
(2011) 12 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8914 of 2011

Union of India and Others

APPELLANT

Vs

U.R. Meena

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 12, 16

Citation : (2011) 12 RAJ CK 0057

Hon'ble Judges : Kailash Chandra Joshi, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Dinesh Maheshwari, J.—By way of this writ petition, the petitioners Union of India through the Secretary, Ministry of Communication and Information Technology, Department of Posts, the Chief Post Master General, Rajasthan Circle, Jaipur, the Post Master General, Western Region, Jodhpur, and the Senior Post Master, Head Post Offices, Jodhpur Division, Jodhpur seek to question the order dated 25.05.2011 whereby the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ("the CAT" / "the Tribunal") has allowed the original application (OA No.229/2009) filed by the applicant-respondent Shri U.R. Meena; and, while setting aside the impugned orders, has directed the present petitioners to give effect to the orders of ad hoc promotion of the applicant.

2. In brief, the relevant facts and background aspects of the matter are as follows: The applicant-respondent was initially appointed on the post of Postal Assistant at Pali Head Office on 21.03.1976. After earning the promotions as per the avenues available, the applicant came into Higher Selection Grade-II ("HSG-II") on 15.02.2007. Thereafter, by an order dated 23.09.2008, as issued by the office of the petitioner No.2, the applicant-respondent was accorded ad hoc promotion to the cadre of Higher Selection Grade-I ("HSG-I") for 11 months from the date of assumption of charge or until further orders whichever be earlier; and he was ordered to be posted as Post Master, Sambhar Lake Head

Office. The order stipulated, *inter alia*, that such ad hoc promotion will not bestow any right of regular absorption in the grade and will not be counted for seniority; and it was to be ensured that no disciplinary case was pending and no penalty was current against the official. Pursuant to the said order dated 23.09.2008, another order came to be issued from the office of the petitioner No.3 on 30.09.2008 that was essentially of reiteration of the terms of the order dated 23.09.2008.

3. An event, however, took place after issuance of the order dated 23.09.2008 but before issuance of the order dated 30.09.2008 that a charge-sheet dated 29.09.2008 came to be issued against the applicant under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ["the CCA Rules, 1965"] on the imputations that while working as Assistant Post Master (Savings Bank) and Incharge Deputy Post Master, Jodhpur, on 17.09.2008 at about 19:30 hours, he left the post office without finishing the work and without taking the permission from the competent officer; handed over the keys to the unauthorised Assistant Post Master; did not get the post office closed in his supervision; and thereby, acted against the Rules. The applicant was served with this charge-sheet on 30.09.2008.

4. The applicant submitted a reply to the imputations aforesaid essentially stating that while working on 17.09.2008, for sudden illness due to change of season, he was required to rush to the hospital and got himself checked in Emergency at Mahatma Gandhi Hospital, Jodhpur. The applicant also submitted that he left only after handing over the keys to a person equal in rank and no loss occasioned thereby.

5. The Disciplinary Authority, however, was not satisfied with the reply and by the order dated 16.10.2008, imposed the punishment under Rule 12 of the CCA Rules, 1965 of reduction of pay of the applicant by one stage for a period of six months from 01.11.2008. The applicant-respondent preferred an appeal that was considered and partly allowed by the Appellate Authority on 03.02.2009 curtailing the punishment of reduction in pay of the applicant by one stage with effect from 01.11.2008 only for a period of three months instead of the period of six months as earlier ordered by the Disciplinary Authority.

6. After the conclusion of the said disciplinary proceedings, the petitioner No.3, by his communication dated 06.02.2009, asked for the instructions from the petitioner No.2, with reference to the aforesaid ad hoc promotion orders, as to whether the applicant-respondent be relieved with promotion order or not while pointing out that the period of his punishment i.e., reduction of pay to the lower stage for three months with effect from 01.11.2008, had already to come to an end on 31.01.2009. It appears that the applicant had also made the representations for being relieved pursuant to the promotion order whereupon he was informed under the impugned communication dated 24.02.2009 that as per the order dated 19.02.2009, as issued by the Chief Post Master General, Rajasthan Circle, Jaipur, his case for promotion to HSG-I would be considered in

the next screening committee meeting and the earlier order dated 23.09.2008 stood cancelled. The applicant, again, made the representation for release of his due promotion on 14.07.2009 but was informed under the other impugned communication dated 07.08.2009 that his case for promotion would be considered in the DPC to be convened in the near future. On the other hand, the department issued an order dated 18.09.2009 according ad hoc promotion to several of the incumbents to the cadre of HSG-I.

7. In the aforesaid circumstances, the applicant-respondent filed the OA leading to this writ petition and stated the grievance that the persons junior to him had been granted ad hoc promotion but he was being illegally deprived of the same though there could not be any dispute about his entitlement thereto. It was also contended that right to be promoted to the next higher post could be curtailed only in accordance with the valid rules. The applicant submitted that there was no reason for cancellation of his promotion order dated 23.09.2008 and the subsequent event of charge-sheet could not have obstructed the accrued promotion. The applicant also submitted that the action of the authorities for withholding the promotion was itself one of the specified penalties and the same could not have been imposed except after following the procedure established by law.

8. The petitioners (respondents in the OA) contended in their reply that before could he be promoted, the applicant was awarded the punishment of one stage down for six months and due to currency of this punishment, the competent authority directed not to relieve him; and hence, no promotion order could be issued. The petitioners submitted that as per the instructions, when a government servant recommended for promotion is subjected to charge-sheet after recommendation of DPC but before actual promotion, it would be considered as if his case has been placed in sealed cover and he would not be promoted until completely exonerated of the charges. The petitioners submitted that the applicant could not be actually promoted due to the currency of punishment and it being a case of ad hoc promotion, even otherwise, the government was having the right to cancel it any time. It was also submitted that the case of the applicant was considered for promotion in the DPC dated 04.09.2009 but due to unsatisfactory service record, he was not found fit for promotion to HSG-I.

9. The applicant filed a replication stating, inter alia, that no disciplinary case was pending against him on the date of issuance of ad hoc promotion order i.e., 23.09.2008; and that the subsequent event could not obstruct the accrued promotion. It was also submitted that there was no question of cancellation of order of promotion already issued. The applicant yet further submitted that even when DPC met subsequently, there was nothing adverse against him except the minor penalty of reduction of pay by one stage for a period of three months and he had not been communicated with any adverse entry otherwise.

10. It appears that the applicant moved an application (MA No.151/2010) before

the Tribunal for summoning the record of DPC whereupon the Tribunal directed that the record of DPC be kept ready at the time of final hearing.

11. The Tribunal considered the matter in its order dated 25.05.2011 and, after finding the stand of the present petitioners unjustified, proceeded to allow the OA, inter alia, with the following observations and findings:-

.....Even when the order of the Appellate Authority dated 03.02.2009 (Annexure A/9), reducing the period of penalty of reduction of pay of the applicant from six months to three months was passed, the period of such punishment of three months with effect from 01.11.2008 had already exhausted itself on 31.01.2009, even before issuance of the Annexure A/9 order of the Appellate Authority itself. Since stay of ad-hoc promotion granted to the applicant was issued on 19.11.2008 as is apparent from the penultimate paragraph of Annexure A/10, such a stay against the ad-hoc promotion of the applicant could also have operated only upto 03.02.2009, the date of issuance of the order of Appellate Authority vide Annexure A/9, by which order, the period of penalty imposed upon the applicant stood already exhausted/expired earlier on 31.01.2009 itself.

16. From 03.02.2009 onwards, there was no reason, logic or basis for the respondents not to have given effect to the order of ad-hoc promotion already issued in favour of the applicant through Annexure A/3 dated 23.09.2008 by the respondent no. 2, and reissued and reiterated by the respondent no. 3 through his order dated 30.09.2008 (Annexure A/4).

17. The respondents have, therefore, obviously erred in not giving effect to the orders already passed by them through Annexure A/3 and Annexure A/4 after issuance of the order of the Appellate Authority through Annexure A/9, even though a request in this regard had been made on behalf of the applicant by respondent no. 4 through Annexure A/10 dated 06.02.2009. Also, it is incorrect to state that the order of ad-hoc promotion of the applicant was revoked during the currency of his punishment, as such an order got passed and communicated only on 16.02.2009, after the period of currency of the punishment was over on 31.01.2009, as is apparent from the contents of the impugned order at Annexure A/1 itself.

18. A perusal of Annexure A/11 dated 08.09.2009 shows that a number of juniors of the applicant have also been given ad-hoc promotions. It is clear that the Departmental Promotion Committee meets only for giving substantive promotions, and ad-hoc promotions are actually issued by the official superiors in exercise of their administrative powers. Therefore, the contention of the respondents that Annexure A/11 dated 08.09.2009 issued for ad-hoc promotions accorded to 20 of the juniors of the applicant does not affect the applicant is also not acceptable, as valid, since without holding a proper Departmental Promotion Committee, which alone can decide about the suitability of the candidates for regular promotions, ad-hoc promotions to the juniors of the applicant could not

have been ordered or given effect to without first giving effect to the ad-hoc promotion already ordered earlier in favour of the applicant.

19. Therefore, the respondents have not been able to properly justify their action in not giving effect to their own orders dated 23.09.2008 (Annexure A/3) and dated 30.09.2008 (Annexure A/4) after the issuance of the orders of the Appellate Authority dated 03.02.2009 (Annexure A/9). The respondents also did not have any authority to pass an order on 19.02.2009, stating that the orders of ad-hoc promotion of the applicant are cancelled, since such an order could have been passed by them only during the currency of the applicant's punishment, but not after 31.01.2009, when the punishment period had exhausted itself. Thereafter, the respondents were empowered to cancel the transfer, but not the ad-hoc promotion of the applicant, the benefit of which had already accrued to him at least with effect from 03.02.2009, the date of the orders of the Appellate Authority, if not from 01.02.2009 itself, after the currency of the period of his punishment.

20. In the result, the Original Application is allowed, the impugned order dated 24.02.2009 (Annexure A/1) and order dated 07.08.2009 (Annexure A/2) are quashed and set aside, and the respondents are directed to give the effect to their orders of ad-hoc promotion of the applicant to the post of HSG-I, ordered through order dated 23.09.2008 (Annexure A/3), and consequential order dated 30.09.2008 (Annexure A/4), with effect from the date of issuance of the order of the Appellate Authority dated 03.02.2009 (Annexure A/9), by which date the penalty imposed upon the applicant also stood expired on 31.01.2009 itself, and all the consequential benefits would also follow and accrue to the applicant. However, since there is no hint of malafide action on the part of the respondents, there shall be no order as to costs.

12. Seeking to assail the order aforesaid, it is contended on behalf of the petitioners that the Tribunal has passed the order without appreciating the correct factual and legal aspects of the matter. It is submitted that when there was a clear condition in the promotion order itself in regard to the pendency of disciplinary proceedings; and when the promotion was not accorded to the applicant for such proceedings, the same could not have been accorded by postponing the date of promotion after expiry of the currency of punishment. It is further submitted that the Tribunal has not taken care to consider that this was merely an ad-hoc promotion which has not created any right in favour of the applicant. It is also submitted that the observations of the Tribunal that the charge-sheet was issued after passing of the promotion order dated 23.09.2008 is not correct because the actual order regarding posting of the applicant-respondent came to be issued only on 30.09.2008; and, according to the petitioners, when the applicant had been issued the charge-sheet prior to the issuance of the actual order giving effect to the promotion order, he had rightly not been accorded the promotion.

13. After having given a thoughtful consideration to the submissions made on

behalf of the petitioners and having taken into comprehension the fact situation of the present case, this Court is not persuaded to consider interference in the just and proper order passed by the Tribunal.

14. A comprehension of the factual matrix makes a few points absolutely clear : First, that the order of ad hoc promotion of the applicant-respondent was, in fact, issued on 23.09.2008; second, that the charge-sheet was issued to him only on 29.09.2008; third, that the allegation in the charge-sheet was of the applicant having left the duty on 17.09.2008 without taking permission from the superior and handed over the keys to the unauthorised person to which, the applicant replied that he was required to leave at about 8:30 p.m. for ailment and got himself examined in the Emergency of the Government Hospital; fourth, that in the disciplinary proceedings, the Appellate Authority ultimately imposed the punishment of reduction of pay of the applicant by one stage for a period of three months from 01.11.2008; fifth, that the said order of modified penalty was passed by the Appellate Authority on 03.02.2009 and, obviously, the period of operation of penalty had already come to an end on 31.01.2009; sixth, that in response to the applicant's representations for being posted on promotional post, the department stated that the earlier order of ad hoc promotion stood cancelled by virtue of the order issued by the petitioner No. 2 on 19.02.2009 and his case for promotion would be considered by the next Screening Committee; seventh, that the applicant's further representation was replied on 07.08.2009 in the manner that his case for promotion would be considered in the next DPC; and eighth, that the department did issue ad hoc promotion order dated 08.09.2009 in relation to the persons junior to the applicant.

15. In the backdrop of the above factual matrix, the only question for consideration is as to whether the Tribunal has committed any error in disapproving the action of the petitioners insofar they had declined to allow the benefit of ad hoc promotion to the applicant and in directing them to give effect to the orders for promotion of the applicant already passed and to accord such promotion to the applicant with effect from the date of the order of the Appellate Authority, i.e., 03.02.2009. In our opinion, the Tribunal has been justified in passing the impugned order and in issuing the aforesaid directions in favour of the applicant.

16. In fact, the right of the applicant to be posted on promotional post came vesting on 23.09.2008 itself and merely with issuance of a charge-sheet thereafter, i.e., on 29.09.2008, the petitioners could not have altogether deprived him of all his rights of promotion. The suggestion as made on behalf of the petitioners that the actual order of posting was made only on 30.09.2008 and prior that, the charge-sheet had been issued, has its own shortcomings. The order dated 30.09.2008 was nothing but a mere reproduction and reiteration of the order dated 23.09.2008. The principal order for ad hoc promotion was issued by the petitioner No. 2 on 23.09.2008. The petitioner No. 3 merely reiterated the same in his order dated 30.09.2008 but before that, issued the charge-sheet on

29.09.2008. Be that as it may, even if it be assumed that a charge-sheet had been issued against the applicant, its final result had been of a penalty of reduction of pay by one stage for a period of three months from 01.11.2008. This period, obviously, ended on 31.01.2009. Even if it be assumed that the rights of the applicant stood shadowed or partially eclipsed because of such disciplinary proceedings, the revival thereof with effect from 01.02.2009 (after expiry of the period of operation of the penalty) cannot be ignored. In any case, from the date of order of the Appellate Authority i.e., 03.02.2009, neither there remained any disciplinary proceeding pending nor there remained any penalty in operation.

17. In the aforesaid fact situation, we find the CAT justified in observing that from 03.02.2009 onwards, there was no reason, logic or basis wherefor the present petitioners had not given effect to the order of ad hoc promotion already issued in favour of the applicant on 23.09.2008. In continuity, we are unable to approve the attempt as made by the petitioners in seeking to cancel the applicant's ad hoc promotion by an order dated 19.02.2009, as stated in the impugned communication dated 24.02.2009. As noticed, the disciplinary proceedings and even the minor penalty there for all came to an end on 03.02.2009. There was no justification at all that the petitioners chose to ignore these basic facts and allegedly cancelled the promotion order on 19.02.2009. Nothing was available to the petitioners on 19.02.2009 that could have formed the basis of such cancellation. In our view, the Tribunal has rightly disapproved such a baseless attempt on the part of the petitioners; and has rightly directed them to give effect to the orders of ad hoc promotion of the applicant to the post of HSG-I.

18. Further, it had rightly been argued on behalf of the applicant before the Tribunal, and the Tribunal has been justified in upholding the argument that stoppage or withholding of promotion is itself a distinct penalty and such a penalty had never been imposed on the applicant. The applicant has referred to paragraph 157 of the P & T Manual, Volume-III to submit that an officer, who had been reduced to a lower stage in time scale, could not, on that account, be considered ineligible for promotion to a higher grade. In the given factual scenario and when it was indisputable before the Tribunal that the ad hoc promotions were given on the basis of seniority-cum-suitability and were practically continued until regular promotions, withholding of such ad hoc promotion in the case of the applicant for all times to come and even when his juniors were promoted on ad hoc basis could not have been countenanced.

19. The suggestion on behalf of the petitioners that on 04.09.2009, the DPC found the applicant not suitable, appears to have been made merely as a pretence. The applicant has asserted that he had not been communicated any other adverse entry in his service record; and so far the minor punishment above-referred was concerned, the same operated only for a period of three months from 01.11.2008 and ended on 31.01.2009. It remains doubtful if there

had been convened the regular DPC for regular promotions because what the department issued on 08.09.2009 had been the order for ad hoc promotions and not the regular promotions. In any case, there had not been any lawful justification wherefor the applicant was denied such ad hoc promotion even while according the same to his juniors.

20. The Tribunal appears right in observing, and we agree with the same, that the present petitioners had not been able to properly justify their actions of not giving effect to the orders in relation to the applicant and had acted illegally in passing the order on 19.02.2009 to the effect that the order of ad hoc promotion of the applicant stood cancelled. Such an action was entirely unjustified and in any case, denial of ad hoc promotion to the applicant while according such ad hoc promotion to his juniors on 08.09.2009 cannot be approved from any standpoint.

21. In view of the above, we find no error or illegality in the order passed by the Tribunal and we are not persuaded to consider interference in the writ jurisdiction.

22. Consequently and as a result of the aforesaid, this writ petition fails and is, therefore, dismissed.