

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/01386/2018
DATED THIS THE 25th DAY OF FEBRUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

R.Narayanaswamy
S/o Sri Ramaiah
Aged about 59 years
Working as Senior Field Assistant
Silk Warm Seed Production Centre
Central Silk Board
Hosur (Tamil Nadu)
Residing at Door No.27
1st A Cross, Nisarga Layout
Near Ooty Convent
Attur Main Road
Ananthapura Village
S.N.Halli Post, Yelahanka
Bangalore-560 024.

....Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. The Member Secretary
Central Silk Board
Ministry of Textiles
CSB Complex, BTM Layout
Madiwala, Bangalore-560 068.
2. The Chairman
Central Silk Board
Ministry of Textiles
CSB Complex, BTM Layout
Madiwala, Bangalore-560 068.
3. Joint Director, Admin.
Central Silk Board
Ministry of Textiles
CSB Complex, BTM Layout
Madiwala, Bangalore-560 068.
4. Union of India represented by
Secretary to Government
Ministry of Textiles
Udyog Bhavan
New Delhi-110 011.

...Respondents

(By Advocate Sri Vishnu Bhat, Sr.PC for CG for R1 to 3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The facts of the case are that the applicant joined the services of Central Silk Board(CSB) as a Field cum Laboratory Assistant on 27.8.1984. He was promoted as Senior Field Assistant on 23.1.1989. In the seniority list of Field Assistant as on 10.2.1989(Annexure-A1), his name is at Sl.No.427. While working as Sr.Field Assistant, he was issued with a charge memorandum dtd.25.9.2001 based on an alleged complaint lodged by one Sri Thimmarayappa. After conclusion of inquiry, penalty of compulsory retirement was imposed on the applicant by order dtd.7.2.2003. An appeal filed by the applicant was dismissed by the appellate authority vide order dtd.22.9.2003. The applicant challenged the penalty and appellate orders in WP.No.46579/2003(S-RES) on the ground that the charge memorandum was issued by an incompetent authority. The Hon'ble High Court of Karnataka by order dtd.5.1.2007(Annexure-A2) allowed the said WP and quashed the disciplinary and appellate orders by directing the respondents to reinstate the applicant with all consequential benefits. Challenging the said order, the respondents filed Writ Appeal No.240/2007 which was allowed in part by the Hon'ble High Court vide order dtd.9.3.2009(Annexure-A3) permitting the respondents to redo the matter of disciplinary proceedings in accordance with law. The respondents further filed a review petition No.177/2009 which was also allowed giving liberty to the competent authority to pass appropriate order vide order dtd.16.10.2009(Annexure-A4). The respondents have filed SLP(C).No.3208-3209/2010 which was rejected by the Hon'ble Supreme Court by its order dtd.8.8.2011. Consequent upon the aforesaid order, the applicant was reinstated into service with all consequential benefits by order

dtd.9.9.2011(Annexure-A5). Thereafter the respondents issued a fresh charge memorandum dtd.8.1.2010 on the same set of charges and the inquiry culminated in the imposition of penalty of dismissal from service imposed by the disciplinary authority vide order dtd.20.2.2015. The applicant preferred detailed appeal before the appellate authority who afforded him a personal hearing on 17.4.2015. Thereafter the appellate authority passed order dtd.19.8.2015(Annexure-A6) allowing the appeal and modifying the penalty from dismissal to that of reduction to a lower stage in the time scale of pay by 2 stages. It was further ordered that the said penalty would come into force from 20.2.2015 and will be in force till the date of the retirement of the applicant on superannuation that is up to 31.8.2018 i.e. for a period of 3 years, 6 months & 9 days. The appellate authority further ordered that the applicant would not earn his annual increments during the period of such reduction till the date of his joining duty and further directed that the said period will be treated as 'dies non' for all purposes. It further ordered that the entire period for which the applicant was under suspension shall be treated as 'non-duty' for all purposes. The applicant preferred OA.No.156/2016 before this Tribunal seeking to quash the entire disciplinary proceedings including the orders of the disciplinary and appellate authorities. This Tribunal vide order dtd.24.1.2017(Annexure-A7) disposed of the said OA by setting aside the appellate authority's order as far as the treatment of intervening period between date of original order of compulsory retirement till the date of rejoining duty consequent of reinstatement as dies non and also the direction to treat the period placed under suspension as non-duty. However the modified penalty imposed by the appellate authority was sustained. Thus it makes clear that the period from initial date of suspension in 2011 till the

date the applicant was finally reinstated by the appellate authority's order has to be treated as the period spent on duty by the applicant. This means the applicant is entitled for all service benefits including seniority, promotion etc. Shri A.S.Shivalingappa who was appointed along with the applicant in 1984 and M.Srinivasa Murthy who was joined after the applicant in the post of Sr.Field Assistant were promoted as Technical Assistants by memorandums dtd.24.12.2001(Annexure-A8) and 30.9.2003(Annexure-A9) respectively. As per the seniority list of Technical Assistants as on 31.12.2004(Annexure-A10), a number of persons who were promoted as Field Assistants after the date of promotion of the applicant were promoted as Technical Assistants. The applicant submitted representation on 3.1.2012 for promotion as Technical Assistant from the date he became entitled to. In response to the same, a reply dtd.18.5.2012(Annexure-A11) was given to the applicant to the effect that when the case of Sri Shivalingappa was considered by the DPC, his case was also considered and since he was facing inquiry, sealed cover procedure was adopted. On opening the sealed cover, it was found that the DPC had not recommended his case for promotion to the post of Technical Assistant as his records were not satisfactory and hence his case was not considered for promotion w.e.f. 24.12.2001 when his immediate junior was considered for promotion. Another memorandum dtd.23.2.2017(Annexure-A12) was also issued by the respondents in response to the representation of the applicant stating that as the applicant is undergoing the penalty as imposed by the appellate authority which will be in currency till his date of retirement, the case for promotion can be examined only upon the completion of the penalty period as per DOPT OM dtd.28.4.2014 & OM dtd.3.11.1995.

2. The applicant submits that when the High Court had held that the applicant shall be reinstated in to service with all consequential benefits and when the said decision had been upheld in the writ appeal and review petition by the High Court, it was incumbent upon the respondents to extend all consequential benefits including consideration for promotion to higher posts etc. Although it was found on opening the sealed cover that the DPC did not recommend his case because his service records were unsatisfactory, in the subsequent DPCs, the case of the applicant apparently is not considered. Therefore, non consideration of his case when his immediate junior was promoted on 30.9.2003 and further promotions after 2003 onwards is unjust, illegal and against the direction of the Hon'ble High Court. His case ought to have been considered every time the DPC had met from 2002 onwards till a fresh charge memorandum was issued on 8.1.2010. Even subsequent to the issue of charge sheet dtd.8.1.2010, his case ought to have been considered and the recommendations ought to have been kept in a sealed cover. But from a reading of impugned memorandum dtd.23.2.2018, it does not appear that his case been considered from 2002 onwards. Therefore, non consideration of his case is unjust and illegal. Being aggrieved, the applicant has filed the present OA seeking the following relief:

- a. Call for records of the case from the respondents and on perusal*
- b. Issue a writ of mandamus directing the respondents to consider the case of the applicant for promotion to the post of Technical Assistant by convening a review DPC, if necessary, in respect of each of the DPC meetings held from the year 2002 onwards and if found fit promote the applicant and extend all consequential benefits without further loss of time as the applicant is attaining the age of superannuation on 31.8.2018*
- c. Grant such other relief/s as this Hon'ble Tribunal deems fit to grant to the applicant including an order as to costs of the litigation in the interest of justice.*

3. On the contrary, the respondents have submitted in their reply statement that the applicant was appointed as Field Assistant on 20.9.1984 under 1st respondent and was promoted as Sr.Field Assistant on 23.1.1989. While working as Sr.Field Assistant at Silkworm Seed Production Centre, CSB, Chintamani, he was placed under suspension w.e.f. 27.7.2001 and disciplinary proceedings were initiated against him. On completion of disciplinary proceedings, a major penalty of 'compulsory retirement' was imposed on him by the Director, NSSO, CSB, Bengaluru being the Disciplinary Authority vide order dtd.7.2.2003. The said penalty was confirmed by the Member-Secretary, CSB, Bengaluru/Appellate Authority vide order dtd.22.9.2003. However, the said penalty was set aside by the Hon'ble High Court of Karnataka vide order dtd.5.1.2007 on the ground that the Director, NSSO, CSB Bengaluru who has passed the order of compulsory retirement is lower in rank to the Member-Secretary, CSB. However, High Court has given liberty to the CSB to pass appropriate orders to redo the matter in accordance with law. The SLP filed before the Hon'ble Supreme Court was rejected by confirming the order of the High Court. As per the directions of the High Court, the applicant was reinstated to duty vide order dtd.9.9.2011 as Sr.Field Assistant with all consequential benefits i.e. back wages for the relevant period, viz., from the date of his compulsory retirement to the date by which he joins the service subsequent to his reinstatement, his suspension period involved in the disciplinary case shall be treated as 'duty' for all purposes, subject to the de novo inquiry that has been initiated against him by the Member-Secretary, CSB vide charge memorandum dtd.8.1.2010. Accordingly, the applicant had reported to duty at P2 Basic Seed Far, CSB, NSSO, Yelagiri Hills(Tamil Nadu) on 15.9.2011. His case for promotion to the post of Technical Assistant was

examined in the DPC meeting held on 13.12.2001 while he was under suspension as per rules. Since he was under suspension w.e.f. 27.7.2001, findings of the DPC were kept in sealed cover. Due to reinstatement, sealed cover was opened on 11.5.2012 to see the recommendations of the DPC for taking further action. The grading for the ACR 1995-96, 1996-97 & 1997-98 is average, for 1998-99 is good, for 1999-2000 is below average(adverse) and the ACR for 2000-2001 contain adverse remarks. As per the findings of the DPC, his service records were unsatisfactory. The grading in the ACR for 1999-2000 is below average which is adverse. The DPC therefore does not consider him fit for promotion. Therefore, the applicant was not found eligible for promotion to the post of Technical Assistant w.e.f. 24.12.2001 i.e. from the date on which his immediate junior namely Sri N.Nanjundaswamy was considered for promotion.

4. The respondents submit that as per the orders of the Hon'ble High Court, the reinstatement of the applicant was ordered pending de novo enquiry. Accordingly, disciplinary proceeding/de novo enquiry was initiated under Rule 14 of CCS(CCA) Rules, 1965 vide memorandum dtd.8.1.2010 by the Member-Secretary, CSB against the applicant. On completion of de novo enquiry, a major penalty of dismissal from service was imposed on the applicant vide order dtd.20.2.2015. However, on appeal by the applicant, the Chairperson, CSB, being the appellate authority vide order dtd.19.8.2015 ordered for the reduction/modification of the major penalty of dismissal from service to the major penalty of reduction to a lower stage in the time scale of pay by two stages. The said penalty came in to effect from the date of the penalty order dtd.20.2.2015 and that would be in force till the date of his retirement on superannuation i.e. up to 31.8.2018. Further he will not earn his annual increment of pay during the

period of such reduction in the time scale of pay. The intervening period between the date of his dismissal from service till the date of his reinstatement into Board's service has been treated as 'dies non' for all purposes; the entire duration for which he was placed under suspension in the case would be treated as non duty for all purposes. Against the said order dtd.19.8.2015 passed by the Chairperson, CSB, the applicant filed OA before this Tribunal and the Tribunal vide order dtd.24.1.2017 while agreeing the appellate order dtd.19.8.2015 only to the extent of the imposition of the reduced/modified penalty on the official, has ordered that as far as treating the suspension period as 'non-duty' and treating the intervening period from the date of his dismissal from service till the date of his rejoining duty consequent on reinstatement by order dtd.19.8.2015 as 'dies non' is unjustified and cannot be sustained. Thereby, the Tribunal has set aside the appellate authority's order dtd.19.8.2015. In compliance to the said order, the competent authority has ordered for the payment of duty pay and allowance(i.e., difference between the subsistence allowance and the duty pay and allowances) and full duty pay and allowance in respect of the intervening period between his dismissal from service and the date of his rejoining duty, consequent on his reinstatement into the Board's service. In view of the above, the major penalty of 'reduction to a lower stage in the time-scale of pay by two stages was in force till the date of his retirement on superannuation. Therefore, the question of considering his case for promotion during penalty period does not arise. Hence, the applicant is not entitled to any relief and the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that when he was reinstated into service, it was necessary for the respondents to open the sealed cover and when it was found that there were

adverse entries against him, it was incumbent upon the respondents to notify the applicant about adverse remarks more particularly when the said remarks have come in the way of his promotion. When several Sr.Field Assistants of CSB filed WP.Nos.38776-38804/2002(S.PRO) to consider their representation for promotion as they were having requisite qualification and experience in the field, the Hon'ble High Court has passed orders permitting the petitioners to submit detailed representation afresh with further direction to the respondents to dispose of the said representations. Upon filing of representations, the respondents have granted promotion to the petitioners as Technical Assistant from July 2005. Since as on July 2005, the applicant was not under any cloud, his case also should have been considered along with cases of several writ petitioners or at least liberty be given to the applicant to represent on similar lines to those of the petitioners in the said writ petitions. Further, in terms of the Hon'ble Supreme Court order in the case of *Dev Dutt vs.UOI*, the un-communicated adverse remarks cannot be considered for denying promotion.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant was punished with the penalty of compulsory retirement in February 2003 and after a series of proceedings before the Hon'ble High Court of Karnataka and the Hon'ble Apex Court, he was finally reinstated in September 2011. A denovo disciplinary proceeding was taken up in the year 2010 which led to the penalty of dismissal from service in February 2015. The appellate authority modified this punishment to that of reduction to lower stage in the time scale of pay by 2 stages vide its order in August 2015. The intervening period has been considered as if he has been on duty based on the orders of this Tribunal which modified the orders of the appellate authority.

Vide Annexure-A11, the respondents have informed the applicant that the sealed cover kept in the DPC meeting held on 13.12.2001 was opened on 11.5.2012 and it was noted that the DPC had found him not fit since the remarks in his annual ACR for the year 1999-2000 was below average and his ACR for 2000-2001 contained same adverse remarks based on which, the DPC did not consider him fit for promotion. As rightly contended by the applicant, it is apparent that these adverse remarks were not forwarded to him since the sealed cover itself was opened only on 11.5.2012 after the completion of the various proceedings before various judicial fora. The applicant now claims that he should be considered on par with the various petitioners in WP.No.38776-38804/2002(S-PRO) of the Hon'ble High Court of Karnataka and based on the orders of the High Court dtd.18.1.2005, he should be considered for promotion on par with those who were promoted in July 2005 and he should be given the liberty to represent on similar lines to those of the petitioners in the said writ petition. From the proceedings, it is obvious that the intervening period has been cleared and at a certain stage, as rightly contended by the applicant, after 2002, the case of the applicant could have been looked at for his eligibility for promotion based on his ACR etc. However, the respondents also could not be faulted because various proceedings were going on before the judicial fora and no final decision could be taken in this matter since as late as 2015, the matter was still pending. We also have to accept his contention that while he was not given adequate opportunity to offer his explanation against the adverse remarks, the same should not be considered as final as has been made clear by the Hon'ble Apex Court in the case of *Dev Dutt vs. UOI*.

7. We therefore, allow the applicant to represent on similar lines as made out by the writ petitioners cited supra and the respondents shall consider the same and pass appropriate orders for giving him the notional promotion with effect from the earliest date possible. This they shall do so within a period of three(3) months from the date of issue of this order. The OA is allowed to this limited extent as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01386/2018

Annexure-A1: Senior List of Field Assistants as on 10.2.1989
Annexure-A2: Order dtd.5.1.2007 in WP.46579/2003
Annexure-A3: Order dtd.9.3.2009 in WA.240/2007
Annexure-A4: Order dtd.16.10.2009 in RA.177/2009
Annexure-A5: Order dtd.9.9.2011 reinstating the applicant
Annexure-A6: Order dtd.20.2.2015 of Appellate Authority
Annexure-A7: Order dtd.24.1.2017 in OA.156/2016
Annexure-A8: Memorandum dtd.24.12.2001
Annexure-A9: Memorandum dtd.30.9.2003

Annexure-A10: Seniority list of Technical Assistants as on 31.12.2004

Annexure-A11: Impugned memorandum dtd.18.5.2012

Annexure-A12: Impugned memorandum dtd.23.2.2008

Annexures with reply:

-NIL-

Annexures with rejoinder:

Annexure-A13: Order dtd.18.1.2005 in WP.38776-38804/2002(S.PRO)
