

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C)(CAT) NO.1 of 2015

1. **The Union of India,**
Represented by the Secretary to the Govt. of India
Ministry of Information & IT,
New Delhi - 110001.
2. **The Chief Post Master General**
North East Circle, Shillong,
Shillong - 793001.
3. **The Director of Postal Services**
Agartala Division,
Agartala - 799001, Tripura.

..... *Petitioners.*

- *Vs* -

Sri Nirmal Chakraborty,
S/o Sri Krishna Bandhu Chakraborty,
Assistant Post Master
Savings Bank, Agartala Head Office,
Now officiating as Deputy Post Master,
Agartala head Office, Agartala - 799001.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U B SAHA

For the petitioners : Mr. A Roy Barman, Advocate.

For the respondents : None.

Date of hearing and
delivery of judgment : **09.4.2015.**

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

This writ petition by the Union of India is directed against the order of the Central Administrative Tribunal, Guwahati Bench, Guwahati whereby the writ petition filed by the original applicant (*respondent herein*) Nirmal Chakraborty has been allowed and the Union of India has been directed to grant the benefit of promotion to the applicant to Higher Selection Grade-II (NB) at par with his juniors namely, Ashit Kr. Chowdhury and Jayanta Saha with all consequential benefits.

2. It is not disputed before us that the original applicant before the Central Administrative Tribunal was one of the senior most officers in the Lower Selection Grade (LSG). His case was to be considered for promotion to HSG Gr.II in the year 2010. In fact the original applicant was eligible for promotion to the Higher Selection Grade right from the year 2006 onwards but no Departmental Promotion Committee (DPC) was held till the year 2010. In this behalf reference may be made to the Para 8 of the written statement filed by the Union of India before the Central Administrative Tribunal which reads as follows :

“8. That in regard to the statement made in para 4.10 of the petition, the deponent begs to state that Departmental Promotion Committee(DPC) was held on 12.10.2010. The case of the applicant being one of the senior most in the grade was also considered. Due to pendency of disciplinary case against

the applicant the decision taken by DPC was kept in sealed cover to be examined on the final disposal of Rule 16 case pending against the applicant. No comments on sub paras under this para 4.10"

The result of the petitioner was kept in a sealed cover. Next year the DPC was held in the year 2011. However, again his result was kept in the sealed cover. However, it later transpired that in fact before the DPC met in 2011 the petitioner had been found guilty in the disciplinary proceedings but the only penalty imposed upon him was recovery of the amount of Rs.50,000/-. Therefore, a review DPC was held and the petitioner was promoted to HSG-II. The petitioner thereafter filed the application claiming that he should have been promoted from the date his juniors were promoted on the basis of the DPC held in the year 2010.

3. It appears that before the Central Administrative Tribunal also the result of the DPC which was kept in sealed cover in the year 2010 was not produced. Be that as it may, we find that in the reply filed by the Union of India before the Central Administrative Tribunal there is not even a whisper that in the year 2010 the DPC had not found the original applicant suitable for promotion. In fact, even in the original writ petition filed before us it has not been averred that he was not found suitable for promotion in the year 2010.

4. The main ground raised is that since he was found guilty in the departmental proceedings he could not have been promoted.

With regard to the same the Tribunal has relied upon the circular issued by the Department of Personal and training and endorsed by the Postal Department itself which reads as follows :

“In the matter of disciplinary/penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS(CCA) Rules, 1965 and instructions issued there under. Attention of the Circle is drawn to Department of Personnel and Training OM No.22011/2/78-Estt.(A) dated 16.02.1979 communicated in DGP&T letter no.35-1/79-SPB-II dated 07.05.1979. According to these orders, the penalty of censure or recovery of pecuniary loss are not bar for penalty for promotion if the findings of the DPC are in favour of the employee.”

These instructions clearly state that if the employee is only visited with the punishment of censure or recovery of pecuniary loss then that will not be a bar for promotion if otherwise the DPC finds the petitioner fit for promotion.

5. In this view of the matter we find no error in the order passed by the Central Administrative Tribunal. The petition is, accordingly, dismissed. In case the order of the Central Administrative Tribunal has not been complied with till date the time for complying with the same is extended up to 30th June, 2015.

JUDGE

CHIEF JUSTICE

Sukhendu