

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.595/87

Date of decision:- 17.11.92.

Sh.S.P.Gupta

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Applicant

versus

Union of India through
Additional Secretary,
Department of Supply,
Ministry of Commerce & anr... Respondents.

CORAM:- THE HON'BLE SH.P.C.JAIN, MEMBER(A)
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant ..

Sh.S.C.Gupta, Senior
counsel with Sh.L.R.Goel,
proxy counsel for Sh.Arvind
Gupta, counsel.

For the Respondents ..

Sh.P.P.Khurana, Counsel.

JUDGEMENT(ORAL)

(DELIVERED BY HON'BLE SH.P.C.JAIN,
MEMBER(A))

While working as Assistant Inspecting Officer in the Directorate General, Supplies & Disposals, the Department of Supply, Government of India, the applicant applied for the post of Assistant Director/Inspecting Officer in the aforesaid Directorate, which was advertised for being filled up by direct recruitment. He was selected for the aforesaid post, as is clear from the Union Public Service Commission letter dated 4.9.1980 addressed to him(Annexure A-1). However, he was not appointed to the aforesaid post in pursuance of the above selection admittedly on the ground that memorandum of chargesheet

dated 9.10.79(Annexure A-2) was served on him for initiating major panalty proceedings under Rule 14 of the CCS(CC&A)Rules,1965. After holding an enquiry,the disciplinary authority imposed upon the applicant, a punishment of reduction in the time scale for three years vide order dated 18.4.81. The applicant preferred an appeal dated 27.5.81 which was disposed of on 22.1.85 by setting aside the aforesaid penalty and remanding the case to the disciplinary authority for further inquiry. However, no further inquiry was held and it appears that no further proceedings whatsoever were taken in pursuance of the aforesaid memorandum of chargesheet. These facts are not disputed. Even after the setting aside of the punishment, the applicant was not given the benefit of appointment to the post for which he was selected by the Union Public Service Commission. It is in this background that he filed this OA under Section 19 of the Administrative Tribunals Act,1985 praying for a direction to the respondents to give him his due appointment to the post of Assistant Director(Inspection)/Inspecting Officer, as a direct recruit, with effect from the date on which he was so selected by the UPSC,namely

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4.9.80, and to give to him all his due benefits of pay, arrears, seniority and other perquisites on the basis of his appointment as aforesaid.

2. The respondents have contested the OA by filing their reply. The stand taken by the respondents in the counter-reply is two-fold, firstly the applicant could not be given appointment after receipt of the recommendations from the Union Public Service Commission in 1980 for want of vigilance clearance. Secondly, that the appellate authority while setting aside the penalty, remitted the case to the disciplinary authority for further inquiry and thus the departmental proceedings against the applicant have been revived.

3. The applicant filed MP No.2594/88 with which he had enclosed order dated 26.8.88 by which the decision of the President to the effect that further inquiry into the charges at this stage may not produce any better evidence than what has already come forth during the initial inquiry, and, therefore, after taking into consideration all the relevant facts and circumstances of the case, the proceedings against the applicant should be dropped, was communicated. A copy of this order is annexed

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to MP No.2594/88. By this Misc.Petition, the applicant had also prayed for issue of a direction for his final regularisation on the post of Assistant Director. By an order passed on 7.2.89 by a Bench of this Tribunal, a direction was issued that the pendency of the OA shall not bar the respondents from regularising the applicant if he is found entitled to the same. Thereafter, on 30.5.90, Office Order No.17 was issued by which the applicant who was already working as Assistant Director of Inspection/Inspecting Officer(Engg.) on ad hoc basis, was given an appointment on regular basis in an officiating capacity with effect from 23.5.90 and until further orders. Therefore, the question which survives for determination in this case is with respect to the applicant's prayer for appointment with effect from the date of selection in 1980 with consequential benefits of pay, arrears, ~~seniority~~ and seniority etc.

4. The learned senior counsel for the applicant contended that the applicant having been duly selected by the UPSC for the higher post of Assistant Director/Inspecting Officer and denial of appointment to the higher post on account of the pendency of the disciplinary C.

proceedings alone, cannot deprive him of his claim for appointment on the basis of a selection in 1980 with all consequential benefits when the punishment imposed upon on him has been set aside and the disciplinary proceedings have been dropped. We find considerable merit in this contention. It is needless to state that once the disciplinary proceedings and the punishment initially imposed in pursuance of such proceedings finally come to naught, the applicant cannot be made to suffer on account of the initiation of the disciplinary proceedings against him. On the facts and in the circumstances of the case, we have no hesitation in coming to the conclusion that in this case the request of the applicant has to be considered as if no such proceedings were initiated and no punishment was imposed on him. If so, there is no reason as to why he should not be held entitled to the benefit of selection to the higher post of Assistant Director/Inspecting Officer from the date from which persons selected along with him in that selection were given appointment in accordance with the relevant rules on that point, but in the matter of seniority as a direct recruit, he will be governed by his merit position in the selection list.

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5. In the light of the foregoing discussion, this OA is allowed in terms of the direction that the applicant shall be appointed to the post of Assistant Director of Inspection/Inspecting Officer on the basis of his selection in 1979/80 and he shall also be entitled to the difference of pay and allowances admissible thereon between what he was entitled to as aforesaid and what he has already drawn in the grade on the basis of his ad hoc/subsequent appointment on regular basis. As already stated above, his date of appointment in pursuance of the aforesaid selection in 1979/1980 shall be regulated in accordance with the rules and with reference to the date of appointment of others who were similarly selected in that selection. His seniority on the basis of the above selection shall relate to his merit position in the list of selectees. This direction may be complied with within a period of three months from the date of receipt of a copy of this judgement.

On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

J. P. Sharma
(J.P.SHARMA)
MEMBER(J)

P. C. Jain
(P.C.JAIN)
MEMBER(A)