

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2464/1989
T.A. No.

199

DATE OF DECISION 08.06.1990.

<u>Shri K.P. Dohare</u>	<u>Retired</u> Applicant
<u>Shri S.S. Tewari</u>	Advocate for the <u>Retired</u> (s) Applicant
Versus	
<u>Union of India & Another</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? */M*
4. Whether it needs to be circulated to other Benches of the Tribunal? */M*

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The reliefs sought by the applicant, who has filed this application under Section 19 of the Administrative Tribunals Act, 1985, are that the impugned order dated 7.12.1988 passed by the President be set aside and quashed and that the respondents be directed to regularise his promotion with effect from the date on which his immediate junior had been regularised in the post of Additional Industrial Adviser(Chemicals).

2. There is no dispute about the facts of the case. On 12.6.1986, the respondents issued a memo to the applicant proposing to take action against him under Rule 16 of the CCS(CCA) Rules, 1965 for having made a false allegation against

his superiors. He denied the charges. On 1.12.1987, a minor penalty of stoppage of increments for a period of two years with effect from 1.9.1988 was imposed on him. This was challenged by him by filing OA 726/88 in this Tribunal which was disposed of by judgment dated 23.9.1988, the operative part of which is as under:-

"(i) The respondents are directed to pass their order in the suo moto review proceedings within a period of two months from the date of communication of this order.

(ii) The respondents shall consider and take a decision in the matter of promotion of the applicant to the next higher post in accordance with the relevant rules and final decision in the suo moto review within a period of three months from the date of decision in the said review.

(iii) The respondents shall similarly consider and take a decision in the matter of confirmation of the applicant in the post of Development Officer in accordance with the relevant rules within a period three months from the date of communication of this order."

3. RA 128/88 filed by him was rejected by our judgment dated 4.5.1989.

4. On 7.12.1988, the President passed an order whereby the order dated 1.12.1987 was modified and the penalty of

censure was imposed on the applicant. He has challenged the validity of this order but we do not see any reason or justification to interfere with the same.

5. The real grievance of the applicant is that during the pendency of the departmental enquiry, his juniors have been promoted from earlier dates but he has been promoted as Additional Industrial Adviser(Chemicals) by order dated 28.3.1989. He is due to retire on attaining the age of superannuation on 31.7.1990.

6. We have heard the learned counsel of both parties and have perused the records of the case carefully. The respondents were also good enough to place before us the relevant files dealing with the meetings of the D.P.C. held between 1985 and 1989. We have duly considered them.

7. DPCs were held on 1.4.1987 and 3.3.1989. The DPC held on 1.4.1987 considered filling up of one vacancy for the year 1985 and 3 vacancies for the year 1986. The suitability of the applicant was considered for both years. His assessment had been placed in sealed covers. For the year 1985, Shri R.S. Ghosh was recommended. He was admittedly senior to the applicant and has been graded as "Very Good" by the DPC. For the year 1986, S/Shri R.N.P. Dubey, S.K. Luthra and P.V. Mehta, all of whom had been graded as "Very Good" by the DPC were recommended. Shri Mehta was junior to him.

8. After the original order dated 1.12.1987 imposing minor penalty was passed, the respondents opened the sealed covers. As regards 1985, the DPC had recommended as

follows:-

" Having examined the character rolls of Shri K.P. Dohare, the committee assessed him as "Good" for the vacancy pertaining to 1985. He could not be included in the panel for want of sufficient number of vacancies".

9. For the year 1986, the DPC had recommended as under:-

" Having examined the character rolls of Shri K.P. Dohare, the committee assessed him as "Good" for the vacancy pertaining to 1986. On the basis of the above assessment, the committee recommend that his name may be included in the panel at Serial No.3-A below Shri S.K. Luthra".

10. In other words, the recommendation of the DPC was to promote S/Shri Dubey, Luthra and the applicant. Instead, Shri P.V. Mehta, the junior of the applicant was promoted in place of the applicant, on ad hoc basis so that he could be reverted in the event of the applicant's selection by the DPC and his exoneration in the departmental proceedings.

11. The respondents did not hold a Review DPC after the final orders were passed on 1.12.1987 or after the same was modified by order dated 7.12.1988. The sole question for consideration is whether the respondents should have convened a Review DPC to consider the suitability of promotion of the applicant after the final orders, as modified, were passed on 7.12.1988, specially when the DPC had adjudged him fit for promotion and recommended his promotion immediately after Shri S.K. Luthra, his immediate senior. Instead of doing this, the respondents convened a regular DPC on 3.3.1989 when he was recommended for promotion but was placed at Serial No.3 in view of lower

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grading given to him in the assessment by the DPC.

12. Thus, Shri P.V. Mehta in the 1987 DPC and S/Shri R. Sachdev and O.P. Saxena in the 1989 DPC have superseded him.

13. In our opinion, the procedure followed by the respondents is not legally sustainable. They ought to have convened a Review DPC after 7.12.1988 when the final order of punishment was imposed on him. The 1987 DPC had recommended his promotion but kept the same in a sealed cover which was opened on 10.12.1988. Though he had been graded only as "Good", being a Scheduled Caste candidate, he was entitled to the safeguard against supersession in promotion in view of the Department of Personnel & A.R. OM No.36012/3/75-Estt.(SCT) dated 6.10.1976. That is why the 1987 DPC included his name in the select list.

14. To our mind, the non-promotion of the applicant with effect from the date 1.4.1987 when his junior Shri P.V. Mehta was promoted, is neither fair nor just. In ^{SLJ} ~~Shiv Shanker~~ Saxena Vs. Union of India & Others, 1989(1) (CAT) 247, the Chandigarh Bench of this Tribunal has held that "once a Government servant, who has been awarded the minor penalty of censure, is considered for promotion by the competent DPC, then he must be given promotion in his turn and not from the date following the conclusion of the departmental enquiry as has been done by the respondents in the instant case". It was further observed that under Rule 11 of the CCS (CCA) Rules, 1965, withholding of promotion of a delinquent employee is by itself a minor penalty independently of other minor penalties.

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So a question would arise whether imposition of the penalty of censure can be construed in a manner so as to result in double punishment to the concerned Government servant, in that it may amount to not only censure but also withholding of promotion. This was not legally permissible.

15. We reiterate the same view. Accordingly, the application is partly allowed and disposed of with the following orders and directions:-

(i) We uphold the validity of the impugned order dated 7.12.1988.

(ii) The respondents shall convene a Review DPC as expeditiously as possible but in any event not later than 15th July, 1990, to consider the suitability of promotion of the applicant for the vacancies which occurred in 1986 and for which he had been found suitable by the DPC convened on 1.4.1987. If the Review DPC finds him suitable for promotion, the applicant shall be promoted from 1.4.1987. We make it clear that this should be done without reverting Shri P.V. Mehta, the junior of the applicant, who was promoted in the third vacancy for the year 1986, in view of the impending retirement of the applicant on 31.7.1990. The applicant would also be entitled to arrears of pay and allowances from 1.4.1987 to 3.3.1989 and annual increments. His pension and retirement benefits should be calculated on the above basis.

(iii) There will be no order as to costs.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEMBER (A) 874490

Aug 8/6/90
(P. K. KARTHA)
VICE CHAIRMAN (J)