

Union of India and others

Vs

K. Krishnan

Civil Appeal No. 4718 of 1991

(CJI Ranganath Misra, G. N. Ray, Dr. A. S. Anand, M. H. Kania, M. M. Punchi, Yogeshwar Dayal, L. M. Sharma J. S. Verma, S. C. Agarwal JJ)

20.11.1991

JUDGMENT

1. The delay is condoned and special leave is granted.
2. The respondent is a postman. He appeared at the required test for the purpose of promotion to the Postal Assistants'cadre. He was successful at the test but before the order for his promotion could be issued he was found guilty in a disciplinary proceeding, and was punished by withholding of increment in salary for a period of one year and six months. As a result of this penalty the decision to promote him was not implemented. He made an application before the Central Administrative Tribunal for a direction to the present appellants to promote him. Following the decision in Parveen Kumar Aggarwal v. Indian Council of Agricultural Research, (1985) 8 Admn. Tri. Cas 496, and another unreported judgment, the Tribunal allowed his prayer holding that he was entitled to be promoted with effect from 1-12-1989 with consequential benefits and directed the appellants to promote him without delay, on the ground that the denial of promotion to the respondent amounts to a second punishment which is not permissible. This judgment is under appeal.
3. The learned Counsel for the appellants has relied on the provisions of Rule 157 of the Post and Telegraph Manual - Volume III, which inter alia provides that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding, the promotion shall not be given effect to during the currency of the penalty. The learned Counsel for the respondent in reply reiterates the ground mentioned in the impugned judgment.
4. 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. We do not find any merit in the argument that there is no justification or rationale behind the policy; nor do we see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory. The

impungned judgment is, therefore, set aside.

5. It has been stated by the learned Counsel for the parties that except for the above punishment, the respondent is fit for promotion and that the currency of the penalty will expire on 14-9-1990. In that view he may be promoted immediately thereafter with effect from 15-9-1990, provided he is not otherwise disqualified for promotion by incurring some other disqualification. The appeal is accordingly allowed but without costs.

Appeal allowed.

</html