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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1181/2001

This the 4th day of April, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Lekh Ram S/O Krishan Lal,
UDC of Garrison Engineer (Hospital)
Delhi and R/O 172 Vasant Nagar,
Vasant Vihar, New Delhi.

... Applicant

(By Shri S.C.Saxena, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Defence,
Govt. of India, South Block,
New Delhi.

2. Chief Engineer,
Headquarters Western Command,
Chandi Mandir.

3. Garrison Engineer (Hospital),
Rao Tula Ram Marg,
Delhi Cantt-110010.

... Respondents

(By Shri R.N.Singh, Advocate)

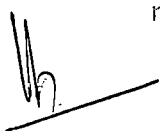
ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Member (A) :

Applicant has challenged the following orders :

1) paragraph 4 of orders dated 30.1.2001 in C.P.
No.417/2000 in O.A. No.2160/1998 (Annexure-III A)
whereby applicant was accorded liberty to agitate
against the cause of action through appropriate
original proceedings and the concerned C.P. was
dismissed;

2) Annexure-I dated 8.12.2000 whereby applicant's
request for opening the sealed cover for



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considering his promotion from the date his juniors were promoted was rejected; and

- 3) Annexure-II order dated 31.3.1998 whereby, among others, applicant was promoted to the post of UDC.

2. Applicant has sought that he should be promoted with effect from the date his juniors were promoted with consequential benefits after quashing two chargesheets.

3. At the outset, Shri R.N.Singh, learned counsel of respondents, questioned the maintainability of this OA on the ground that applicant has challenged the order dated 30.1.2001 passed on his CP No.417/2000 in OA No.2160/1998. Learned counsel of applicant has not been able to provide any satisfactory explanation regarding the challenge to the aforesaid order passed by the Tribunal. Thus, challenge to paragraph 4 of order dated 30.1.2001 in CP No.417/2000 cannot be entertained.

4. It is an admitted fact that while applicant was working as LDC in the office of Garrison Engineer, Bhatinda during the period 10.8.1985 to 31.7.1987 he was proceeded against in departmental proceedings under rule 14 of the CCS (CCA) Rules vide memorandum dated 9.10.1988 (Annexure-III^β). Applicant submitted his defence statement dated 7.11.1988 and the enquiry was completed on 15.1.1991. However, when the matter was processed by the authorities, it was decided that imposition of a minor penalty could be considered. Accordingly, a chargesheet under rule 16 of CCS (CCA) Rules was served

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upon applicant vide memorandum dated 24.6.1996. Applicant submitted his defence statement dated 2.7.1996. The competent authority passed order dated 20.7.1996 (Annexure-X) awarding a penalty of censure against applicant.

5. In our view, we do not find any infirmity in the action of respondents in proceeding against applicant under rule 16 of CCS (CCA) Rules when it was considered by them on consideration of applicant's defence statement that it was not a fit case for imposition of a major penalty. Thus, there is nothing inappropriate in the action of respondents to proceed against applicant on the same charge under rule 16. Applicant has been awarded penalty of censure on consideration of the defence statement submitted by him. After imposition of censure, respondents have adopted the sealed cover procedure while considering applicant's promotion, while juniors to applicant have been promoted.


6. The punishment of censure was imposed upon applicant on 20.7.1996. To a specific query, learned counsel of respondents stated that although the penalty of censure remains in operation for a period of one year which expired on 20.7.1997, they have not yet opened the sealed cover and effected the recommendations contained therein. On behalf of applicant nothing has been stated in the rejoinder regarding the effective period of operation of the penalty of censure being one year. However, the learned counsel of applicant referred to order dated 26.3.1991 in the case of A.D.Khunger v.

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Union of India, OA No.608/CH/1990 (CAT, Chandigarh Bench). The facts of the present case are distinguishable from those of the case of A.D.Khunger inasmuch as the DPC in that case was held subsequent to the conclusion of the departmental proceedings, whereas in the present case DPC had been held earlier and the departmental proceedings were concluded later on against applicant, culminating in imposition of the penalty of censure.

7. In the facts and circumstances of the case and having regard to the reasons recorded above, in our view, interest of justice would be met if respondents are directed to open the sealed cover forthwith and in case the DPC has recommended promotion to applicant, the same be put into effect with effect from expiry of one year from 20.7.1996 when the penalty of censure was commenced against applicant. Ordered accordingly. Applicant shall be entitled to consequential benefits of grant of promotion in terms of the recommendations of the DPC and in that event, after a period of one year from 20.7.1996.

8. The OA is allowed in the above terms. No costs.


(V. K. Majotra)
Member (A)


(Ashok Agarwal)
Chairman

/as/