

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/675/2019

Date of Reserve:06.01.2020
Date of Order: 22.01.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

IIIa Srikanth, aged about 47 years,S/o. Late I.Satyanarayana, resident Official Quarters No.T-10/2, NAD, Sunabeda-763 004, presently working as STS/DGM, Naval Armament Depot, Sunabeda, Koraput-763 004 (Group-A).

...Applicant

By the Advocate(s)-M/s.D.K.Mohanty
S.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Defence, Central Secretariat, New Delhi-110 001.
2. The Chief of Naval Staff, Integrated Headquarters, New Delhi-110 001.
3. Flag Officer Commanding in Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam-14.
4. Director General of Naval Armament, Integrated Headquarters, Ministry of Defence (Navy), R.K.Puram, West Block-V, New Delhi-110 066.
5. General Manager, Naval Armament, Sunabeda-4, Koraput-763 004.

...Respondents

By the Advocate(s)-Mr.P.R.J.Dash
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as STS/DGM, Naval Armament Depot, Sunabeda in the State of Odisha. In this Original Application under Section 19 of the A.T.Act, 1985, he has challenged the legality and validity of order dated 27.09.2019 (A/4) passed by Respondent No.5, whereby and whereunder his placement from Senior Time Scale to the Senior Time Scale (Non Functional Second Grade) Group-A Gazetted in INAS cadre with effect from 02.07.2019 in the pay level 12 of 7th CPC Pay Matrix has been treated as cancelled, due to administrative reason. In the circumstances, he has sought for the following reliefs:

- i) To quash the cancellation of promotion vide order dated 27.09.2019 under Annexure-A/4.
- ii) To direct the Respondents that the order dated 23.09.2019 under Annexure-A/2 which is in consonance of the order of Screening Committee dated 19.09.2019 under Annexure-A/1 is justified & give consequential service & financial benefits.
- iii) To pass any other order/orders as deemed fit and proper.

2. The factual matrix, as revealed from the O.A. is that in pursuance of the recommendations made by the Group 'A' Departmental Screening Committee, the Competent Authority approved placement of a number of Senior Time Scale Officers of INAS cadre including the applicant in the Senior Time Scale (Non Functional Second Grade) carrying Pay Level-12 of 7th CPC Pay Matrix with effect from 02.07.2019, as per A/1 dated 19.09.2019. Based on A/1, Respondent No.5 passed an order dated 23.09.2019 (A/2). According to applicant, he assumed the charge of the promotional post of STS(NFSG) on 24.09.2019. While the matter stood thus, on 27.09.2019, Respondent No.5, without any authority and even without giving an opportunity to the applicant, cancelled the order dated 23.09.2019 (A/2) stating "due to administrative reason". On a query made, the applicant could come to know that a charge sheet had been framed against him in the month of May, 2019, as communicated to him on 12.08.2019. Since his promotion took effect from 02.07.2019, prior to which no charge sheet had been issued to him, the applicant submitted a representation dated 03.10.2019 (A/5) to Respondent No.5 to revoke the order treating the order dated 23.09.2019 as cancelled and in the meantime, he approached this Tribunal in the instant O.A. praying for the reliefs as quoted above.

3. The grounds on which the applicant has laid his claim are that as per OM dated 08.01.2003, the recommendations for grant of NFSG are required to

be kept in a sealed cover, if the officer concerned is covered by the following three situations as on 1st January of the relevant Calendar Year in which the case of the concerned officer matures for grant of NFSG.

- i) Where the officer is under suspension.
- ii) Where a charge sheet has been issued and the departmental proceedings for disciplinary action are pending.
- iii) Where prosecution for a criminal charge is pending in a Court of Law.

4. According to applicant, the charge sheet in the disciplinary proceedings against him was issued to him on 12.08.2019 whereas the Departmental Screening Committee approved for promotion to the post of STS(NFSG) with effect from 02.07.2019. Therefore, at the time of consideration for grant of NFSG by the Screening Committee, there was no proceedings initiated and/or pending against him. He has further submitted that having joined the promotional post on 24.09.2019, cancellation of his promotion by virtue of order dated 27.09.2019 (A/4) due to administrative reason is unwarranted and uncalled for, which in other words, displays an arbitrary action of the Respondent No.5 purportedly, to harass the applicant. It is the case of the applicant that as per settled principle of law, without affording him an opportunity to have his say, order passed vide A/4 to his prejudice is not sustainable in the eye of law. In view of this, the applicant has contended that the action of the Respondents is illegal and unreasonable since it is hit by Articles 14, 16 and 21 of the Constitution of India.

5. Per contra, respondents have filed a counter-reply. The main thrust of the counter-reply is that in pursuance of order vide IHQ/MOD(N)DCP, New Delhi letter No.CP(G)/2112/JSG(NF)/DPC/2019 dated 19.09.2019 placing the applicant to STS (NFSG) with effect from 02.07.2019, Civilian Establishment

Order No.21/2019 dated 23.09.2019 was published by Respondent No.5 for implementation. According to Respondents, a disciplinary proceedings had been initiated against the applicant vide Ministry of Defence Memorandum No.5(20)/2018-D(Lab) dated 08.05.2019, which was received by the Respondent No.5 on 08.08.2019 through Headquarters Eastern Naval Command, Visakhapatnam's letter dated 31.07.2019. This Memorandum was handed over to the applicant on 12.08.2019, which the applicant had acknowledged its receipt vide R/3 dated 12.08.2019. According to respondents, since the applicant is under disciplinary proceedings, his placement in NFSG will be implemented only if he is exonerated of the charges and this is the reason, why order dated 23.09.2019 was treated as cancelled. It has been pointed out that the aforesaid action is in pursuance of the directives issued by the IHQ/MOD(N)/DCE, New Delhi vide letter dated 10.10.2019 (R/4), whereby it has been instructed that the placement of the applicant in the higher grade may be kept in abeyance till further orders by IHQ/DCP. Respondents have made it clear that the representation submitted by the applicant on 03.10.2019 has been forwarded to HQENC vide Respondent No.5's letter dated 04.10.2019 whereby clarification in the matter has been sought from the competent authority. While his grievance is pending consideration, the applicant without waiting for the decision, has approached this Tribunal in the instant O.A. and therefore, this O.A. in the present form is premature. Further, the respondents have brought to the notice of this Tribunal that after issuance of Civilian Establishment Order No.21/2019 dated 23.09.2019, the General Manager (Respondent No.5) had been on temporary duty to Visakhapatnam from 23.09.2019 to 26.09.2019 and during this period, the applicant had officiated as General Manager, NAD, Sunabeda.

In the time between, he processed his pay fixation proposal to Audit Authorities for placement to STS(NFSG) without the knowledge of the General Manager. In view of this, it has been contended that the applicant being in-charge of General Manager should not have discharged the statutory duties and therefore, pay fixation on promotion vide A/3 as made by him in the capacity of officiating General Manager is bad in law.

6. Applicant has not filed any rejoinder to the counter.
7. We have heard the learned counsels for both the sides and perused the records including the written notes of submissions filed by the parties concerned.
8. Before proceeding to adjudicate the matter on merit, it is apt to note that the respondents in their counter-reply have raised an objection that the applicant soon after filing his representation dated 03.10.2019 has rushed to this Tribunal without waiting for the decision to be taken thereon and therefore, the present O.A. is not maintainable being premature.
9. In this connection, we would like to mention that by dint of order dated 27.09.2019 (A/4) whereby the Civilian Establishment Order No.21/2019 dated 23.09.2019 has been treated as cancelled, there existed a cause of action for the applicant to approach this Tribunal, because, by that prejudice had already caused to him. Therefore, even if he, after submitting his representation to the authorities concerned, has simultaneously, approached this Tribunal, the O.A. is maintainable within the scope and meaning of Section 19 read with Sections-20 and & 21 of the A.T.Act, 1985, since there was no ostensible reason for the applicant to wait until a decision is taken by the respondents.

10. As regards the point raised by the respondents that during the period when the General Manager had been on tour to Visakhapatnam, the applicant being In-Charge of the General Manager should not have dealt with the statutory matters, like fixation of pay in NFSG, we do not find this contention to be reasonable and considerate inasmuch as, the applicant has only got the Civilian Establishment Order No.21/2019 dated 23.09.2019 that had been passed by the General Manager in pursuance to the IHQ of MoD(N)/DCP Letter No.CP(G)/2112/JAG(NF)/DPC/2019 dated 19.09.2019 (A/2) implemented. This, in our considered view, does not constitute discharge of statutory functions by the applicant when he was officiating as General Manager.

11. However, from the pleadings of the parties the sole point to be decided in the present O.A. is whether the applicant having acknowledged receipt of Memorandum of Charge dated 08.05.2019 on 12.08.2019 is entitled to get the benefit arising out of his placement in Senior Time Scale (NFSG) with effect from 02.07.2019 in pursuance of the recommendations made by the Departmental Screening Committee, as approved by the Competent Authority vide communication dated 19.09.2019 (A/1).

12. In support of his case, the applicant has placed reliance on the decision of CAT, Principal Bench in O.A.No.1848/2005 decided on 25.07.2006 (Jyoti Shankar vs. UOI & Ors.) and according to him, the applicant herein being similarly situated person, the ratio decided therein should be applied.

13. We have perused the aforesaid decision of CAT, Principal Bench. In that O.A., the applicant having joined as Inspector in the Income Tax Department had been promoted to Group A post of Assistant Commissioner, followed by further promotions as Joint Commissioner as well as Additional

Commissioner. An order was passed on 3.9.2003 by virtue of which he was granted NFSG with retrospective effect, i.e., 1.1.2003 and thereafter, by an order dated 17.09.2003, his pay was fixed. However, the fact remains that a major penalty proceedings under Rule 14 of CCS(CCA) Rules, 1965 drawn on 24.6.2002 were issued to the applicant on 24.2.2003. In the wake of disciplinary proceedings, purportedly as an inadvertent mistake, the respondents withdrew NFSG granted to the applicant, which gave rise to the litigation before CAT, Principal Bench. The Tribunal, while dealing with the OM dated 8.1.2003 issued by the DOPT, held as follows:

- “11. In so far as the above memorandum is concerned, it does not lay down anywhere in supersession to earlier OM dated 6.6.2000 that NFSG is a promotion. Accordingly, we have no hesitation to hold that being a segment of JAG grant of NFSG to Group A officer is still grant of higher pay scale. However, suitability for the aforesaid of the officer is to be determined in internal Selection Committee.
- 12. In the above OM dated 8.1.2003 there has been a reference to DOPT OM of 9.10.89 according to which for consideration of appointment to selection grade being non-functional to Group A officers apart from overall performance Screening Committee would consider 5 years ACR and on their recommendation the approval for NSFG would be accorded.
- 13. The only difference, which has been made vide OM dated 8.1.2003, is introduction of sealed cover. As a condition precedent it is provided that as on 1st January of the relevant calendar year in which the concerned officer matures for grant of NFSG the date of the meeting of internal Selection Committee would be relevant. This leaves no doubt that it is only on 1st January of the relevant year in which the meeting of the internal Selection Committee held if an officer has been issued a charge sheet in the departmental proceedings sealed cover would have to be resorted to.
- 14. Though unlike promotion resort to sealed cover where the resort to sealed cover procedure has been laid down in extenso where at the time of DPC if a charge sheet is issued sealed cover is to be resorted to. DOP&T OM issued on 14.9.92 reiterated vide OM dated 25.10.2004 provides that for a regular promotion para 2 of the DOPT memorandum dated 14.9.92 where on being placed under sealed cover

and before actual promotion takes place in the event sealed cover is not resorted to, i.e., in the event while at the time of DPC none of the conditions, i.e., one of which issue of the charge sheet was not existing yet before actual promotion is resorted to if any of the conditions of enquiry exists then case has to be placed under sealed cover.

15. We are of the considered view that sealed cover procedure is synomious with regular promotion. However, on a deviation in a case like grant of NFSG where it is not treated as a promotion the only provision which has been borrowed from DOPT OM dated 14.9.92 is a condition of issue of the charge sheet but other conditions as to whether NFSG would be denied before actual promotion when one is issued a charge sheet would have no application. It is rational and logical because if all the conditions attached to a regular promotion regarding sealed cover are applied in case of grant of NFSG it would transform it into a regular promotion which is not factually correct as NFSG is still despite issue of DOPT OM dated 8.1.2003 has been treated to be a segment of JAG and not a promotion but an upgradation of the pay scale.
16. With the aforesaid interpretation in consonance with DOPT OM dated 8.1.2003 where sealed cover is to be resorted to in a very limited application the contention put forth by the learned counsel for the respondents as to applicability of Clause 7 of DOPT OM dated 14.9.92 and reliance on decision of the Apex court in R.S.Sharma case is misconceived.
17. This leaves to us on the issue whether resort to sealed cover in the present case is in consonance with the rules and is justifiable ? It is no more res integra that sealed cover in NFSG would have to be resorted to only when a charge sheet has been issued and a departmental proceedings for disciplinary action are pending. Apex Court in Union of India vs. K.V.Jankiraman (1991) 4 SCC 109 in so far as sealed cover procedure is concerned held as follows:-

“17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus, read, there is no inconsistency in the two conclusions”.

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14. In Paragraph-21, the CAT, Principal Bench has noted as follows:

"21. In the light of the above, applying the ratio to the facts and circumstances of the present case, it is no more res integra that the internal Screening Committee for JAG was constituted and considered the cases before 3.9.2003 and on that day NFSG was accorded to the applicant w.e.f. 1.1.2003. Admittedly also the charge sheet, i.e. memorandum under Rule 14 of the CCS(CCA) Rules, 1965 was prepared on 24.6.2002 but was issued to the applicant vide order dated 24.2.2003 issued by the Chief Commissioner where it has been observed that a letter dated 24.6.2002 received from the Under Secretary for further action the same was sent to the applicant which he received on 25.2.2003. What is relevant for placing one case in sealed cover is the issue of the charge sheet. A mere decision on the file unless in process in communication and goes out of the hand would not amount to issue. In the present case the memorandum though is dated 24.2.2002 had been withheld by the respondents and is only issued to the applicant through the Chief Commissioner on 24.2.2003. In such an event the issue of charge sheet would not relate back to 24.6.2002 but to a subsequent date when it has gone out of the hands of the disciplinary authority and is in the process of being communicated to the applicant and the only proof of his being issued is a communication dated 24.2.2003. Accordingly, on 1st of January, 2003 when the applicant had been accorded the benefit of NFSG the meeting having been held on 3.9.2003 of the Internal Screening Committing having accorded the benefit from a retrospective date, i.e., 1.1.2003, the applicant was not issued any charge sheet by that time. His case cannot be placed under sealed cover. Moreover, as there is no provision as NFSG not being promotion to deem it under sealed cover before actual promotion, deletion of the name of the applicant from list is not only against the instructions regarding sealed cover procedure but is contrary to OM dated 8.1.2003".

15. In the case in hand, the Charge Memorandum dated 08.05.2019 was forwarded to the General Manager, Naval Armament Depot vide letter dated 31.07.2019 (R/2) with a request to serve the same on the applicant and this was served on the applicant on 12.08.2019. Viewed from this angle, the date of issue of Memorandum of Charge, i.e., 31.07.2019 to the General Manager,

Naval Armament Depot, Sunabeda (Respondent No.5) with a request to serve the same on the applicant cannot be the deemed date of initiation of disciplinary proceedings. Therefore, the date of receipt of Memorandum of Charge by the applicant herein, i.e., 12.08.2019 is the deemed date of issue of Memorandum of Charge. Of course the respondents have not mentioned in their counter-reply as to when the Departmental Screening Committee was held to consider grant of NSFG. However, it is evident from the order dated 19.09.2019 that the Competent Authority having approved the recommendations of the Departmental Screening Committee accorded the benefit of NFSG on the applicant retrospectively with effect from 02.07.2019 and by that time no charge memo had been issued to the applicant. Therefore, by no stretch of imagination his case could be put under the sealed cover. In view of this, cancellation of the said benefit of NFSG vide order dated 27.09.2019 on the ground of administrative reason is uncalled for. Thus, we answer the point in issue in favour of the applicant and against the respondents.

16. For the reasons discussed above, we quash the order dated 27.09.2019 (A/4) and direct the respondents to release the benefits received by the applicant vide order dated 23.09.2019 (A/2) within a period of sixty days from the date of receipt of this order.

17. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)