

THE HON'BLE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.40532 OF 2018

ORDER: *(Per Hon'ble Dr. Justice Shameem Akther)*

This writ petition, filed under Article 226 of the Constitution of India, challenges the order dated 23.04.2018 passed in O.A.No.300 of 2015 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short "the Tribunal"). By the said order, the Tribunal directed the respondents/petitioners herein to issue posting orders to the applicant/respondent herein for the post of Group-B Postal Services within a period of three months from the date of receipt of a copy of the order by giving effect to the promotion from 16.08.2011 with all consequential benefits.

2. The facts in nutshell are that Petitioner No.1 herein is the Union of India, Ministry of Communications & IT, Department of Posts and petitioners 2 to 5 are its officers. The respondent herein is the employee of the postal department. He filed impugned O.A.No.300 of 2015 before the Tribunal aggrieved by the order dated 28.07.2014 issued by the petitioner No.1 herein rejecting his request to issue posting orders. Respondent-employee was initially appointed as Postal Assistant on 01.08.1992 and after completion of 10 years of service, appeared for Lower Selection Grade (LGO), Limited Departmental Competitive Examination under Fast Track Promotion Scheme in 2004 and was selected and appointed on 17.02.2004. Subsequently, he was promoted to Higher Selection Grade on 17.09.2008. Thereafter, he filed O.A.No.46 of 2012

seeking to consider his case for promotion to the cadre of Postal Service Group 'B' on the basis of Limited Department Competitive Examination held on 29.05.2011. The said O.A was disposed of on 13.03.2013 and as per the direction of the Tribunal in the said O.A, the respondent herein was promoted to Postal Service Group 'B' cadre on 09.07.2013. The respondent herein in the impugned O.A alleged that so far the said post was not allotted to him and he is at present working as Postmaster Gr.II at Godavarikhani sub-post office from 25.06.2011. The respondent-employee further alleged that in the Limited Departmental Competitive Examination held on 29.05.2011 his name was not shown though he appeared and wrote the examination and was not promoted along with 8 persons at the relevant point of time. The respondent-employee made representations, but in vain. The application of the respondent-employee seeking to issue posting orders was rejected by the petitioner No.1 on 02.12.2013 on the ground that charge sheet is pending against the respondent-employee. Therefore, the respondent herein filed the impugned O.A.

3. Petitioners herein filed a detailed reply before the Tribunal denying all the material allegations and averments made by the respondent herein. In the reply, it is stated that respondent-employee filed O.A.No.46 of 2012 before the Tribunal alleging that respondents 6 and 7 in the O.A who got lesser marks than him in the Limited Departmental Competitive Examination were shown as successful candidates in the proceedings dated 28.12.2011 and sought a direction to declare his result and for a consequential

action. Since major penalty disciplinary proceedings were initiated by a charge memo dated 10.09.2011, the name of the respondent-employee was not included in the supplementary results declared on 28.12.2011. However, the said O.A.No.46 of 2012 was allowed by the Tribunal on 13.03.2013 directing to consider the case of the respondent-employee. In compliance of the said orders, office proceedings dated 09.07.2013 were issued declaring the respondent-employee as successful in the said Limited Competitive Examination and the seniority among the successful candidates was fixed at Sl.No.19 in the supplementary results issued vide office proceedings dated 28.12.2011. In the said proceedings though the seniority of the respondent-employee was indicated, he was not actually promoted. Since the respondent-employee was not cleared from vigilance angle and exonerated, he was not promoted to Postal Service Group 'B' cadre.

4. It is further stated in the reply before the Tribunal that the Postal Directorate, New Delhi, by a letter dated 02.12.2013 informed the respondent-employee that in terms of Para 7 of DoP & T, Office Memorandum dated 14.09.1992, as there is a major penalty charge memo pending against him and till he is completely exonerated, he cannot be promoted to the Postal Service Group B cadre based on the results of the Limited Departmental Competitive Examination. The said order was served on the respondent-employee on 17.12.2013. Subsequently, the said major penalty disciplinary proceedings ended with punishment of reduction of pay by one stage for six months by orders dated

07.01.2014. On appeal filed by the respondent-employee, the said punishment was modified as "reduction of pay by one stage for three months". The petition filed by the respondent-employee against the said order was rejected on 12.09.2014 by the-then Chief Postmaster General, A.P. Circle, Hyderabad/4th respondent herein. On considering the representation submitted by the respondent-employee for his promotion, an order was passed on 28.07.2014 referring to paragraph No.7 of the DoP & T, Office memorandum dated 14.09.1992 rejecting his representation. Aggrieved by the same, the respondent-employee filed C.P.No.161 of 2014 on 25.09.2014 in O.A.No.46 of 2012, for which compliance affidavit was filed on 28.10.2014 enclosing a copy of the office letter dated 28.07.2014, wherein his request for promotion was rejected. However, the Tribunal closed C.P.No.161 of 2014 by order dated 28.11.2014. Thereafter, the respondent-employee filed M.A.No.101 of 2015 for restoration of the said contempt petition and a reply was also filed opposing the M.A. In the meantime, the respondent-employee filed the impugned O.A.No.300 of 2015 questioning the above referred rejection order dated 28.07.2014 before the Tribunal and the Tribunal allowed O.A.No.300 of 2015 by order dated 23.04.2018 directing the petitioners herein to give posting orders to respondent-employee. Therefore, the present writ petition is filed.

5. The respondent-employee filed his counter denying the averments made in the petition and ultimately prayed to dismiss the writ petition.

6. Heard Sri K.Lakshman, learned Assistant Solicitor General of India, for petitioners and Sri Goda Siva, learned counsel for respondent and perused the record.

7. Learned counsel for the petitioners would submit that the impugned order passed by the Tribunal is cryptic, without reasons and the reply statement given by the petitioners was not considered. The application of the respondent-employee for promotion was rightly rejected by way of speaking order dated 28.07.2014. It is also contended that since the respondent-employee was declared successful in the Limited Departmental Competitive Examination (LDCE), his seniority among the successful candidates is fixed at Sl.No.19. Since the respondent-employee did not seek clearance from vigilance angle, his case has been treated as placed in sealed cover. Since there is no exoneration of the charges against the respondent-employee, the sealed cover has not been opened and acted upon. The Tribunal ought to have examined that, the Office Memorandum dated 14.09.1992 was issued on the strength of the order of the Apex Court in the matter of *Union of India vs. K.V.Janaki Ram*¹ and the Tribunal cannot dilute it further. The disciplinary proceedings are pending against the respondent-employee and ultimately prayed to allow the writ petition by setting aside the impugned order.

8. On the other hand, learned counsel for the respondent supported the impugned order passed by the Tribunal and

¹ AIR 1991 SC 2010

contended that Para 7 of DoP & T, Office Memorandum dated 14.09.1992 has no application to the instant case. The Tribunal has discussed all the contentions raised before this Court and rightly answered the same in favour of the respondent-employee and ultimately prayed to dismiss the writ petition.

9. In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order dated 23.04.2018 in O.A.No.300 of 2015 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad is liable to be set aside?”

10. POINT:

The writ petitioners mainly placed reliance on Office Memorandum dated 14.09.1992, which relates to promotion of Government servants against whom Disciplinary Proceedings/ Court Proceedings are pending or whose conduct is under investigation. Para 2 of the Office Memorandum reads as follows:

“2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) Government servants under suspension;*
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.”*

As seen from the entire material placed on record, no charge sheet was filed against the respondent-employee. Neither he was under suspension nor facing any prosecution for the criminal charge. It is also pertinent to state that as per the Rules governing the promotion of the respondent-employee, the selection for promotional post was purely based on the written examination conducted and the candidate who succeeds in securing required marks need not appear before the Departmental Promotion Committee and the respondent-employee had fallen in the zone of consideration for promotion. Admittedly, disciplinary proceedings were not pending against the respondent-employee on the date of examination or on the date of issuing promotion to the other successful candidates. The petitioner-employer declared the results on 26.03.2011 and promoted eight candidates on 16.08.2011, some of them are juniors to the respondent-employee. Similar issue had arisen in O.A.No.612 of 2015 and the same was allowed by the Tribunal. Aggrieved, the respondents therein preferred Writ Petition No.24577/2016 and the said W.P was dismissed by this Court vide order dated 19.01.2017, wherein this Court had also referred Para 2 of the OM dated 14.09.1992. Since there was no charge sheet pending against the respondent-employee as indicated above and his juniors were promoted w.e.f. 16.08.2011, the denial of promotion to the respondent-employee w.e.f. 16.08.2011 is erroneous and unsustainable on law and facts and his promotion is to be related back to 16.08.2011 only. Since the 4th petitioner had refused to issue proceedings to the respondent-employee, the respondent had again approached the Tribunal by

way of impugned O.A and succeeded. The Tribunal had rightly answered the contentions raised in favour of the respondent-employee. There is no illegality or perversity in the impugned order passed by the Tribunal.

11. The Writ Petition is devoid of merit and is accordingly dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, ACJ

SHAMEEM AKTHER, J

Date: 06.06.2019
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