

Original Application No.1645 of 2013

This the 03rd day of March, 2021.

Present.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Hon'ble Mr. Tarun Shridhar, Member (A)

Chandra Karan Tiwari, S/o Shri Indra Mani Prasad Tiwari, R/o 4/61, Yojna
No.3, Avas Vikas Colony, Jhunsi District Allahabad.

.....Applicant

By Advocate: Shri M.K. Upadhyaya

Versus

1. Union of India through the Secretary, Ministry of Finance (Department of Financial Services), Govt. of India Sansad Marg, New Delhi.
2. The Joint Secretary, Ministry of Finance (Department of Financial Services) Govt. of India, Sansad Marg, New Delhi.
3. The Registrar, Debt Recovery Tribunal, 9/3 Panna Lal Road, Allahabad 211 002.

.....Respondents

By Advocate: Sri R.K. Srivastava

ORDER

By Hon'ble Mr. Tarun Shridhar, Member (A)

The applicant is aggrieved that his rightful claim for appointment on promotion to the post of Recovery Officer in Debt Recovery Tribunal has been rejected and the respondents have invited applications for filling that post by way of selection on deputation basis in spite of the fact that his name was recommended by the Departmental Promotion Committee. The reliefs, he seeks by way of the present O.A., are as follows:-

- “(i) *To issue a writ, order or direction in the nature of certiorari quashing the impugned recruitment notification dated NIL issued by the respondents Nos. 1/2, so far as it pertains to the post of Recovery Officer at Allahabad Bench of the Debt Recovery Tribunal (Annexure A-1 to Compilation No. I of this petition)*

- (ii) *To issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 1/2 to give effect to the recommendations of the Selection Committee/D.P.C held on 05/06.08.2010 and to promote the petitioner on the post of Recovery Officer, Allahabad Bench of the Debt Recovery Tribunal as a departmental candidate and issue formal order in this respect giving effect to with effect from 02.02.2012 when Shri M.P Parmar has been promoted who too was recommended for promotion by the same DPC for promotion to the post of Recovery Officer, Debt Recovery Tribunal, Nagpur Bench with all consequential benefits including the seniority and pay and allowances attached with the said post, within a period as may be fixed by this Hon'ble Tribunal.*
- (iii) *To issue a writ, order or direction in the nature of mandamus directing the respondents Nos. 1/2 not to fill up the post of recovery officer at Allahabad Bench of the Debt Recovery Tribunal upon which the petitioner has duly been recommended for promotion as a departmental candidate by the Selection Committee/DPC assembled on 05/06.08.2010 but the recommendation has not been illegally acted upon, until the present OA is decided finally.*
- (iv) *To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- (v) *To award cost of the petition in favour of the petitioner”.*

2. Learned counsel for the applicant draws attention to the DOPT Circular No. F. No. 22034/4/2012-Estt. (D) dated 2nd November 2012, which clearly lays down that promotion cannot be withheld merely because disciplinary proceedings are pending against the employee. The rightful course is to adopt the sealed cover procedure and take a decision on the recommendation of the DPC subsequent to culmination of such disciplinary proceedings. No doubt, the applicant has been named in an FIR filed by Debt Recovery Tribunal, Jabalpur, however, no cognizance of charges has been

taken by any court of law. Hence the applicant cannot be denied the promotion especially when he has been exonerated in the disciplinary proceedings. Pointing out to para 8 of the said DOPT Circular, he further argues that judicial proceedings are deemed to be instituted only when the Magistrate takes cognizance of the complaint or report of the Police Officer. Curiously, the learned counsel for the respondents also relies upon this Circular justifying denial of promotion to the applicant and points out that since the applicant is still facing criminal proceedings as an FIR has been lodged in which he is also named, he has been correctly denied the benefit of promotion despite the recommendation of the DPC. One Shri M.P Parmar whose case has been cited by the learned counsel for the applicant as having been accorded promotion by virtue of the recommendation of the same DPC is free of any disciplinary proceedings or charges he points out. Hence, these two cases cannot be equated.

3. We have heard the learned counsel for the parties and also perused the record.

4. It is evident that the DPC had found that the applicant fit for promotion and it is also on record that there was nothing against the applicant on the date of such DPC which recommended his name. Both disciplinary proceedings and the FIR happened subsequently. The applicant stands exonerated in the disciplinary proceedings and competent Magistrate is yet to take cognizance of the allegations/charges contained in the FIR against the applicant. Therefore, the rules and instructions clearly stipulate that promotion cannot be denied squarely on the ground that applicant is not clear from vigilance angle. The Circular of DOPT makes it abundantly clear that at the conclusion of disciplinary proceedings, the sealed cover is to be opened and promotion is to be granted notionally from the date of promotion of the

juniors. To further clarify the matter, relevant portions of the said DOPT Circular are quoted below:-

“7 The law on sealed cover based on the judgment of the Apex Court in Union of India Vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), is by now well settled. The OM dated 14.9.92 confined the circumstances for adopting sealed cover to the three situations mentioned in para 2 of the said OM. Even after recommendation of the DPC, but before appointment of the officer if any of the three situation arise, the case is deemed to have been kept in sealed cover by virtue of para 7 of the OM dated 14.9.92.

8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said OM dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6) (b) (i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6) (b) (i) of CCS (Pension) Rules, 1972 provides as under:-

“(b) Judicial proceedings shall be deemed to be instituted.

(i) In the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made”.

5. In the light of these specific and unambiguous instructions, it is evident that the respondents have erred in denying the benefit of promotion to the applicant on this single ground. No doubt, the applicant does not have right to be promoted but he certainly has a right for consideration for promotion and if after such consideration he is declared fit, an appropriate decision is to be taken on such a recommendation. We hold that the action of the respondents in not taking the recommendations of the DPC to a logical conclusion, is incorrect and hence dispose of the OA by way of a direction to them that reasoned decision in accordance with rules be taken on the recommendation

of the DPC and accordingly grant the benefit of promotion if he does not attract any other ineligibility within a period of two months from the date of receipt of a certified copy of the order. No order as to costs.

(Tarun Shridhar)

Member (A)

(Justice Vijay Lakshmi)

Member (J)

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