, he could not have been recommended for promotion; and that therefore, his order of promotion was rightly cancelled. The said order directed that his case shall be placed before the next Zonal Promotion Committee.*

4. *The appellant challenged the said order dated 20.04.2006 in another Writ Petition (CWP No. 7637 of 2006). During the pendency of the said Writ Petition, the first respondent passed another order dated 11.03.2008 stating that the case of the appellant for consideration, for promotion to the post of Technical Assistant, Grade I was placed before the Zonal Promotion Committee during 2005, 2006 and 2007 and the recommendations of the Zonal Promotion Committee were kept in a sealed cover due to the involvement in vigilance cases as reported by the Zonal Office.*

5. *In view of the said order dated 11.03.2008, the High Court dismissed his Writ Petition (CWP No. 7637 of 2006) by order dated 25.03.2008. It held that the stand of the respondents taken in the order dated 11.03.2008 in regard to sealed cover procedure being followed in the case of the appellant was not unfair or unjust. The said order is challenged in this appeal by special leave.*

6. *The appellant does not dispute the fact that when his case was initially considered for promotion in December 2004, a minor penalty proceeding was pending. Nor does he dispute the fact that in the said proceedings, an order was made on 03.01.2005 imposing a penalty for recovery of Rs.5000.*

7. *But the appellant relies on two circulars of the first respondent dated 13.12.2001 and 19.12.2001. The first circular dated 13.12.2001, reads thus:*

“We have made a reference to the Headquarters about some clarifications relating to imposition of minor penalty/recovery from the individuals and not releasing promotions of various officers/officials involved in such cases. Clarification has been received which stipulates that in the cases where such recoveries

have been ordered under minor penalty these recoveries can continue even in promoted capacity, therefore, there is no point to withhold such promotions. Since necessary clarification has already been received, all such cases which be reviewed and before 24.12.2001, all such promotions should be released.”

This was followed by another circular dated 19.12.2001 issuing a consequential direction that promotion orders may be served in cases where orders have been released by the Zonal Office, but withheld by regional offices due to currency of recovery. The learned counsel for the appellant submitted that having regard to the said circulars, mere pendency of minor penalty proceedings, or imposition of orders of minor penalty for recovery in such proceedings should not result in withholding the promotion.

8. Seen in the background of the two circulars dated 13.12.2001 and 19.12.2001, it is evident that the promotion of the petitioner by order dated 24.01.2005 was not the result of any oversight. It should be noticed that as on 24.01.2005, the minor penalty proceeding had come to an end by levying minor penalty of Rs.5000. Even as on 08.11.2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the circulars dated 13.12.2001 and 19.12.2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs.5000 would come in the way of the employee being considered for promotion or being promoted. It therefore, follows that there was no justification for cancelling the said promotion dated 24.01.2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise (vide Delhi Jal Board v. Mahinder Singh)

9. We hold that cancellation of the promotion of the appellant on 24.01.2005 was not warranted and the reasons given for cancellation thereof cannot be supported. Consequently, we allow this appeal, set aside the order of the High Court and uphold the promotion of the appellant as per order dated 24.01.2005, given effect by order dated 31.01.2005. As a consequence, the subsequent order of cancellation dated 20.04.2006 and the consequential order dated 11.03.2008 are quashed.”

2. Therefore, there does not seem to be any moral turpitude on the part of the applicant and the case of the applicant is that he had brought it to the

notice of the Superintendent of Post Office the imperfection or infraction of the Branch Postmaster and he did not take any action. But it is also correct that applicant had not chosen to challenge the recovery against him. Had he challenged it, probably the scenario would have been different but even otherwise for relieving him on promotion, as it was cleared by the circle office, there is nothing which will impeditment such a move and, following the posting orders of 24.05.2018, applicant ought to have been released. Therefore, we will issue a mandate to the respondents to immediately release the applicant for being posted to the promoted post.

3. The OA is allowed to this extent. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00537/2018

Annexure A-1: Copy of the SSPO letter dated 31.03.2017

Annexure A-2: Copy of the applicant's reply to the memo of charges dated 22.04.2017

Annexure A-3: Copy of the memo proceedings vide SPO, Kolar Division letter dated 30.06.2017

Annexure A-4: Copy of the appeal submitted to the Appellate Authority dated 12.08.2017

Annexure A-5: Copy of the Appellate Authority order dated 29.01.2018

Annexure A-6: Copy of the CPMG letter dated 17.05.2018

Annexure A-7: Copy of the PMG letter dated 24.05.2018

Annexure A-8: Copy of the SSPO letter dated 28.05.2018

Annexure A-9: Copy of the SSPO letter dated 30.05.2018

Annexure A-10: Copy of the Hon'ble Apex Court order dated 05.02.2010 in Civil Appeal No. 1448/2010

Annexures with reply statement

Annexure R-1: Copy of the extract of Swamy's manual on Establishment and Administration

Annexure R-2: Copy of the OM dated 07.07.2008
