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Court : Central Administrative Tribunal CAT Madras

Decided On : Jun-25-2012

Judge : The Honourable Mr. G. Shanthappa, Judicial Member & the Honourable Mr. R. Satapathy, Administrative Member

Appeal No. : Original Application No.1290 of 2011

Appellant : P. Subramanian and Others

Respondent : The Union of India Represented by the Chief Post Master General and Others

Advocate for Pet/Ap. : For the Applicants: R. Malaichamy, C. Premkumar R. Baby, S. Baskar, Advocates. For the Respondents: R. Govindaraj, Advocate.

Judgement :

G. SHANTHAPPA, JUDICIAL MEMBER

1. The above application is filed under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to permit the applicants to appear for LGO examination for promotion to the cadre of Postal Assistant/Sorting Assistant (PA/SA for short) to be held on 16.10.2011 (Sunday) and a further relief of direction to the respondents to appoint the applicants as PA/SA subject to come out successful in the said examination.

2. We have heard the learned counsel for the respective parties. In respect of the first relief, this Tribunal while hearing the case, at the time of admission on 14.10.2011, passed an interim order which reads as under:

“We direct the respondents to permit the applicants to write the examination for promotion to the post of Postal Assistant/Sorting Assistant, to be held on 16.10.2011. The results, so far as the applicants are concerned, will be subject to the outcome of the O.A.”

From a reading of the above interim order, it is clear that the first part of the relief has been granted to all the three applicants. But the results of the applicants are kept in a sealed cover.

3. The admitted facts from either side are that the applicants have completed 3 years of regular service as Postman/Postwoman respectively. The 3rd respondent issued a notification dated 31.03.2011 inviting applications from permanent officials with not less than 3 years regular service as on the last date for receipt of applications in Divisional Office for appearing in the LGO examination for promotion to the cadre of PA/SA to be held on 01.05.2011. Subsequently, the date of examination was postponed to 16.10.2011 due to administrative reasons. The applicants though applied as per the notification, hall tickets were not issued to them.

4. It was also admitted from either side that the applicants were unauthorisedly absent from duty and resorted to flash strike on 28.05.2010 without prior information and further no such strike call was given by the recognized trade union of the department, such a flash strike is against CCS (Conduct) Rules, 1964. Since the applicants have participated in the unauthorized and uninformed strike organized by one S. Thiyagarajan on 28.05.2010 and so abandoned the public essential services from Post Office on 28.05.2010, appropriate disciplinary action was initiated in accordance with CCS (CCA) Rules, 1965, for their unauthorized absence from duty by the 3rd respondent and imposed penalty of pay reduction by one stage for a period of 3 years by order dated 01.12.2010. Being aggrieved by the said order, the applicants have preferred appeals on 29.12.2010 and the same were pending for consideration before the Appellate Authority.

5. It is the grievance of the applicants that when punishment is no bar in assessing their suitability for promotion, then the reduction of pay by one stage is not a bar for appearing in the said departmental examination, which was held on 16.10.2011. The applicants have more than three years' regular service and therefore they are eligible to appear in the said examination. The Appellate Authority has wantonly delayed passing of orders on their appeal dated 28.12.2010. The 3rd respondent with an ulterior motive imposed the punishment dated 01.12.2010. He has imposed censure on some of the staff and imposed heavy punishments to others like the applicants. Hence discrimination has been shown towards the applicants while imposing the punishment. Since their appeals are pending, the punishment had not attained finality and hence they are eligible to appear in the above said examination and for further relief of appointment of them as PA/SA.

6. Per contra, the respondents have filed reply statement vehemently opposing the O.A, admitted the facts based on record and denied the allegation of discrimination. It is further stated that the action of the respondents is in order which is in accordance with the conditions stipulated in Postal Manual Vol. IV, Appendix (Ix) para IV, as per which, departmental candidates applying for the examination should have unblemished service. Applications should be submitted to the Head of the Circle through his immediate superior and it will be at the discretion of the Head of the Circle whose decision will be final to permit the applicants for the examination. The application submitted by the applicants were not recommended by the 3rd respondent i.e. Superintendent of Post Offices, Tirunelveli Division. Since the applicants were not permitted by the Head of the Circle they became ineligible to appear in the examination which was scheduled on 16.10.2011 as the applicants do not have unblemished service records. Being aggrieved by the punishment order, the applicants have preferred an appeal on 28.12.2010, which is still pending. The same will be decided by the competent authority based on the circumstances, merits the gravity of the offence and the records of the case. The applicants cannot presume that the punishment imposed would be set aside immediately on submission of appeals. As per Department of Personnel OM No.236/5/70 Estt (A) dated 15.05.1971, wherein it has been specifically stated that reduction to a lower stage of pay scale would be a bar from

being considered for promotion. Therefore, the applicants are not eligible for taking up departmental examination for promotion. Since the punishment imposed on the applicants is still in operation, they are not eligible to sit in the examination for promotion to the post of PA/SA held on 16.10.2011. As per the direction of this Tribunal, the applicants were allowed to sit in the examination. The result of the applicants are kept in sealed cover.

7. We have carefully considered the submissions made from either side, perused the pleadings available on record. The learned counsel for the applicants relied on an order of a coordinate Bench of this Tribunal, Chandigarh Bench (circuit sitting) at Shimla in the case of T.L. More Vs. UOI and ors. (1996 (2) ATJ 337), wherein it was held that an employee undergoing punishment is not entitled to promotion during the currency of the punishment but he could not be prevented from appearing in a departmental examination for the purpose of promotion. The applicant had also relied on extract of Swamy's compilation Chapter "Seniority and promotion" in para 13 it is stated that punishment no bar in assessing the suitability for promotion.

8. On the admitted facts narrated in the earlier paras, it is evident that the applicants were undergoing punishment of reduction of pay by one stage for a period of three years imposed vide order dated 01.12.2010. The applicants submitted their applications, to appear in the departmental LGO examination for promotion to the cadre of PA/SA issued vide notification dated 31.3.2011. One of the relevant conditions reads as under:

"Permanent officials with not less than three years of regular service as on the last date for receipt of applications in Divisional Office are eligible to sit for the examination. The specimen form of application is enclosed. The filed in applications with one copy of passport size photo affixed on the application in the place provided and one extra copy attached to the applications should be submitted well in advance to the respective SAAs/HPMs/Sub Division Heads.

9. The applicants were not issued hall tickets to sit for the examination held on 16.10.2011. On 14.10.2011, they have approached this Tribunal for a direction to the respondents to permit the applicants to appear for LGO examination to be

held on 16.10.2011. This Tribunal vide its interim order dated 14.10.2011 directed the respondents to allow the applicants to appear in the said examination which was to be held on 16.10.2011. The learned counsel for the respondents submits that the applicants were allowed to appear in the examination held on 16.10.2011, but their results are kept in a sealed cover which was brought to the Court to day.

10. We have to see whether the applicants are eligible to appear in the LGO departmental examination for promotion to the post of PA/SA when they are undergoing the penalty. The learned counsel for the respondents relied on the provisions contained in Postal Manual Vol. IV Appendix (ix) para 4 wherein it is clearly stipulated a departmental candidate should have unblemished service. The notification issued also stipulates the said provision. The 3rd respondent did not recommend the cases of the applicants to write the examination since they have no unblemished service. In this aspect we have to rely on the rule position reported in Swamy's compilation on Seniority and promotion:

“13. Punishment no bar in assessing suitability for promotion.

An officer whose increment 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 to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, 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 considered that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty”.

11. The applicants have relied on the judgment of the Chandigarh Bench rendered in the case of T.L. More (supra), Para 14 and 15 are relevant which is extracted hereunder:

14. Thus from the above observation, it will be in order if an employee undergoing punishment is denied promotion during the currency of the punishment even if he qualifies in the department examination.' This is also in consonance with instruction 21 referred to above and the rule '157 of the P and T Manual.

15. In the result, the impugned order No. RandE/77-28/95 dated 07.12.95 (Annex. A/1) is set aside and the interim order permitting the applicant to appear for the departmental examination held on 14th and 15th December 1995 on a provisional basis is made final and if he qualifies in the departmental examination, his case for promotion has to be considered by the competent authority and he should be promoted only there the expiry of the punishment imposed on him, if the competent authority decided to promote him. No direction is given in regard to his seniority in the promoted cadre.

The main contention of the respondents is the applicants having no unblemished service records and the applicants are undergoing the penalty, unless they are exonerated from the penalty on the basis of appeal, which is still pending, they are not entitled to sit in the examination.

12. After careful consideration of the rule position and the order of the Chandigarh Bench in T.L. More's case (Supra), it will be in order, if the employee undergoing punishment is denied of promotion during currency of punishment is denied of promotion during currency of punishment, even if he qualifies in the departmental examination. This is also in consonance with the instruction No.21 referred and rule 157 of the P and T Manual. However, the penalty imposed on the applicants cannot be a bar for the applicants to appear in the departmental examination for the purpose of promotion. Hence the applicants are entitled to sit for examination. Since the applicants have already appeared in the examination on the basis of interim order passed by this Tribunal on 14.10.2011, there is no need to give any direction with regard to the first relief. It is stated by the respondents that the results relating to the applicants are kept in a sealed cover. Para 15 of the judgment reads as under:

15. In the result, the impugned order No.RandE/77-28/95 dated 07.12.95 (Annex. A/1) is set aside and the interim order permitting the applicant to appear for the

departmental examination held on 14th and 15th December 1995 on a provisional basis is made final and if he qualifies in the departmental examination, his case for promotion has to be considered by the competent authority and he should be promoted only there the expiry of the punishment imposed on him, if the competent authority decided to promote him. No direction is given in regard to his seniority in the promoted cadre.

13. The applicants have established that they are eligible to appear in the LGO examination. Since the penalty is in operation, the applicants cannot be declared as having unblemished service records. However, there is no bar to declare results of exam by opening the sealed cover. Hence the respondents are directed to open the sealed cover and announce the results of the applicants. Based on the result of the exam if the applicants are found qualified, they can be considered as eligible for promotion to the post of PA/SA and that too after the currency of penalty period is over. According to the penalty advice, the currency of penalty would be over only on 30.11.2013. If the applicants qualify and have the merit in the said examination they can be promoted as PA/SA only after 30.11.2013.

14. It is seen from the records that the applicants have not prayed for any direction to the appellate authority to decide the appeals. However, justice would be met if a direction is given to the appellate authority to decide the appeal and pass appropriate orders. Accordingly the appellate authority is directed to decide the appeal and pass appropriate orders in accordance with rules within a period of two weeks from the date of receipt of a copy of this order. If the applicants are exonerated from the penalty, the sealed cover be opened and consider the marks, and if the applicants have merit, they should be given promotion as PA/SA from the date they are eligible along with others.

15. With the above observation, the O.A. disposed of. No costs.

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