

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3124/92

New Delhi this the 2nd day of July, 1999.

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HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. N. SAHU, MEMBER (A)

P.K. Venugopal,
S/o late Shri P.K. Nair,
R/o 34 Canning Lane,
New Delhi.

...Applicant

(By Advocate Shri Sunil Mittal)

-Versus-

1. Union of India through
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.

2. Union of India through
Secretary (R),
Cabinet Secretariat,
Room No.8-B, South Block,
New Delhi.

...Respondents

(By Advocate Shri Madhav Panikar)

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant who was working as Director with respondent No.2 and was on deputation to the Ministry of External Affairs as an Officer on Special Duty from November, 1990 to a foreign country is aggrieved that on his repatriation to the parent department, i.e., respondent 2, he was directed to join as Director, even though, according to him the Departmental Promotion Committee (DPC) had cleared his name for promotion to the post of Joint Secretary by order dated 11.3.91. He has filed this OA, seeking a direction to the respondents to post him as Joint Secretary with seniority and other incidental benefits in terms of the DPC's recommendation of March, 1991.

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2. The applicant states that while he was on deputation with the External Affairs Ministry the DPC has cleared his case in March, 1991 for promotion to the post of Joint Secretary from Director by the aforesaid order in March, 1991. However, his contention is that on his return, he was verbally told to join as a Director, although his juniors have been promoted. He has, therefore, claimed that he should be promoted w.e.f. March, 1991, i.e., from the date his junior was promoted under the "Next Below Rule". In the OA, the applicant has himself referred to an incident which has happened while he was on deputation on 21.8.92. Soon thereafter he was directed to return to India on 28.8.92 which he did on 16.11.92 when according to him he was denied posting as Joint Secretary. Shri Sunit Mittal, learned counsel for the applicant has submitted that the applicant cannot be denied his promotion to the post of Joint Secretary when he returned to India. In the rejoinder filed by the applicant, he has also referred to the order passed by the respondents on 19.3.93, compulsorily retiring him from service under FR 56 (J). This order has, however, not been challenged in this OA. He relies on the judgement of the Supreme Court in Union of India Vs. K.V. Jankiraman (JT 1993 (3) SC 527) and has submitted that the respondents cannot deny him the benefit of promotion to the rank of Joint Secretary with effect from the date his juniors were promoted in March, 1991.

3. The respondents in their reply have submitted that the applicant could not be promoted as Joint Secretary because he was on special assignment on

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deputation to another country at that time. They have, however, not denied that officers junior to the applicant who were approved for promotion were appointed as Joint Secretaries. They have also submitted that the applicant himself has referred to certain details of an incident which occurred in the foreign country on 21.8.92 while he was posted on special assignment, the details of which we have also seen which have been submitted for our perusal in a sealed cover by the learned counsel for the respondents. The respondents have submitted that applicant's promotion to the rank of Joint Secretary was to take effect from the date of assumption of the post vide order dated 11.3.91. They have submitted that he was to take charge of the post only in March, 1994 on his return to India after his deputation term abroad. However, because of his grave misconduct having major security and national implications, while he was abroad a decision had been taken by the Government to deotify the appointment of the applicant to the rank of Joint Secretary for which approval of the competent authority has since been received. Subsequently, since the applicant had already crossed 50 years, the competent authority had passed an order of compulsory retirement against the applicant on 19.3.93. In the circumstances the respondents have contended that he is not entitled to any relief. A preliminary objection has also been taken by the respondents that the applicant has rushed to the Tribunal without exhausting the departmental remedies as he has made a representation only on 16.11.92 and thereafter filed the OA just after one week on 24.11.92. However, since the O.A. has been pending in the Tribunal for over 7 years and we have now heard the parties, we

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(a)

are ourselves disposing of the matter on merit, instead of sending it to the respondents to take a decision at this stage.

4. We have carefully considered the pleadings and the averments made by the learned counsel for the parties and have also perused the report on the applicant about the incident that has occurred abroad in August, 1992. From the reply filed by the respondents, it is seen that the applicant had been considered by the DPC for promotion to the rank of Joint Secretary which was to take effect from the date of assumption of charge by their order dated 11.3.91. Following the incident/abroad in August, 1992, the applicant's deputation had been curtailed and he returned to India to join services with Respondent 2 on 16.11.1992. The respondents have submitted that approval of the competent authority had been obtained to denotify the promotion order of the applicant which appears to have been done after he returned to India in November, 1992. Further, it is also seen that the respondents have passed an order compulsory retiring the applicant from service under FR 56(J). The applicant has neither challenged the compulsory retirement order nor the order denotifying his promotion to the rank of Joint Secretary in this O.A. In the rejoinder, he has submitted that he has not been intimated of any sanction of the competent authority to denotify his promotion and he has also admitted that he has not challenged the compulsory retirement order. He has himself referred to the incident which occurred abroad in August, 1992 and has not seriously contested

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his recall to India thereby curtailing his deputation. It is settled law that the compulsory retirement order passed under the provisions of FR 56(J) is not a punishment. By his action, therefore, since the applicant has not challenged the denotification of his promotion order, his claim for promotion to the post of Joint Secretary based on the earlier order passed by the respondents dated 11.3.1991 cannot be sustained. The judgement in Janakiraman's case (supra) will not be applicable to this case.

5. In the above facts and circumstances of the case, and especially since the order denotifying his promotion has not been challenged, no such direction as prayed for by the applicant to direct the respondents to promote him to the post of Joint Secretary w.e.f. 11.3.1991 with consequential benefits can be granted at this stage. Accordingly, we see no merit in the application. The O.A. is dismissed. No order as to costs.

Narasimha Sahu
(N. SAHU)
MEMBER (A)

'San.'

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)