

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 902/95
T.A. No.

199

DATE OF DECISION 24.11.99

Shri Vinod Prakash Petitioner
Shri G.D. Gupta Advocate for the Petitioner(s)
Versus
U.O.I. & Ors. Respondent
Mr. Anil Singhal Proxy for Advocate for the Respondent
Mrs. P.K. Gupta

CORAM

The Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
The Hon'ble Mrs. Shanta Shastry, Member (A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal

VR
(V. Rajagopala Reddy)
VC (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 902/95

New Delhi this the 24th day of November, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Shri Vinod Prakash,
S/o Shri Jagan Nath Tiwari,
R/o 67, Bhatwara,
Meerut (U.P.)

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Defence,
South Block,
New Delhi.
 2. The Financial Advisor (Defence Services),
Ministry of Defence,
South Block,
New Delhi.
 3. The Controller General of Defence Accounts,
Ministry of Defence,
West Block-V, R.K. Puram,
New Delhi-110 011.
 4. The Controller of Defence Accounts,
Western Command,
Chandigarh.
- ...Respondents
- (By Advocate Mrs. P.K. Gupta) *Mr. Anil Singhal, Proxy Counsel for*

ORDER

By Reddy, J.-

The grievance of the applicant is that he is entitled to have been promoted to the post of Assistant Accounts Officer (in short "AAO") retrospectively w.e.f. 1.4.1997, with all consequential benefits.

2. The facts of the case are as follows:

3. The applicant was initially appointed as

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Upper Division Clerk during 1964 in the Office of the Controller of Defence Accounts (Other ranks), Mysore. Thereafter on his successful completion of Subordinate Accounts Services Examination Part I & Part II in 1972 and 1974 respectively, he was promoted as Section Officer on 17.2.1975. As a result of restructuring of the Accounts Staff in organised Accounts Cadres, the post of the Section Officer (Accounts) was upgraded to the post of A.A.O. to the extent of 80% of the post, in the revised pay scale of Rs. 2000-3200 w.e.f. 1.4.1987. The detailed instructions for implementing the policy of restructuring was announced in the Office Memorandum dated 12.6.1987 (Annexure A2). For filling up the post of AAOs, the departmental Promotion Committee (for short DPC) was held from January 1988 to April 1988 where the persons who had become eligible upto 1.4.1987 were considered. The applicant was one of the Officers considered by the DPC for the post of AAO. The grievance of the applicant is that he was not promoted though his juniors were promoted by order dated 10.5.1988. He thereupon made representation dated 11.5.1988 requesting to apprise him of the reasons as to why he was not promoted. In response thereto by letter dated 16.5.1988 (Annexure A-5), the respondents stated that he could not be promoted due to "some administrative reasons".

4. The applicant submits that meanwhile, the charge sheet dated 28.3.1988 was served on him on 30.6.1988. He had submitted the explanation to the charge sheet, on 21.6.1988. Thereafter an enquiry

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ensued and the penalty of stoppage of three increments for three years without cumulative effect was imposed on him by order dated 21.7.1989 (Annexure A-10). The applicant submitted an appeal against this order and the appellate authority reduced the penalty to stoppage of two increments for two years without cumulative effect, by order dated 23.11.1989. The applicant was thereafter promoted to the post of JAO by order dated 30.8.93 w.e.f. 11.9.89 and that the financial benefits should be granted to him from the date of actual promotion/expiry of penalty period whichever was later. The applicant was served with the order dated 27.7.94 wherein it was stated that the respondents relied upon para 7 readwith para 2 (1) of the Department of Personnel and Training's OM dated 12.1.88. It was stated that as the chargesheet has been served on the applicant during which the DPC was considering the promotion of the applicant and others, his case was placed in a sealed cover. The applicant filed the OA questioning the action of the respondents in adopting the sealed cover procedure as to his promotion to the post of AAO.

5. The main contention of the learned counsel for the applicant Sh. G.D. gupta is that as the DPC was convened for the purpose of considering the cases of eligible candidates for promotion to the post of AAOs w.e.f. 1.4.87 and the applicant was served with the chargesheet in March, 1988, i.e, subsequent to the recommendations made by the DPC the institution of disciplinary proceedings cannot be a valid ground for postponing his promotion adopting the sealed cover

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procedure. He further contends that the reliance placed on para 7 of the OM dated 12.1.88 is wholly illegal, inasmuch as it has no application to the promotions to be made w.e.f. 1.4.87

6. The learned counsel for the respondents, however, contends that it was permissible for the respondents to take into consideration any disciplinary case that might be initiated against the employee even subsequent to the recommendations made by the DPC, provided the same has not been accepted by the respondents in the meanwhile. As the applicant was imposed a penalty as a result of disciplinary proceedings instituted against him the findings of the DPC were kept in a sealed cover and he was promoted in the impugned order having due regard to the penalty.

7. We have given our careful consideration to the submissions made on either side and perused the record.

8. The only point that arises for consideration is whether paragraph-7 of the OM dated 12.1.88 has any application in the matter of promotion of the applicant. The facts are not in dispute in this case. In view of the restructuring of accounts staff the posts of Section Officers were upgraded to the posts of AAO to the extent of 80% of the posts in the revised scale and that the restructuring was given effect to from 1.4.87. The DPC has been constituted for the purpose of filling up the posts of AAO and the applicant was one of the candidates who has been

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considered by the DPC during its deliberations between January, 1988 to April, 1988. It is true that the ACRs prior to the period ending December, 1987 have been placed before the DPC and that by that time no disciplinary action was pending against the applicant. The OM dated 12.1.88 has been issued by the DOP&T purporting to comply with the directions of the Supreme Court in Union of India v. Tajinder Singh dated 29.6.86, in supersession of the earlier instructions on the subject for the purpose of promotion of Government servant in cases where disciplinary proceedings are pending. Paragraph 2 speaks of the action to be followed by the Government in case of promotion after the DPC submitted its recommendations, inter alia, in cases where the Government servant were under suspension, where disciplinary proceedings were pending or a decision was taken to initiate disciplinary proceedings or in respect of whom a criminal charge was pending.

9. Paragraph-7 of the OM reads as follows:-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case has been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

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10. It speaks of a situation with regard to the post recommendatory period, i.e., after the recommendations have been submitted by the DPC to the Government and prior to the approval of the same and giving actual promotion. During the said period if any disciplinary proceedings have been initiated or any other circumstances mentioned in para 2 of the OA arises, then the Government should consider the case of the candidate as if he was initially considered. His promotion would eventually be made into consideration the punishment that may be awarded.

11. As seen supra, the charge memo has been issued in March, 1988 after the DPC submitted its recommendations but before the Government accepted the same. On the basis of the charge the enquiry was held and the applicant was imposed a penalty. The findings of the DPC were, accordingly, kept in a sealed cover and they were eventually acted upon and the case for promotion was considered, having due regard to the penalty imposed upon him. Had he been completely exonerated the applicant would have been promoted w.e.f. 1.4.87 in terms of para 3 of the OM dated 12.1.88. Since the applicant was penalised the applicant was promoted w.e.f. 11.9.89. This OM has been issued in January, 1988 before the DPC met for considering the case of the applicant for promotion. The memo of charge issued to the applicant relates to his conduct much prior to 1.4.87, as a Government servant. Once it is brought to the notice of the Government that a disciplinary enquiry has been initiated regarding the conduct of the candidate

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during the relevant period the Government is entitled to consider the circumstances before it, before it decides to promote the applicant to a higher post. Shri G.D. Gupta, learned counsel for the applicant laid heavy stress upon the vacancy of the post of AAO having arisen on 1.4.87. The date of the vacancy, in our view, has no relevance to the consideration for promotion. The law is trite that a Government servant has no right for promotion, his right is only for claiming consideration for promotion. In order to consider an employee for promotion the Government is entitled to prescribe its own guidelines to be followed by the DPC. In the circumstances, the consideration by the Government of the circumstances regarding pendency of disciplinary proceedings is a valid consideration. We are of the view that para 7 of the OM cannot be said to be inapplicable in respect of the applicant.


12. We are also of the view that the OA is liable to be dismissed on the ground of limitation. The case of the applicant is that the applicant was not promoted alongwith others in the order dated 10.5.88. The applicant having ^{been} aggrieved by the same made representation on 11.5.88 but the respondents rejected the representation. The applicant has not questioned this order in a Court of law, though he was aggrieved by the action of the respondents in denying him promotion. The disciplinary enquiry has been completed and the applicant was penalised by order dated 21.7.89 and the order of the appellate authority was also passed on 23.11.89. The applicant was

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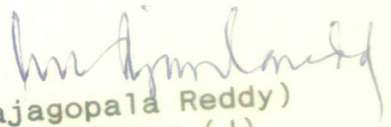
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promoted as Assistant Accounts Officer by order dated 30.8.93 as stated supra. The grievance of the applicant being that he should have been promoted along with others by order dated 10.5.88 the limitation started from that date and the applicant ought to have filed the OA within the period of limitation, as prescribed under Sections 20 and 21 of the Administrative Tribunals Act, 1985. Even assuming that the limitation started from the date of promotion order of the applicant i.e. 30.8.93, even then the OA is barred by limitation.

13. The O.A. is, therefore, dismissed, both on the ground of limitation as well as on merits. No costs.


(Smt. Shanta Shastry)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)