

(2018) 10 CAT CK 0099
In the Central Administrative Tribunal
Case No : Original Application No. 700 Of 2012

Jag Mohan

APPELLANT

Vs

Union Of India Through Secretary And Ors

RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0099

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Yogesh Sharma, Sanjay K, Shandilya, Abhishek Singh

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant was promoted to the post of Regional Provident Fund Commissioner Grade-I (for short, RPFC Grade- I) on regular basis w.e.f. 21.05.2009, through an order dated 22.06.2009. This OA is filed by the applicant, not being satisfied with the effective date of his promotion. According to him, several officers junior to him were promoted w.e.f. 01.07.2005, and he too is entitled to be promoted from that date. Reference is also made to an order dated 11.05.2009 passed by the Allahabad Bench of the Tribunal in OA No.258/2008.

2. The relevant facts are that the applicant was initially appointed as Assistant Provident Fund Commissioner (APFC) on 20.10.1990, and was promoted to the post of RPFC on 16.02.1995. The next promotion is to the post of RPFC Grade-I. He was placed under suspension on 19.08.2002 in contemplation of the disciplinary proceedings. A charge memorandum dated 18.09.2002 was issued proposing major penalty. During the pendency of those proceedings, the DPC met for selection of candidate for promotion to the post of RPFC Grade-I. The result of consideration of the case of the applicant was kept in sealed cover. Thereafter, the disciplinary authority passed an order dated 13.09.2005 imposing

the penalty of censure. In that view of the matter, the sealed cover was not opened. At a later stage, i.e., in the year 2009, the applicant was promoted to the post of RPFC Grade-I w.e.f. 21.05.2009. The grievance of the applicant is that he is entitled to be promoted w.e.f. 01.07.2005, from which date, his juniors were promoted.

3. The respondents filed a counter affidavit opposing the OA. According to them, the sealed cover that was adopted in the case of the applicant, could not be opened on account of the punishment imposed upon him, and in the process, his juniors were promoted in the year 2005 itself. It is also stated that the case of the applicant for promotion was thereafter considered in the year 2009, and accordingly, was promoted from the date on which the DPC met.

4. Heard Shri Yogesh Sharma, learned counsel for the applicant, and Shri Sanjay K. Shandilya and Shri Abhishek Singh, learned counsel for the respondents.

5. The applicant does not deny the fact that his case was considered for promotion in the year 2005 itself, but the sealed cover procedure had to be adopted in view of the pendency of the disciplinary proceedings, and the occasion to open the sealed cover did not arise in view of the fact that the punishment of censure was imposed upon him. The order of punishment became final, and the applicant did not pursue any proceedings vis-à-vis the refusal to open the sealed cover.

6. It is only in the year 2009 that the applicant was considered for promotion, and on being found fit and suitable, was promoted from the date on which the DPC met. Promotion of an officer can be only prospective in nature. Reference in this context may be had to the judgment of the Hon'ble Supreme Court in *Union of India v K. K. Vadera & others* [1989 Supp. (2) SCC 625]. The only exception to this is where a junior is promoted to the next higher post from an earlier date. This, however, is subject to the condition that the promotion of the junior as well as the senior is effected through the same DPC. In case the junior was promoted in the DPC conducted earlier, such a parallel cannot be drawn. It has already been mentioned in the preceding paragraphs that though the case of the applicant was considered in the year 2005, sealed cover procedure was adopted for him; and the sealed cover was not opened in view of the punishment imposed upon him. The result is that his juniors stole a march over him. Therefore, it cannot be said that the applicant was denied promotion from any earlier date.

7. Another contention of the applicant is that there was undue delay in conclusion of the disciplinary proceedings, as well as in conducting the DPC. In the counter affidavit, the respondents have furnished details of various stages of the proceedings, and the applicant is not able to demonstrate that the delay is attributable to any wanton acts on the part of the respondents, or that it can be treated as deliberate.

8. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.