

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 165/1990
T.A. No.

199

DATE OF DECISION 24.08.1990.

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| <u>Shri Charan Singh</u> | Petitioner |
| <u>Shri S.S. Tiwari</u> | Advocate for the Petitioner(s) |
| Versus | |
| <u>Union of India & Others</u> | Respondent |
| <u>Mrs. Raj Kumari Chopra</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? *yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *(No)*
4. Whether it needs to be circulated to other Benches of the Tribunal? *(No)*

JUDGMENT

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

The applicant, while working as Store Keeper Grade I in the Military Engineering Service, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) to quash the memorandum dated 16th May, 1989 issued by Commander Works Engineer (AF), Palam; and
- (ii) to direct the respondents to promote him to the post of Supervisor B/S Grade II from the date of the issue of the order, i.e., 29th March, 1984 along with all consequential benefits flowing from it as well as place him at par with other colleagues of 1984 batch.

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2. The present application was filed on 29.1.1990. When it came up for admission on 2.2.1990, the Tribunal directed notice to be issued to the respondents on admission and interim relief. By way of ex-parte interim relief, it was directed that that the respondents are restrained from taking further action in the departmental enquiry.

3. The respondents have filed their counter-affidavit opposing its admission and on the merits of the case. We feel that the application can be disposed of at the admission stage itself.

4. At the outset, it may be stated that the applicant had filed OA 192 of 1987 which was disposed of by the Tribunal by judgment dated 21.4.1987. His grievance was that though he had been promoted by order dated 29.3.1984 as Supervisor Grade II, he was not posted to the higher post. The Tribunal noted in its judgment dated 21.4.1987 that the promotion order was subject to the condition that there were no disciplinary proceedings against the applicant. The Tribunal was informed that the disciplinary proceedings had actually been initiated against the applicant and were pending. In view of the above position stated at the Bar, the Tribunal observed that it cannot direct the authority to implement the order dated 29.3.1984. The Tribunal directed the respondents to complete the disciplinary proceedings, if any, instituted against the applicant within 3½ months from the date of the judgment and thereafter review the matter and make a fresh order as the circumstances justify.

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5. On 16.5.1989, the respondents served on the applicant a memorandum under Rule 14 of the CCS(CCA) Rules, 1985, together with the statement of article of charge framed against him, the statement of imputation of misconduct or misbehaviour in support of the article of charge framed against him, the list of documents by which the article of charge was proposed to be sustained and the list of witnesses. On 20.1.1990, the disciplinary authority imposed on him the penalty of (a) recovery of Rs.15,000 in 36 equal instalments and (b) reduction to lower post of Store Keeper, Grade II until he is found fit by the competent authority to be restored to the higher post of Store Keeper, Grade I. The applicant has annexed a copy of the said order to his application at pages 32-33 of the Paper Book.

6. There is nothing on record to indicate that the applicant preferred an appeal against the aforesaid order dated 20.1.1990.

7. We have gone through the records of the case carefully and have considered the rival contentions. The applicant has not sought to set aside and quash the order dated 20.1.1990 passed by the disciplinary authority, though the passing of the said order is well within his knowledge. Instead, he has merely sought for quashing the memorandum dated 16.5.1989 which has culminated in the passing of the order dated 20.1.1990. In fact, the interim order was passed by the Tribunal on 2.2.1990 on the mistaken assumption that the departmental enquiry was pending then.

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In the facts and circumstances, we are of the opinion that the applicant is not entitled to the first relief sought by him for quashing the memorandum dated 16.5.1989.

8. As regards the non-promotion of applicant along with his colleagues of the 1984 batch, the respondents have relied on the condition appended to the order dated 29.3.1984 to the effect that the promotion is subject to the condition that the person concerned is not involved in a "disciplinary case". What is stipulated is the pendency of a "disciplinary case" and not the pendency of "departmental enquiry". The respondents have stated in their counter-affidavit that the applicant was the custodian of Government stores in April, 1984 when his promotion to the higher rank was ordered conditionally by order dated 29.3.1984, that he delayed in the process of handing them over, that a Board of officers was constituted in 1986 to determine the value of the stores in question, that the said Board valued the shortage as Rs.50,052.20, that finally the Handing/Taking over was done in December 1986 and that he was given Movement order for his move on promotion to CWE Utility located in Delhi Cantt., where he was not accepted due to non-availability of vacancy and involvement in a disciplinary case. The applicant has not controverted the above facts by filing a rejoinder-affidavit. In our opinion, the non-promotion of the applicant in the facts and circumstances of the case cannot be faulted.

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9. In the light of the foregoing discussion, the application is disposed of at the admission stage itself with the following observations and directions:-

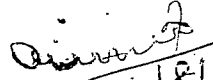
(1) As the departmental enquiry initiated by the impugned memorandum dated 16.5.1989 has been concluded by the passing of the order dated 20.1.1990 by the disciplinary authority, the applicant will be at liberty to challenge the validity of the order of penalty by filing a separate application, after exhausting the remedies available to him under the relevant service rules. We refrain from expressing any opinion on the tenability of imposition of the order of penalty, at this stage.

(2) The non-promotion of the applicant pursuant to the order dated 29.3.1989 cannot be faulted in the facts and circumstances of the case. In case he is exonerated of the charge by the appellate authority or in a subsequent proceeding before the Tribunal, he will be entitled to all consequential benefits, including promotion from the due date.

(3) The interim order passed on 2.2.1990 and continued thereafter has become infructuous as the departmental enquiry had been completed and final orders passed by that date and it is hereby vacated.

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


(D.K. CHAKRAVORTY)
MEMBER (A) 24/8/1990


24/8/90
(P.K. KARTHA)
VICE CHAIRMAN(J)