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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.2642/90

New Delhi this the 21st Day of April, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Binda Singh
S/o Late Sh. Lallu Singh,
H-141, Sector-IV,
Pushp Vihar,
New Delhi. ...Applicant

(None for the applicant)

Versus

1. Union of India through
the Secretary, Ministry
of Defence, Govt. of India,
New Delhi.
2. SA PM and R&D,
Secretary Deptt. of Defence P&D,
New Delhi.
3. Director of Personnel R&D Hqrs.,
Sena Bhawan, New Delhi-11.
4. Director of EDP Systems/
Computer Centre,
Ministry of Defence,
Matcalfe House Complex,
Delhi-110054. ...Respondents

(By Advocate Sh. M.L. Verma, though none appeared)

ORDER (Oral)
(Mr. N.V. Krishnan, Vice-Chairman (A))

This OA was filed on 24.4.90 by Sh. Lalit Kumar Gupta, Advocate. Except for two appearances on 18.12.90 and 13.2.91 this counsel has not appeared thereafter. The applicant appeared in person on two subsequent hearings, the last being on 9.5.91.

2. When this matter came up for final hearing, we noticed on 19.12.94 the above facts and directed notice to be issued to the applicant. The A.D. in respect of that notice has not been received. The applicant is not present today. None is present

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for the respondents either. Presuming service of notice, we could normally have dismissed this application in default. However, as we feel that justice has not been done to the applicant, we proceed to dispose of this case on merits.

3. The brief facts are as follows:-

3.1. The applicant, a Senior Storekeeper in the DRDO was promoted, along with others, as Officiating Store Superintendent by the letter dated 22.1.85 (Annexure R-1 of reply) of the DRDO, an Organisation under the Scientific Adviser to the Raksha Mantri, Ministry of Defence - the respondent - and transferred to another office in Dehradun.

3.2 The applicant's case is that he was not relieved by the superior authorities to enable him to take charge of the post on promotion. He had made representation in this connection, but he was not relieved.

3.3 Subsequently, the order of promotion was cancelled by the Annexure R-4 order dated December, 1985 on the ground that the applicant did not move out promotion.

3.4 The applicant was subsequently promoted again by the order dated 6.1.86 (Annexure R-10) and posted to GPRE, Bangalore. Again, he was not relieved and, therefore, he could not join the post on

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promotion. Therefore, this order of promotion was also cancelled by the order dated 8.12.86 (Annexure R-6).

3.5 The applicant made a representation in this behalf which has been finally turned down by the letter dated 15.12.89 (Annexure R-9), which is a letter from the first respondent to the third respondent and reads as follows:-

"Subject:-PERMISSION FOR MAKING AN APPEAL IN CAT

Reference your Note No.EDP(CC)/94085/PF/BS/RD-145 dated 26 Dec 88 and subsequent reminders.

The case of promotion of Shri Binda Singh, SSK has been considered very carefully. Orders of his promotion to the grade of Stores Supdt. and posting to DEAL, Dehradun and GTRE, Bangalore were cancelled as he did not move to assume charge within the validity period of relevant panels. It is regretted that his request for promotion without being reempanelled cannot be acceded to under the existing rules. In any case the case of his promotion during the years 1985 and 1986 cannot be reopened at this belated stage. He may please be informed suitably."

It is this letter, which has been impugned by the applicant, who seeks a direction to promote him to the post of Stores Superintendent w.e.f. January, 1985, as ordered by the letter dated 21.2.85 and give him consequential benefits.

4. The respondents have filed a reply contesting these claims. It is stated that the orders of promotion clearly indicated that if any individual did not assume charge of the higher post within 60 days from the date of issue of the order it would be assumed that he was not interested in promotion and orders for promotion would be cancelled without any

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further reference to him or to his establishment. It is further stated that on a representation of the applicant dated 7.10.85 that he may be relieved to join duty at Dehradun or if he is not so relieved due to exigencies of service, he be permitted to assume charge w.e.f. 22.1.85 at his present place of posting itself, the Director ordered him to be relieved forthwith (Annexure R-3). However, it is stated in the reply that the applicant did not hand over and continued to remain in the establishment. Hence, his order or promotion was cancelled on 30.12.85 (Annexure R-4). It is also contended that the representation made in 1988 was only with a view to save limitation to file an application before this Tribunal.

5. We have perused the pleadings. There is ample evidence to corroborate the contention of the applicant that he was not relieved. Dr. C.R. Chakravorty, Director of the DRDO sent a DO letter on 31.1.86 (page 25 of the paperbook) in which reference is made to the promotion of the applicant by the letter dated 6.1.86 and his posting to Bangalore. It is clearly stated that the applicant could not be relieved without replacement. It is also stated that the applicant should be helped out and not made to suffer for no fault of his. He, therefore, requested for the transfer of one vacancy of Stores Superintendent from Bangalore to Delhi, where the applicant was working, in exchange of one post of Storekeeper from Delhi to Bangalore. Subsequently there is another letter dated 24.3.86 (page 28 of the paperbook) by Dr. P.K. Bhatt, Scientist 'E', Officer

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Incharge of the DRDO, which is with reference to the posting order of the applicant to Bangalore. This is addressed to RD/PRS/9. It is stated that one post of Stores Superintendent should be transferred to the Delhi Centre or alternatively, a replacement should be given for the applicant. There is another letter of Sh. Sarjeet Singh Scientist 'C' Manager (Admn.) dated 3.12.86 sent again to RD/PRS-9 (page 32 of the paper book) repeating the request and stating that as the applicant cannot be promoted in-situ in Delhi, and as he cannot be relieved without a substitute, a post be created at Delhi so that he can be posted in Delhi itself. The respondents have not referred to any of these letters in their reply.

6. The contention of the respondents that the applicant failed to comply with the order of relief is also not borne out by the record. The Annexure R-3 order dated 10.10.85 passed by the competent authority (his name appears to be Sh. P.K. Bhatt, probably the same authority who wrote the letter dated 24.3.86, referred to above) was marked to the Manager (Admn.) for compliance. That functionary was directed to relieve the applicant forthwith by asking Havildar P.D. Sharma to take over the charge. No order asking P.D. Sharma, Havildar to take over charge or no report of P.D. Sharma that charge was not given to him has been produced. On the contrary the Manager (Admn.) records a note on 3.12.86 as mentioned above (page 32 of the paperbook) to the RDS

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from the fact that he was not relieved due to official reasons. However, this fact will be taken note of in moulding the relief.

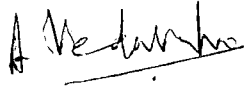
8. It is unfortunate that the competent authorities have not owned up that it was because of their official difficulties that the applicant could not get the benefit of promotion. We are of the view that this should not stand in the way of the applicant getting the promotion which was given to him. In the circumstances, we direct the respondents to deem that the applicant has been promoted to the post of Stores Superintendent with effect from the date on which a person junior to him has taken over charge in pursuance of the order dated 21.2.85 when he was directed to be posted to Dehradun, as if he was relieved to join that post. Consequential benefits in terms of arrears of pay shall be given to him only with effect from 1.1.91 (i.e. immediately after this OA was filed), based on the pay he would have drawn on that date on the higher post of Store Superintendent, had he actually assumed charge in pursuance of the order dated 21.2.85, as deemed above. The respondents shall comply with this order within three months from the date of its receipt. We make it clear that the respondents can transfer the applicant as Store Superintendent to any place as they may choose. No costs.

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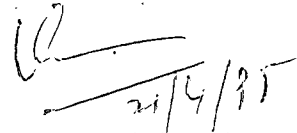
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9. The O.A. is disposed of accordingly.

No costs.



(Dr. A. Vedavalli)
Member (J)



(N.V. Krishnan)
Vice-Chairman(A)

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