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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 408/92

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T.A. No.

(37)

DATE OF DECISION 29.6.1999

S.K. Saxena

....Petitioner

Shri V.K. Rao

....Advocate for the
Petitioner(s)

VERSUS

Controller General of
Accounts, Govt. of India
and Anr.

....Respondent

Shri P.H. Ramchandani

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N. Sahu, Member (A).

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.408/92

New Delhi this the 29thday of June, 1999.

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

S.K. Saxena,
S/o late Shri R.K. Saxena,
R/o G-78, Sarojini Nagar,
New Delhi. ...Applicant

(By Advocate Shri V.K. Rao)

-Versus-

1. Controller General of Accounts,
Government of India,
Ministry of Finance,
(Dept. of Expenditure),
Lok Nayak Bhawan,
New Delhi.
2. Principal Accounts Officer,
Ministry of Urban Development,
'F' Wing, Nirman Bhawan,
New Delhi. ...Respondents

(By Advocate Shri P.H. Ramchandani)

O R D E R

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

The applicant is aggrieved that his representation dated 9.9.91 has been rejected by the respondents by OM dated 21.12.91 regarding his promotion as Pay and Accounts Officer (PAO) from February, 1991 when his junior was promoted.

2. The OA had been earlier dismissed by the Tribunal by order dated 2.7.97 on the ground of limitation. On appeal being filed, the Delhi High Court by order dated 16.3.98 observed that the respondents had corrected their mistake vide their order dated 10.1.91 which gave a cause of action to the petitioner and accordingly remanded the case to the Tribunal for fresh decision on merits, in accordance with law.

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3. The applicant has stated that by order dated 14.10.97, 104 Junior Accounts Officers (JAOs) were promoted out of which 92 officers were junior to him, and Shri R.K. Abbi was his immediate junior. He has submitted that that he was presumably not promoted because a minor penalty of withholding of one increment for a period of three years without cumulative effect has been imposed on him by order dated 5.10.87, which was treated effective from 1.10.87 when his increment was due. This penalty has been imposed on him while he was working as JAO. He was chargesheeted initially for major penalty under Rule 14 of the CCS (CCA) Rules, 1965. According to the applicant his promotion as Assistant Accounts Officer (AAO) was due w.e.f. 1.4.87 when others had been promoted by the order dated 14.10.87. The respondents gave a reply to the applicant on 21.12.89 that his case has been submitted to DPC which had recommended that his case may be reviewed on completion of the currency of the penalty, when his case will be submitted to the DPC after 1990.

4. The respondents in their reply have submitted that the applicant along with other eligible JAOs were considered for promotion by the DPC which met on 7th, 8th & 13.10.87. They have stated that taking into account the applicant's overall service record, including his ACRs for the year 1982-86 and the minor penalty imposed on him on 5.10.87, he was not recommended for promotion as AAO by the DPC. They have also submitted that he was again considered by the DPC held on 6th & 7th April, 1988 but in view of the fact that a penalty has been imposed on 5.10.87 which had not expired he could not be promoted as AAO. The DPC held in December, 1990 had considered his erstwhile junior Shri R.K. Abbi who was considered fit for further promotion as Pay and Accounts

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Officer (PAO) and thereafter he was promoted to that post on 14.3.91. The respondents have also submitted the relevant DPC minutes of the meetings, including the one held in October, 1987. In this meeting, the following remarks in respect of eight cases, including the case of the applicant at serial No.17, ~~had~~ been made, namely, "...either the disciplinary cases or the adverse remarks were there, as a result the DPC could not clear these names. They may be considered during next DPC." In actual fact at that time the minor penalty order had already been passed on 5.10.87.

5. Considering the above facts, we find force in the submissions made by the learned counsel for the applicant as well as the averments in the rejoinder filed by the applicant that the respondents have taken somewhat contrary stands with regard to the consideration of the applicant's case by the DPC of October, 1987. In the letter issued by the respondents dated 21.12.89 they have stated that as the penalty imposed on him was current till October, 1998 (sic) his case would be considered by the DPC only after 1990 thereby implying that the DPC of October, 1987, had not considered his case. On perusal of the minutes of the DPC of 1987 we do not, therefore, find that they have found the applicant 'unfit' for promotion but have merely put his case along with seven other cases to be considered in the next DPC because either disciplinary proceedings or adverse remarks were there as a result of which they could not clear their names. In the present application, the applicant has sought a direction to the respondents to arrange a review DPC to consider his case for promotion as AAO with effect from 1.4.1987, when his juniors were promoted by order dated 14.10.87, i.e., prior to the penalty order dated 5.10.87, was.

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given effect to. It is also relevant to note in this connection that by office order dated 25.5.91 issued by the respondents, they have referred to another office order dated 26.2.91 regarding the withholding of one increment for a period of three years in respect of the applicant. They have clarified that only the increment due on 1.10.88 was being withheld with non cumulative effect instead of 1.10.87 and have accordingly proceeded to indicate in the remarks column that the "increment due in 10/88 not allowed for three years i.e. upto 30.9.91 vide order dated 26.2.91."

6. The next DPC which met for considering the eligible persons for promotion to the post of JAO met on 6th & 7th April, 1988. In the minutes of this meeting it has been stated in the case of the applicant that penalty of postponing increment for three years was imposed in October, 1987. It was decided by earlier DPC to review his case on receipt of the 1987 confidential report which has been found to be "Very Good" and the DPC of April, 1987 had recommended that his case may be reviewed on expiry of the currency of the penalty. It is, therefore, seen from the minutes of this DPC also that the applicant has not been found 'unfit' for promotion but the recommendation was that his case may be reviewed on expiry of the currency of the penalty.

7. From the above it is seen, therefore, that the respondents themselves have corrected the penalty order passed by them on 5.10.87 by their subsequent order dated 25.5.91. The statement that disciplinary proceedings were pending against him at the time DPC met in 1987 was not correct as the penalty order had already been passed, though the same was to take effect only from 1.10.88. It is also obvious that these

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relevant facts were not placed before the DPC of 1987 nor was the applicant's case considered in accordance with the relevant rules to be followed by them. In these circumstances the OA is allowed with a direction to the respondents to hold a review DPC to consider the applicant's case for promotion as AAO from 1.4.87, when his juniors were so promoted. In case the review DPC finds the applicant fit for promotion, he shall be entitled to all consequential benefits in accordance with rules/instructions. No order as to costs.

K. Sahu

(N. SAHU)
MEMBER(A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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