

Plaban Kumar Bhattacharya Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Kolkata

Decided On : Jun-20-2002

Reported in : (2003)(1)SLJ73CAT

Judge : G G Vice, S a B.P.

Appellant : Plaban Kumar Bhattacharya

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. Samaddar

Advocate for Pet/Ap. : Mr. Ghosh

Judgement :

1. This is an application under Section 19 of the A.T. Act, 1985 whereby the applicant calls in question the order of reversion dated 1.2.02 reverting him from the post of assistant Superintendent of Post Officer to the post of Inspector of Post Offices and the order dated 5.2.02 posting him as Inspector as also the order 5.3.02 rejecting his representation.

2. The applicant joined the Postal Service on 28.6.78 as Postal Assistant. He was promoted to the post of Inspector of Post Offices on 28.8.86. He was further promoted as Assistant Superintendent of Post Offices of ad hoc basis. It is that on 15.6.98 a chargesheet was issued by respondent No. 1 and thereafter on enquiry he was punished with stoppage of five grade increments vide order dated 24.8.98, but on appeal the penalty was reduced to stoppage of increments for two years.

It is further averred that the applicant was served another chargesheet on 7.8.2000 in which he was censured.

The case for the applicant is that similarly situated persons who were junior to the applicant in the feeder cadre, had also been given promotion on ad hoc basis and have been retained on the post of Assistant Superintendent of Post Offices, but the applicant has been reverted and thus he has been discriminated. It is stated that the respondent authorities have not acted in good faith on consideration of the relevant facts and that they have chosen to revert him despite his efficient and honest working on the post of Assistant Superintendent of Post Officer.

3. In the reply, the respondent's version is that the applicant was given promotion to the post Assistant Superintendent of Post Offices on ad hoc basis and the DPCs held for the years 1998, 1999 and 2000 considered his case for regular promotion but did not find him fit for promotion and hence the reversion order, was passed. It is also stated in the reply that besides the two penalties narrated by the applicant in his O.A., the applicant was also punished with withholding of one increment for the period of three months vide order dated 7.5.99, It is averred that the persons junior to the applicant who have been retained as Assistant Superintendent of Post Offices were found fit by the DPC and there is no adverse material against them.

4. In the rejoinder, the applicant has reiterated the facts stated in the application. It is stated that the applicant held the position of Assistant Superintendent of Post Offices for 8 years and he has been reverted without sufficient reason.

5. It may be stated here that vide order dated 27.3.02 an interim order was issued directing the respondent to maintain status quo, hence the order of reversion was not implemented.

6. The respondents have filed M.A for vacation of the interim order. In MA it is averred that the applicant's case was considered by the DPCs, but he was not found fit for promotion and hence the impugned order of reversion has been issued.

In the reply to the MA, the applicant has reiterated almost the same fact which he has stated in the O.A. It is further averred that the applicant's case was not considered because of the currency of the punishment but he ought to have been considered on the basis of his ACRs of 5 preceeding years.

7. We have heard the learned Counsel for the parties and perused the documents placed on record.

8. The contention of Mr. Ghosh, learned Counsel for the applicant was that the DPC did not at all consider the case of the applicant on account of the pendency of the disciplinary proceedings, whereas his case ought to have been considered along with other candidates. He contended that when the officials junior to the applicant have been retained on the post of Assistant Superintendent of Post Offices of ad hoc basis, there could not be any justification for not allowing the applicant to continue on the post when he had put in 8 years' service on that post.

9. In the other hand, Mr. Samaddar, learned Counsel for the respondents pointed out that the applicant's case could not be considered because of the currency of the punishment and pendency of disciplinary proceedings against him. He contended that even for ad hoc promotion, it is required it is required to be seen whether an official is fit to be promoted or not and as it was found that the applicant was having adverse material to his credit, he could not be given promotion even on ad hoc basis.

10. We have given the matter our thoughtful consideration. It is now no more in dispute that the applicant was served with the chargesheet on 15.6.98 and the DA proceedings were concluded vide order dated 24.8.98 whereby the charge leveled against the applicant was found to be proved, the Disciplinary Authority imposed the penalty of stoppage of 5 years' grade increments which was reduced by the Appellate Authority to stoppage of two year's grade increment. It is evident that upto the year 2000 the punishment of the applicant was in currency.

It is further not in dispute that the applicant was also chargesheeted on 7.8.2000 and he was censured.

It is also not in dispute that the applicant was served with one more chargesheet which was also decided against him and his one grade increment was withheld for a period of three months vide order dated 7.5.99.

11. The fact remains that in the years 1998 and 1999 the disciplinary proceedings were pending against the applicant and in the years 1999 and 2000 the applicant was punished. In other words, from 1998 to 2000 either the disciplinary proceedings were pending against the applicant or the penalty imposed in the disciplinary proceedings had not ended.

12. A perusal of the minutes of the DPC dated 31.1.02 (Annexure 'R/6') indicates that the case of applicant was not considered because of the currency of the punishment. It cannot be said that the DPC faulted when it did not consider the case of the applicant because by that the applicant had been punished by the Disciplinary Authority. It is evident by Annexure 'R/5' that the case of the applicant was considered in the earlier DPC held on 15.1.99. Therefore, it cannot be said that the DPC did not consider the case of the applicant when it ought to have been considered.

13. Promotion to the higher post may be given either on regular basis or on ad hoc basis. The principles are laid down to adjudge the suitability of the candidates for promotion. Even for promotion on ad hoc it is required that incumbent is fit to be given promotion. It his principle is stated in the Swamy's Compilation on the subject of ad hoc promotion at page 141. The ad hoc promotion is to be given on the basis of the seniority-cum-fitness basis. It obvious that seniority is not the only criteria for giving promotion and even on promotion on ad hoc basis, besides the seniority, it is also be seen whether the incumbent is fit to be promoted or not.

14. When it is admitted position that in years 1998 to 2000 either the disciplinary proceedings were pending against the applicant or the punishment was in currency, it cannot be accepted that the applicant ought to have been recommended fit for promotion to the post of Assistant Superintendent of Post Offices.

15. Much emphasis was laid by Mr. Ghosh on this point that the juniors have not been reverted, whereas the applicant has been reverted which amounts to discrimination. It is however, not averred that the persons junior to the applicant who have not been reverted were also having adverse materials against them. Therefore, there could not be any cause to revert along with the applicant.

It is stated in the O.A. that one Shri Parimal Chandra Mondal was punished in the manner the applicant was punished with stoppage of grade increments for two years, but he has been given promotion on regular basis. It is noticed that Shri Mondal has been given promotion after the penalty period was over against the vacancy of 2001. No only that he had been chargesheeted for minor penalty. The applicant cannot claim ad hoc promotion on the ground that Shri Mondal has been given promotion. Moreover, the equality clause cannot be invoked in such matters. It is the discretion of the competent authority to see as to whether the adverse material render an official unfit of promotion or not. This Court cannot be justified in directing the respondent to continue the promotion of the applicant on ad hoc basis on the ground that it has continued the ad hoc promotion of some other persons. *State of Uttar Pradesh and Ors. v. Sughar Singh*, AIR 1974 SC 423, relied on by Mr. Ghosh is clearly distinguishable. In that case the petitioner had been given promotion on temporary officiating basis and thereafter he was reverted to the lower post on the basis of an adverse entry in his character roll. It was held by their Lordships that the order of reversion was by way of punishment and amounts to reduction in rank. Instant case is not of the type of that case. Here the applicant was not given promotion to the post of Assistant Superintendent of Post offices on officiating/ temporary basis. He was given promotion only on ad hoc basis and the regular DPC did not find him fit and suitable for promotion. Moreover, the applicant has been reverted after the regularly selected persons were available for promotion. The ruling in our humble opinion, does not assist the applicant.

17. As a result of the foregoing discussions, we have no hesitation in holding that the applicant does not have enforceable right to continue on the post of Assistant Superintendent of Post Offices. The O.A is liable to be dismissed.

18. Consequently, the O.A. is dismissed, interim order is vacated. MA stands disposed of in terms of this decision.

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