

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1921/1994

New Delhi this the 8th day of September, 1997.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI S. P. BISWAS, MEMBER (A)

K. N. Barthwal,
R/O Sector IX/899,
R. K. Puram,
New Delhi-110022.

... Applicant

(By Shri A. K. Bhardwaj, Advocate)

-Versus-

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.
2. The Administrative Officer,
Dte. of Eng. J&M (VARJA CELL),
Air Headquarters,
Vayu Bhawan,
New Delhi-110011.
3. Shri Sudershan Lal Trikha,
C/O The Administrative Officer,
Dte. of Eng. J&M (Varja Cell),
Air Headquarters,
Vayu Bhawan,
New Delhi-110011.

... Respondents

(By Shri Dushyant Pal, Departmental Representative)

O R D E R (ORAL)

Shri Justice K. M. Agarwal,

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for quashing regulation 4 (5) of the Armed Forces Headquarters Civil Service (Promotion to Civilian Staff Officer and Assistant Civilian Staff Officer) Regulations, 1968 (in short, the Regulations), besides other reliefs for quashing the

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DPC proceedings convened during 1989, 1990 and 1991 and for review DPC after quashing the impugned order dated 13.12.1991. During the course of arguments, the learned counsel for the applicant gave up his challenge to regulation 4 (5) of the said Regulations and, therefore, we are confining ourselves to the other reliefs claimed in the application.

2. Briefly stated, the applicant has been working as an Assistant in the office of the respondents since 21.10.1980, which is a Group 'B' non-gazetted post. In the seniority list, his position was shown at sl. no. 88. In the year 1987, the applicant became eligible for promotion to the post of ACSO which is a selection post. It is alleged by the applicant that he was also considered along with others and thereafter empanelled for promotion by the DPC in the year 1987, but no promotion was given to him. During subsequent meetings of the DPC, the applicant was considered but not cleared. In the DPC that was held in 1992, the decision of the DPC in regard to the applicant was kept in sealed cover, because during that period he was facing some departmental inquiry. After the conclusion of inquiry, a minor penalty of censure was awarded to the applicant in the year 1992 itself. According to the applicant, after the termination of departmental proceedings, the sealed cover of the DPC ought to have been opened and further action should have been taken.

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That having not been done and the applicant having earlier been found fit for promotion, the applicant filed the present application for the aforesaid reliefs.

3. According to the respondents, the seniority list, which was taken into consideration by the DPC in the year 1987 was quashed by the Tribunal in O.A. No. 1121/1987, K. N. Mishra vs. Union of India and, therefore, the applicant could not be promoted. During the subsequent meetings of the DPC in 1988, 1989, 1990 and 1991, the applicant was not found fit due to lower ranking. In so far as the result of 1992 DPC is concerned, it is submitted that the applicant was awarded a penalty of censure and, therefore, the sealed cover of the DPC was not opened, because even if it was favourable to the applicant, he could not get promotion in view of the penalty of censure imposed on him subsequent to the date of the meeting of the DPC in 1992.

4. The learned counsel for the applicant submitted that there are several authorities which go to say that the penalty of censure is not such a serious penalty on the basis of which a person found eligible by the DPC may be deprived of his promotion. He also submitted that for this reason, the respondents deserve to be commanded to open the sealed cover and to inform the applicant about their decision after going through the recommendations of the DPC.

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5. The departmental representative did not say anything in reply to what was submitted by the learned counsel for the applicant.

6. In this application filed in the year 1994, no relief is claimed in reference to the DPC alleged to have been held in the years 1987 and 1988. The relief claimed in this O.A. is for quashing the DPC proceedings of the years 1989, 1990 and 1991. There has been a considerable delay in lodging a grievance against DPC proceedings of those years. The learned counsel for the applicant, therefore, did not insist for any relief in reference to DPC proceedings of 1989, 1990 and 1991. He submitted that the applicant would be satisfied if the respondents are directed to open the sealed cover of the DPC of 1992 and to pass appropriate orders thereafter on the basis of the recommendations of the DPC in relation to the applicant.

7. The departmental representative submitted that no relief has been claimed in this O.A. in regard to DPC of 1992 and, therefore, no relief can be granted to the applicant in relation to the DPC proceedings of the year 1992.

8. After perusing the record and in the light of the arguments advanced before us, we find that in *the* paragraph 8 (f) of the application, the applicant has

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also made a prayer for any other relief which may be found just and proper in the facts and circumstances of the case. This O.A. was filed in the year 1994. DPC was held in the year 1992. The disciplinary proceedings were also terminated in April, 1992. Allegations made in the application and the reply filed by the respondents show that both parties were conscious of the fact that the DPC held in the year 1992 was also under challenge in this application, otherwise there was no point in urging in paragraph 5 of their counter by the respondents that :-

"....In the year 1992, as a disciplinary case against him was in progress, the recommendations of the DPC were kept in a sealed cover as per the instructions on the subject. On conclusion of disciplinary case, the penalty of "ceusure" was imposed on the applicant vide order dated 27/04/92 (copy annexed and marked as Annexure R-III). The contents of sealed cover could not be acted upon in view of the imposition of penalty."

We are, therefore, of the view that the applicant is entitled to a relief against the respondents to the extent of opening the sealed cover and for acting in accordance with the recommendations made and/or to pass appropriate orders on that basis.

9. In the result, this application partly succeeds and it is hereby partly allowed. The respondents are directed to open the sealed cover of

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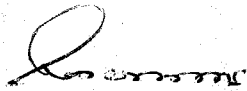
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the DPC held in the year 1992 and thereafter to pass appropriate order on that basis in reference to the claim for promotion to the higher post made by the applicant. No costs.

10. If promotion is denied to the applicant and he feels aggrieved by any such order, he shall be at liberty to challenge such order by filing fresh O.A. or by pursuing any other remedy available to him under law.



(K. M. Agarwal)
Chairman



(S. P. Biswas)
Member (A)

/as/