

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00280/2012

Pronounced on : 05.08.2019
(Reserved on : 22.07.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Nawal Ram Meghwal S/o Shri Jeewaji, aged 54 years, R/o 4/988, Pahada, University Road, Udaipur, at present employed on the post of APM (Accounts) HSG-II, Udaipur HO.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra

VERSUS

1. Union of India through Secretary to the Govt. of India, Department of Posts, Ministry of Communications & IT, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Postmaster General, Rajasthan Circle, Jaipur-302007.
3. Postmaster General, Rajasthan Southern Region, Ajmer.
4. Senior Superintendent of Post Offices, Udaipur.

RESPONDENTS

BY ADVOCATE: Mr. Nimesh Suthar for R1 to R4

ORDER

...

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i) *That the respondents may be directed to consider the case of the applicant for promotion in HSG-II and HSG-I with effect from 01.10.2001 and 01.10.2004, respectively and prepone the dates of his said promotions accordingly and allow all consequential benefits. The impugned order dated 22.05.2012 (Annexure A1) may be directed to be modified accordingly.*

- ii) *That the respondents may be directed to produce the complete DPC proceedings wherein the case of the applicant was considered for promotion in HSG-II and HSG-II cadre in pursuance with the order dated 24.02.2012 (Annexure A5) at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts.*
- iii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- iv) *That the costs of this application may be awarded. The applicant may also be paid a reasonable amount of compensation."*

2. This OA has been made against the order No.Staff/43-05/2012, dated 22.05.2012 (Annexure A1) passed by respondent no.2.

3. The brief facts of the present case as narrated by the applicant are that the applicant was initially appointed to the post of Postal Assistant on 26.08.1975. He enjoyed the upgradation benefits under TBOP Scheme on completion of 16 years service with effect from 16.06.1990 and of BCR Scheme on rendering 26 years of service with effect from 01.01.2002. He was promoted to LSG (Norm Based) (for brevity NB) vide memo dated 06.09.2007 (Annexure A2) and also to HSG-II (NB) vide memo dated 29.04.2011 (Annexure A3) respectively. The applicant had to challenge the order dated 23.06.2003 by which five candidates were promoted on the norm based LSG and his case was not considered. He filed an OA bearing No.230/2004 before this Tribunal, which was allowed vide order dated 26.08.2008. In pursuance to this order, the applicant was granted LSG (NB) promotion with effect from 01.10.1991 (Annexure A4). As per the amended recruitment rules, the applicant was eligible for promotion to the post of HSG-II with effect from 01.10.2001 on completion of 10 years as LSG (NB) post. He was also entitled for further promotion to the post of HSG-I with effect from 01.10.2004, on completion of three years of service on the feeder post of HSG-II (NB). His juniors were also promoted, but his case for promotions was not considered.

4. It is further stated that the applicant preferred an OA No.178/2009 before this Tribunal, after a thorough discussion in the matter, a direction was given to the respondents to convene a review DPC in order to consider the case of the applicant for promotion on the post of HSG-II and HSG-I with effect from 01.10.2001 and 01.10.2004 or from the date when the juniors were promoted on the post vide order dated 24.02.2012 (Annexure A5). In pursuance to the order dated 24.02.2012 in OA No.178/2009, 2nd respondent has issued an impugned order dated 22.05.2012 (Annexure A1) and the applicant has been ordered to be promoted in the HSG-II cadre on regular basis and HSG-I cadre on adhoc basis with effect from 01.01.2010 and 02.01.2010 respectively. As per the direction of this Tribunal vide order dated 24.02.2012, the respondents did convene a DPC but his promotion on the post of HSG-II cadre and HSG-I cadre has neither been considered with effect from 01.10.2001 and 01.10.2004 nor from the date his juniors were promoted. In fact, the order of this Tribunal has been flouted and it is a case of clear contempt but since the impugned order gives rise to a fresh cause of action, therefore, the applicant has filed this OA for redressal of his grievances. Hence this OA.

5. It is also stated that in the case of Shri S.L. Meena belonging to ST category cannot be compared with the case of the applicant and therefore the case of the applicant has been considered as per the direction of this Tribunal vide order dated 24.02.2012 in OA No.178/2009 and in view of that this OA is devoid of any merit and deserves to be dismissed on this count alone. It is also stated that the order passed by the competent authority on 22.05.2012 is just and proper because as per the Review DPC, the petitioner was found eligible to be promoted at par with his junior but due to punishment granted with effect from 20.02.2009 to 31.12.2009, he was allowed promotion with effect from 01.01.2010 to

02.01.2010 respectively. The movement the punishment order seized to be in existence the promotion order has been passed by the competent authority as per the direction of this Tribunal.

6. In the rejoinder filed on behalf of the applicant, wherein it has been stated that the respondents have not considered the case of the applicant for promotions to the post of HSG-II and HSG-I w.e.f. 01.10.2001 and 01.10.2004 respectively and thus the main direction has not been obeyed/implemented. The applicant had to challenge the order dated 23.06.2003 by which five candidates were promoted on the norm based LSG and his case was not considered. He filed an OA No.230/2004 before this Tribunal, the same was allowed vide order dated 26.08.2008. In implementation of that order, 4th respondent was pleased to issue an order dated 04.03.2009 by which the applicant was granted LSG (NB) promotion w.e.f. 01.10.1991. It is also stated that the respondents have not considered the case of the applicant for promotions to the post of HSG-II and HSG-I w.e.f. 01.10.2001 and 01.10.2004 respectively, as per the main direction in the order of this Tribunal. The same has rather been side tracked and neither has it been obeyed/implemented nor any reasons for flouting the order in this respect disclosed.

7. Heard Shri J.K. Mishra, learned counsel for the applicant and Shri Nimesh Suthar, learned counsel for respondents no.1 to 4 and perused the material available on record.

8. Learned counsel for the applicant drew our attention to the direction of this Tribunal vide order dated 24.02.2012 in OA No.178/2009 which had directed the convening of review DPC for reconsidering the case of the applicant for promotion to HSG-I and HSG-II cadre w.e.f. 01.10.2001 and 01.10.2004 or from the date when the juniors were promoted to the post. The Tribunal also directed that applicant shall be promoted as per the

existing rules. The Review DPC was required to be convened within a period of three months from the date of receipt of the order.

9. Learned counsel for the respondents have stated in their reply that the order of this Tribunal dated 24.02.2012, DPC was held on 18.05.2012 at Jaipur to reconsider the case of the applicant for promotion to the post of HSG-II and HSG-I cadre with effect from 01.10.2001 and 01.10.2009 respectively or at par with his junior and found him fit for HSG-II w.e.f. 01.01.2010 on regular basis and in HSG-I w.e.f. 01.01.2010 on adhoc basis. Though the case of the applicant was considered by the DPC to allow HSG-II w.e.f. 22.03.2009, the date from which his junior Shri R.L. Yadav (SC) was promoted but since the punishment was current against the applicant w.e.f. 01.07.2009 to 31.12.2009. He was not found fit between 22.03.2009 to 31.12.2009 due to the punishment granted under rule 16 of CCS (CCA) Rules, 1965, he was penalized with stoppage of increment for six months w.e.f. 01.07.2009 vide SSPOs Udaipur Memo dated 20.02.2009.

10. Learned counsel for the respondents also submitted a copy of the Minutes of the Review DPC wherein it has been stated that the case was put up for reconsideration and his selection to HSG-I cadre on adhoc basis w.e.f. 02.01.2010 only could be recommended in view of the disciplinary case and issue of charge sheet under Rule 16 CCS (CCA) Rules on 02.01.2009 which awarded punishment of stoppage of one next increment due on 01.07.2009 for a period of six months.

11. To be able to adjudicate on the claim made by the applicant it would be worthwhile to review the guidelines issued by Government vide OM No.22011/4/2007-Estt.(D), dated 21.11.2016 wherein it has been stated as under:

"7(f) If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he / she is found guilty in the criminal prosecution against him / her, the findings of the sealed cover / covers shall not be acted upon. His / her case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him / her [paragraph 3.1 of DoPT OM dated 14.9.1992].

7(g) In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over [paragraph 13 of DoPT OM dated 10.4.1989]."

12. From the facts submitted by the learned counsel for the respondents and the Minutes of the DPC submitted in the open Court across the Bar it would be appear that there has been no infringement of the guidelines in the matter. Accordingly, it cannot be said that there has been any violation of fair procedure in the matter of promotion of the applicant Shri Naval Ram Meghwal. This issue also came up for deliberation by the Hon'ble Apex Court in the case of UOI Etc. Etc. Vs. K.V. Jankiraman Etc. Etc., decided on 27.08.1991, Equivalent citations: 1991 AIR 2010, 1991 SCR (3) 790, wherein the Hon'ble Apex Court has considered the conflicting decision given by different Benches of Central Administrative Tribunal and while doing so have struck down two provisions of the memorandum No.2201111179-Est.(A), dated 30.01.1982 which related to prohibition against acting upon the findings contained in the sealed cover in case the officer was imposed penalty as a result of disciplinary proceedings or found guilty in the Court proceedings against him and regarding arrears of pay for the period of notional promotion.

13. Further the Hon'ble Apex Court have also deliberated upon the issue of promotion during penalty and given the following decision on the issue wherein it has been held as under:-

"5. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently. [804G-H; 805A]

6. The least that is expected of any administration is that it does not reward an employee with promotion retro-spectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. [805B-C]

7. While considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. [805C-D]"

14. In view of the factual matrix brought on record and the discussion of the decisions of the Hon'ble Apex Court, we are of the opinion that the OA is devoid of any merits and deserves to be dismissed.

15. The OA is accordingly dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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