(1996) 11 SC CK 0225

In the Supreme Court Of India

Case No : Civil Appeals Nos. 14808-14809 Of 1996

Union of India (UOI) and Others APPELLANT

Vs

B. Radhakrishna RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Citation : (1997) 10 JT 342 : (1997) 11 SCC 650 : (1998) SCC(L&S) 447

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Delay condoned.

2. The respondent has been duly served. He has sent his reply/statement of the special leave petition by post.

3. Special leave granted.

4. The respondent was working as Junior Accountant in the Postal Accounts Services of the government of India (Karnataka Division). By order dated 17/12/1985 passed in departmental proceedings initiated against him the penalty of withholding of increment for a period of two years was imposed on the respondent. The said penalty was current up to 28/2/1988. In the meanwhile the Departmental Promotion Committee (DPC) met for the purpose of promotion to the posts of Senior Accountant. On the basis of the recommendation of the DPC, the respondent was promoted as Senior Accountant by order dated 11/11/1987 with effect from 1/4/1987. Subsequently, by order dated 23/5/1994, the said order was modified and the promotion of the respondent was made effective from 1/3/1988, i.e. from the date on which the penalty of withholding of increment ceased to operate. Feeling aggrieved by the said order dated 23/5/1994, the respondent filed a petition (OA No. 1117 of 1994 before the central Administrative tribunal, Bangalore bench (hereinafter referred to as "the tribunal"). The said petition of the respondent has been allowed by the tribunal

by the impugned judgment dated 2/3/1995. The tribunal has held that the respondent was promoted to the functional post in November 1987 with effect from 1/4/198787 and that since he had discharged the said function it would be unjust and arbitrary to reopen the matter at this distance of time and revise the date of promotion. The tribunal directed that the date of promotion of the respondent be maintained as 1/4/1987. The tribunal, in its judgment, has referred to its earlier decisions in Parveen Kumar Aggarwal v. Indian Council of Agricultural Research, and S.K. Mallick v. Union of India. Feeling aggrieved by the said judgment of the tribunal, the appellants filed a review application which was dismissed by the tribunal by order dated 7/9/199595. Hence these appeals.

5. The learned counsel for the appellants has invited our attention to the judgment of this court in Union of India v. K. Krishna. In that case this Court was dealing with the provisions of Rule 157 of the Posts and Telegraphs Manual, Vol. III, which provides that even where the competent authority considers the candidate fit for promotion in spite of punishment given in a departmental proceeding the promotion shall not be given effect to during the currency of the penalty. The impugned judgment of the Tribunal in that case was based on the decision in Parveen Kumar Aggarwal. This court, while setting aside the judgment of the tribunal, has laid down:

"WE have considered the matter closely and in our opinion the view taken by the tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy."

6. The order dated 11/11/1987 promoting the respondent as Senior Accountant with effect from 1/4/1987, on which date the punishment of withholding of two increments imposed on the respondent was operative, was, therefore, not correct and it has rightly been rectified and the promotion has been granted with effect from 1/3/1988, i.e., the date on which the said punishment ceased to operate,

7. The respondent, in his written reply, has placed reliance on the decision of this court in council of Scientific and Industrial Research v. K.G.S. Bhatt, wherein this court has laid down that in exercise of its power under Article 136 of the Constitution, the court normally does not interfere in individual disputes of seniority, promotion, reversion, suspension, pay fixation, etc. It is no doubt true that normally this court does not interfere in such matters but having regard to

the facts of this case, we are of the view that the tribunal was in error in setting aside the order dated 23/5/1994 altering the date of promotion of the respondent from 1/4/1987 to 1/3/1988 and, since it is likely to affect other employees, we are of the view that it is a fit case which calls for interference by this court under Article 136 of the Constitution. The impugned judgments of the tribunal dated 2/3/1995 passed in OA No. 1117 of 1994 and dated 7/9/1995 passed in RA No. 59 of 1995 are, therefore, set aside insofar as the quashing of the order dated 23/5/199494 altering the date of promotion as Senior Accountant from 1/4/1987 to 1/3/1988 is concerned. The respondent will, however, not be required to refund the excess amount received by him towards the pay for the post of Senior Accountant in respect of the period from the date he worked as Senior Accountant after the passing of the order of promotion dated 11-11- 1987 till 28/2/1988.

8. The appeals are disposed of accordingly. No order as to costs.

