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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.No.2232/91

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 21st day of July, 1995

Shri S.K.Goel,
s/o Shri Ugra Sen
Audit Officer
Office of the Director of Audit-I
Central Revenues
New Delhi - 110 002.

... Applicant

(By Shri S.C.Mehta, Advocate)

Versus

The Principal Director of Audit-II
Central Revenues,
Indra Prastha Estate
New Delhi - 110 002.

The Principal Director of Audit-I
Central Revenues
Indra Prastha Estate
New Delhi-110 002.

The Comptroller and Auditor General of India
Bahadursha Zafar Marg
New Delhi - 110 002. ... Respondents

O R D E R(Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

The applicant while filing his application was an Audit Officer in the office of a Principal Director of Audit-I, Central Revenues, New Delhi since 1.11.1990. He is aggrieved by the penalty of censure for misconduct/misbehaviour imposed on him by an order dated 20.6.1990 (Annexure-I) and appellate order dated 25.9.1990 rejecting his appeal and also by supersession in the matter of promotion inasmuch as he was not promoted on 25.10.1989 while many of his juniors were promoted. A minor penalty proceedings under Rule 16 of CCS (CCA) Rules, 1965 with imputation of misconduct was initiated against the applicant by serving of a memorandum dated 5.12.1989. An enquiry was held and it was on the basis of the report of the enquiry

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authority that the penalty of censure was imposed on him. The applicant has stated that the authority who has issued the memorandum of charge is incompetent, that the enquiry was not held in accordance with the rules and that the penalty of censure imposed on him was wholly unjustified. He has further alleged that all his juniors have been promoted on 25.10.1989, specifically his junior Shri Bhu Prasad Gupta. The applicant was wrongly denied promotion and his representation against supersession was rejected firstly by the Principal Director of Audit-I, Central Revenues vide his order dated 14.1.1991 and secondly by appellate authority (Deputy C.A.G) by order dated 12.3.1991. These orders are impugned in this application. The applicant contends that there was no justification for ~~it~~ denying him promotion while his juniors were promoted.

2. The respondents in their reply contended that the disciplinary proceedings against the applicant having been completed in accordance with the rules and ~~that the~~ ^{and} penalty of censure was properly imposed on him. They contend further that the applicant was not promoted along with his juniors because the findings of the DPC in his case ~~was~~ kept in sealed cover on account of the pending disciplinary proceedings.

3. The applicant, in the rejoinder has stated that on the date on which the DPC met or even on the day his juniors were promoted, no disciplinary procedure had been initiated against him as the charge sheet was served on him only on 5.12.1989.

4. We have perused the pleadings and have heard the learned counsel on either side. As the applicant is subsequently promoted as Audit Officer and also as Senior

Audit Officer w.e.f. 1.11.1990 and 3.1.1994 respectively, penalty of censure issued on 20.6.1990 has now lost its significance and therefore, learned counsel for the applicant ~~fairly conceded~~ ~~forcefully contended~~ that it is not necessary to go into that question. Therefore we are not considering the validity, legality, propriety and correctness of the disciplinary proceedings as also the penalty of censure.

5. We have now to consider whether the promotion of the applicant as Audit Officer with effect from 25.10.1989 when his juniors were promoted and the rejection of his representation against supersession is sustainable or not. The applicant claims that he has a clean service record it was absolutely wrong to deny him promotion w.e.f. 25.10.1989 when his junior Shri Bhu Prasad Gupta was promoted on 25.10.1989. The contention of the respondents is that as the disciplinary proceedings against the applicant had already commenced prior to the date of the DPC, the recommendations of the DPC in regard to the applicant were rightly put in the sealed cover, and that was the reason why the applicant was not promoted from the date on which his junior was promoted.

6. Having heard the learned counsel and having perused the counter as also its connected annexures we are convinced that the respondents have not mentioned any thing about the Departmental Promotion Committee's findings which were kept in a sealed cover. The respondents have contended the disciplinary proceedings against the applicant and were commenced on 25.7.1989 to 4.8.1989 when charge sheet was served on him. This conclusion is totally ~~false~~ ^{unwarranted} and untenable. It is seen that by a memorandum dated 2.8.1989 issued from the office of the Director of Audit-I, the

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applicant was asked to explain why disciplinary action should not be taken against him. No decision had yet been taken to initiate disciplinary proceedings.

7. The memorandum of charge was issued to the applicant only on 5.12.89. A copy of this memorandum is available at Annexure-IV. The Departmental Promotion Committee could have adopted the sealed cover procedure only if the memorandum of charge had been served on the government servant. This position is settled by the judgment of the apex Court in Shri K.V.Janaki Raman Vs. Union of India reported in AIR 1991 SC 2010. Therefore, as memorandum of charge was served on the applicant only on 5.12.1989, the DPC which met for consideration of the officials, including the applicant for promotion could not have validly adopted the sealed cover procedure as the promotion of the junior person recommended by the Departmental Promotion Committee took effect from 25.10.1989. Now we have found that the DPC has wrongly adopted the sealed cover procedure against the applicant. It is not clear from the pleadings as to what was the recommendation of the DPC. The respondents in their reply have not disclosed the DPC's recommendations. In these circumstances, we are of the considered view that the relief, that can be awarded to the applicant is a direction to the respondents to open sealed cover in which the recommendation of the DPC of the year 1989 was kept and if not is found that the DPC had adjudged him fit for promotion to promote him to the post of Audit Officer w.e.f. the date on which his junior Shri Bhu Prasad Gupta was promoted, to adjust his seniority accordingly and to refix his pay in the promotion post.

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8. In the light of the above we dispose of this application with a direction to respondents to open the sealed cover in which the recommendations of the DPC in regard to the applicant is said to have been kept by the DPC which met in the year 1989 and if the applicant was adjudged fit for promotion by the DPC to promote the applicant w.e.f. the date on which Shri Gupta, his junior was promoted to adjust his seniority accordingly and to refix his pay accordingly notionally. The above said directions shall complained with the respondents within the period of three months from the date of the receipt of this order. There shall be no order as to costs.

Reedas -

(R.K.AHOOJA)
MEMBER(A)

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(A.V.HARIDASAN)
VICE-CHAIRMAN(J)