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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-2035 of 1989

Date of decision: 5.9.1990

S.S. Rudra

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri G.K. Aggarwal, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

Hon'ble Justice Shri Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgment of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

This application has been filed by Shri S.S. Rudra, Asstt. Engineer (Civil), C.P.W.D., New Delhi, under Section 19 of the Administrative Tribunals Act, 1985 against the impugned orders contained in Memo No. 12/5/82-VS I dated 22.6.85 and order No. 1/25/85-VS II dated 13.6.85 issued by the Chief Engineer (Vigilance) C.P.W.D. and has sought relief to direct the respondents to promote him from Assistant Engineer to Executive Engineer with effect from the date he was cleared for promotion at the 1985 DPC with retrospective benefits.

2. Brief facts of the case, as stated by the applicant, are that he has been working as Assistant Engineer (Civil) CPWD since 15.9.62 and was within the zone of promotion to Executive Engineer since 1977. His juniors were promoted in 1977. He was due for promotion in 1977 and all later years. He was cleared for promotion in March 1985 by the DPC and in later years also, but he was not promoted on the ground that disciplinary proceedings were instituted against him on 25.9.84 and 22.6.85 resulting in 'censure' dated 10.8.88 and 13.6.88 respectively. The proceedings instituted on 25.9.84 are under challenge.

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posted as Asstt. Engineer (Civil) incharge of Sunil/Joshimath Sub Division under Dehradun Central Division No. II during December 1978 and March 1981. Vide Memo dated 25.9.84, (Annexure A-1 to the application), the applicant was chargesheeted in relation to the work quality of Type II quarters in exhibiting lack of devotion to duty under Rule 16 of the CCS (CCA) Rules, 1965. The applicant submitted his reply dated 18.6.87 and the respondents passed the impugned orders dated 13.6.88 (Annexure A-3 to the application) imposing on the applicant the penalty of censure. No enquiry was held and the UPSC was not consulted. There are 7 articles of charge in the chargesheet as per imputation of misconduct (Annexure A-1). The statement of imputation of charges is a bare reproduction of some observations made in a report of the Chief Technical Examiner's office as a result of an inspection carried out by it in October, 1981 of the entire work of the Dehradun Division upto October 1981. The applicant was there upto March 1981. The case of the applicant is that Annexure A-1 does not state anywhere in any of the articles of charge, any specific charge against the applicant himself. It only reads as an inspection report on the work and related/unrelated matters, rather than as a charge-sheet against the applicant. The chargesheet being vague and unintelligible is null and void. The applicant was never informed in writing of the imputation of any misconduct or misbehaviour alleged to have been committed by him. As the chargesheet was vague, the applicant was denied reasonable opportunity to present his defence which violates Rule 16(1)(a) of the CCS (CCA) Rules, 1965. The applicant has also stated that there is no evidence of material to show or suggest that the disciplinary authority ever applied its mind to the inspection report nor formed any opinion on the same. It was necessary to specify the charges against the applicant to hold an enquiry under Rule 14 of the CCS (CCA) Rules in order to pin-point the apportioning of the blame, if any, on the applicant for techni-

cal defects said to have been noticed by the inspection team in October 1981, much after the applicant had left the scene. Despite the handicaps, the applicant submitted his representation dated 18.6.87 (Annex. A-2 to the application) citing several pieces of official record, but the disciplinary authority did not take into consideration the representation. That is apparent from the impugned order dated 13.6.88 (Annexure A-3 to the application).

3. The applicant has also stated that under Rule 16(1)(d) of the CCS (CCA) Rules, it was binding on the disciplinary authority to record a finding on each imputation of misconduct or misbehaviour as against the applicant. No such finding has been recorded on any imputation of misconduct or misbehaviour against the applicant. It is also stressed that every finding on every allegation is not a finding on any charge. The disciplinary authority without recording any guilt on any article of charge in the impugned order dated 13.6.88 has imposed the penalty of 'censure' concluded as follows:

"Considering the replies of Shri Rudra, connected documents and circumstances and the remoteness of the site of work, I have come to the conclusion that the ends of justice would be met if Shri SS Rudra, Assistant Engineer (C) is awarded a penalty of 'Censure'. I decide and order accordingly."

The applicant states that the two pre-requisites to the imposing of any penalty, namely, that there must be an express finding of guilt charge-wise and that the guilt found must constitute 'misconduct' are absent. There was no finding to the effect that there was a duty cast on the applicant which he did not perform.

4. The applicant has also stated that Chief Engineer (Vigilance) could not be disciplinary authority as he is the prosecuting and investigating arm of Respondents 1 and 2. Chief Engineer (Vigilance) is a staff officer and not a line officer

and as such cannot be the disciplinary authority. The disciplinary authority also ignored the personal interest of Shri RL Vahi, the Executive Engineer incharge of Dehradun Central Dn.II, in the carriage contractor. The applicant has raised several points against his Executive Engineer, Shri RL Vahi, who was responsible for most of the paragraphs written in the report of the Chief Technical Examiner. Shir Vahi was given a simple advice to be careful in future and ends of justice would have been met if the same advice could be given to him, if at all it was necessary. It has been brought out that censure is no bar to promotion. Prior to 13.6.88, there was no order of penalty against the applicant. He was cleared for promotion in March 1985, but not promoted only because of pendency of proceedings that resulted in the 'censure' on 13.6.88 and 10.8.88 and has been cleared by all DPCs eversince 1985.

5. The respondents in their reply have stated that the application is misconceived and the Tribunal may not interfere with the penalty imposed by the competent authority as the Tribunal is not vested with the powers of appellate jurisdiction as held in the case of Union of India Vs. Parma Nand - A.I.R. 1988 S.C. 1185.

6. It has been stated that the Chief Technical Examiner's organisation inspected the work of construction of residential accommodation at Sunil - 20 Type I quarters - during the period December 1978 to March 1981 and found that the applicant had committed certain irregularities in getting the work executed. He was served with a chargesheet under Rule 16 of the CCS (CCA) Rules 1965 and after considering his reply, he was awarded the penalty of 'censure' on 13.6.88. The applicant had submitted an appeal to the appellate authority for consideration but because of the present application before the Tribunal, further action on the appeal has been stopped. It has been stated that the post of Executive Engineer is filled from the grade of Asstt. Executive Engineers (Group 'A') on seniority-cum-fitness and from Asstt. Engineers (Group 'D') on merit-cum-seniority in the ratio of 50:50. The applicant came in the consideration

zone only in the panel which was prepared on 27.2.85. The recommendation of the Screening Committee in respect of the application was kept in a sealed cover as per existing instructions of the Government.

7. It has been denied by the respondents that the contents of charges are vague and unintelligible as the charge contained in each of the articles of charge was clear and the replies given by the applicant to each of the articles of charge were also clear based on which the disciplinary authority did not consider it necessary to hold an enquiry under Rule 14 of the CCS (CCA) Rules, but considered the matter under Rule 16 of the CCS (CCA) Rules and imposed a penalty of 'censure'. Committing of irregularities is considered a sufficient guilt as far as departmental proceedings are concerned. The applicant as contained in CPWD/ was expected to follow the instructions and not following of these regulations amounts to lack of devotion to duty. It has also been stated that the appointment of Chief Engineer (Vigilance) as the disciplinary authority is not bad in law. According to Government of India's instruction 5 below Rule 12 of the CCS (CCA) Rules, 1965, the authority who conducts a preliminary enquiry in a case of misconduct of a Government servant is not debarred from functioning as a disciplinary authority in the same case. The recommendations of the Screening Committee were kept in a sealed cover due to pendency of disciplinary cases against the applicant. The rules provide that unless the disciplinary/criminal proceedings due to which recommendations of DPC are kept in a sealed cover end in exonerations of the Govt. servant concerned, the recommendations of the DPC should not be acted upon. If the proceedings do not end in exonerations, the Govt. servant should be considered for promotion only by the next DPC held in due course after conclusion of the proceedings for making promotion against subsequent vacancies. As the applicant has been imposed the penalty of censure vide orders dated 13.6.88 (under consideration in a separate OA) and 10.8.88,

his case for promotion could be considered only by the next DPC in the normal course. The respondents have also stated that in another case filed by Shri Gupta, Asstt. Engineer in OA 910/89, the Principal Bench of the Tribunal, has stayed the holding of DPC for promotion to the grade of Executive Engineers.

8. The learned counsel for the applicant stressed the point that the penalty of 'censure' cannot stop anyone's promotion. In this case the penalty was imposed in 1988 while he was cleared for promotion in 1985 by the D.P.C. He also said that according to rules, the penalty could only be imposed by the D.G., C.P.W.D., and not by the Chief Engineer (Vigilance). He said that in this case the chargesheet itself is vague without listing any specific charge against the applicant and as such it is not valid. He said that under rule 16(1)(d) of the CCS (CCA) Rules, the disciplinary authority has to record a finding of each misconduct which has not been done and prayed that the penalty should be quashed and the applicant promoted from the date he was cleared by the D.P.C. The learned counsel for the respondents said that the chargesheet had been served on the applicant in June 1985 and, therefore, unless a new D.P.C. meets the applicant cannot be promoted.

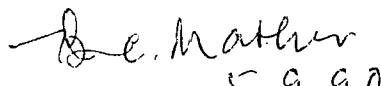
9. We have gone through the pleadings and given full consideration to the arguments by the learned counsel. We certainly cannot go into the question whether the penalty awarded was adequate or harsh. We may also not go into the merit of the question whether the Chief Engineer (Vigilance) was competent to be the disciplinary authority, specially as there is no imputation that he had taken any part in the preliminary enquiry or even the investigation. The main question before us is regarding the promotion of the applicant even though he has been awarded the penalty of 'censure'. In the case of Haridev Goyal Vs. Union of India - A.T.C. 1989 Vol. 10 744 - this Tribunal has held that 'censure' is not a bar against promotion. This has been clarified in the Department of Personnel & Administrative Reforms O.M.

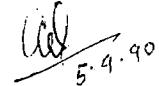
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quoted in this judgment.

No. 21/5/70-Estt.(A) dated 15.5.71/ In the case of Shiv Shankar Saxena Vs. Union of India - S.L.J. 1989 (1) 247 - the Chandigarh Bench of this Tribunal has discussed the implications of withholding promotions where departmental proceedings have ended with the imposition of a minor penalty. It has been held that where an applicant has been awarded the penalty of 'censure' and is further punished by non-confirmation (in this case it would be promotion), it would amount to double jeopardy. As the minor penalty of 'censure' is not to be treated as a penalty to withhold the promotion of an officer, we are of the opinion that the applicant's case should be decided on the basis of the D.P.C. held in 1985. If he had otherwise been found fit by the D.P.C., the penalty of 'censure' in 1988 should not stand in the way of his promotion. We order accordingly and direct the respondents to consider the case of the applicant for promotion to the grade of Executive Engineer (Civil) on the basis of the findings of the D.P.C. held in 1985.

10. The argument of the respondents that in another case filed by Shri G.L. Gupta, Asstt. Engineer in OA 910/89 holding of DPC for promotion to the grade of Executive Engineer has been stayed would not apply to this case as the promotion of the applicant has to be considered on the basis of the D.P.C. meeting already held in 1985. We direct that the promotion of the applicant should be finalised within a period of two months from the date of receipt of these orders on the lines indicated above. The application is disposed of accordingly. Parties to bear their own costs.


 B.C. Mathur
 5.9.90
 Vice-Chairman


 5.4.90
 (Amitav Banerji)
 Chairman