

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2919 OF 2003

New Delhi this the 28th day of May, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. S.A. Singh, Member (A).

K.G. Mohanachandran,
R/o C-402, M.S. Apartments,
K.G. Marg, New Delhi-110001
Presently working at
Consulate General of India, Herat
Afghanistan

.... Applicant.

(By Advocate Shri C.N. Sreekumar)

Versus

1. Union of India
Through Secretary,
Ministry of External Affairs,
New Delhi-110001.

2. Jayant Prasad,
Joint Secretary (CNV) & CVO,
Ministry of External Affairs,
South Block, New Delhi-11.

... Respondents.

(By Advocate Shri Rajeev Bansal proxy for Shri N.S.
Mehta)

O R D E R (ORAL)

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.

The applicant, K.G. Mohanachandran seeks quashing of the condition attached to the promotion order dated 24.9.2002. By virtue of the same, the promotion of the applicant has been postponed to a date after completion of the penalty period. He seeks a direction to the respondents to promote him forthwith if the vacancy is available.

2. Some of the relevant facts would precipitate the question in controversy. The applicant was working as attache (Administration) in the Embassy of India at

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Belgrade. He was served with an article of charge pertaining to the payment to an outsider without getting the approval of the head of chancery, submission of claim for reimbursement of medical expenses on him and members of family and inflation of the amount of two hospital bills by altering the same. The applicant had contested the same. The disciplinary authority after doing the necessary process and the procedure imposed a penalty of reduction to a lower stage in the time scale of pay for a period of five years. It was further stipulated that he will not earn any increments during the period of such reduction. The reduction was to have the effect of postponing the future increments of his pay. The applicant had challenged the said order but this Tribunal had dismissed the petition. Even his Civil Writ Petition in the Delhi High Court is pending.

3. After the said order, the respondents had issued an office memorandum (impugned order) whereby the select list of promotees to Grade-I has been published. For the ^{panel of} year 2001 to 2002, the applicant has also been promoted but with the condition that promotion will be given after completion of the penalty period. The applicant assails the same by virtue of the present application.

4. Needless to state that in the reply filed, the application has been contested. We have heard the parties counsel and have seen the relevant records.

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5. The penalty order referred to above is of 27.2.2001. The operative part of the same reads:

"After taking into consideration the facts and circumstances of the case, documentary evidences on record, the Inquiry Report and the representation of the Charged Officer, the President, in consultation with the UPSC, has imposed the penalty of reduction to a lower stage in time scale of pay for a period of five years on Shri K.G. Mohanachandran, Section Officer, with further stipulation that he will not earn any increments during the period of such reduction and the reduction will have the effect of postponing the future increments of his pay".

6. Indeed it is subject to judicial review after dismissal of the applicant's Original Application in this Tribunal in the Delhi High Court. Subject to that, the claim of the applicant had been considered for promotion. For the select list for the year 2001-2002, the applicant has been promoted but with the stipulation that he has to be promoted after the completion of the penalty period. We take liberty in reproducing the impugned order which is relevant for our purpose:

"The following officers of Integrated Grades II and III of the General Cadre and Merged Selection Grade/Grade I of the Stenographers' Cadre of the Indian Foreign Service, Branch 'B', have been approved for inclusion in the Select List for promotion to Grade I of the General Cadre of Indian Foreign Service, Branch 'B' in accordance with Rule 12 of the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, based on the recommendations of the Departmental Promotion Committee (DPC) held in the Union Public Service Commission (UPSC):-

Select List for the year 2001-02

S.No. Name (S/Shri)

1. K.G. Mohanachandran (to be promoted after completion of penalty period)
2. M.M. Gayen (SC)
3. Bhisham S. Chauhan
4. Mahinder Kumar
5. R. Raghunathan



6. Onkar Sarup
7. B.S. Rawat
8. C.O. Thomas
9. Vikrant Rattan".

7. The argument of the learned counsel for the applicant is that the impugned order violates Rule 11 of the CCS (CCA) Rules, 1965. According to him, reduction that has been ordered in the impugned order cannot affect his promotion. According to the learned counsel, the penalty has been imposed under sub-clause (v) of Rule 11 of the CCS Rules but promotion could only be deferred under sub-clause (vi) of the abovesaid Rules.

8. In our opinion, the argument has to be stated to be rejected. Sub-clauses (v) and (vi) of Rule 11 of the CCS Rules unfold themselves in the following words:

"Major Penalties-

(v) save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of pay;

(vi) reduction to lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service".

9. Perusal of the abovesaid clearly shows that the framers of the Rules draw a clear distinction between sub-clause (v) and (vi) of Rule 11 of the CCS Rules. Sub-clause (vi) comes to play when there is

reduction to lower time-scale of pay, grade, post or Service. In the present case before us, we have already reproduced above the relevant penalty that has been imposed upon the applicant. The penalty does not refer to any reduction in lower scale of pay, grade or post. The penalty refers to reduction to a lower stage in the time scale contemplated under clause (v) of Rule 11 because it clearly states that the penalty can be reduction to a lower stage in the time scale of pay for a specified period. He was not to earn increment during this period. Therefore, in the present case, it is a penalty imposed under clause (v) of Rule 11 rather than under clause (vi) of Rule 11 of the Rules referred to above because there is no further direction contemplated under clause (vi) of Rule 11.

10. In this regard, reference with advantage can be made to the instructions of Government of India dated 30.8.1990. It clearly prescribes that an officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale, cannot be considered on that account to be ineligible for promotion, but it clearly further provides that the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, he should ^{not} be actually promoted during the currency of the penalty. This

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clearly answers the argument eloquently put forward and so much thought of by the learned counsel. The said instructions have not even been challenged.

11. In fact, we may take advantage in referring to the well known decision in the case Union of India Vs. K.V. Jankiraman & Ors. (1991 (4) SCC 109). The relevant extract of the findings of the Apex Court are:

".....That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a 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. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in present. 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. In fact, 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, further, 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 late date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal".

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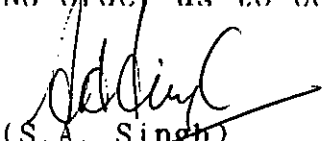
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12. This supports the respondents' contention that while the applicant is undergoing the aforesaid penalty necessarily his promotion has rightly been deferred.

13. No other argument has been raised.

14. For these reasons, the application being devoid of any merit fails and is, therefore, dismissed.

No order as to costs.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

'SRD'