

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2196 of 1993

New Delhi, this the 28<sup>th</sup> day of July, 1999

Hon'ble Mr. Justice K.M. Agarwal, Chairman  
Hon'ble Mr. N. Sahu, Member (Admnv)

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-APPLICANT

(By Advocate - Shri O.P. Khokha)

Versus

Union of India - Through

1. Secretary, Ministry of Defence, South  
Block, New Delhi-110011

2. Director General Armed Forces, Medical  
Services, M Block, New Delhi-110001

- RESPONDENTS

(By Shri Trilochan Rout, Sr.AO (Legal))

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The applicant seeks in this Original Application a direction that he should be granted the benefits of promotion in the grade of Assistant Civilian Staff Officer (in short 'ACSO') with effect from 4.8.1989 based on the recommendations of the review DPC. It is agreed by the parties that no disciplinary proceedings were pending against the applicant on 4.8.1989.

2. The background facts need to be explained. The applicant was accused of fraudulently making LTC claim for the block year 1982-85. The charges were proved. He was imposed a penalty of stoppage of increment for a period of three years without cumulative effect by an order dated 7.12.1990 (Annexure-A-3). The effect of penalty was operative till 1.1.1994. Though a DPC took place for the year 1990, his name was considered but it was kept in a

sealed cover on account of the currency of the penalty. The samething happened in 1991. The applicant was promoted in the grade of ACSO after expiry of the penalty on 3.1.1994 (Annexure-R-1). In the meanwhile the Hon'ble Supreme Court decided a Civil Appeal No.4133-4134 of 1984 DP Sharma and others Vs. Union of India, on 21.2.1989, the benefit of which was extended to similarly placed persons in the case of R.K.Khosla & Others Vs. Union of India, WP No.493/90 decided on 3.1.1991 and HR Saba & ors Vs. Union of India, OA No.115/90 decided on 8.11.1991. In accordance with the directions of the Hon'ble Supreme Court the seniority position of several LDCs and the applicant found a place in the review panel of 1989. Along with promotion on 3.1.1994 he was granted notional seniority and the benefit of notional pay fixation in the grade of ACSO with effect from 4.8.1989. The respondents rejected the claim of the applicant for granting him actual promotion from 4.8.1989 relying on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. K.V.Jankiraman, AIR 1991 SC 2010.

3. The applicant contends that his name appeared at serial no.1899 before the revision of his seniority and his name appeared at serial no.48 in the panel after the revision. His claim is that the penalty was imposed on 7.12.1990 and on the date of review DPC's panel on 4.8.1989, there were no proceedings against him.

4. We have carefully considered the submissions. We are of the view that the applicant cannot succeed in this O.A. A selection DPC is not merely concerned with seniority. The applicant was proved to be guilty of misdemeanour and by the time the DPC took place in 1990 and 1991 he was undergoing the imposition of penalty. He was not considered fit for promotion. Subsequently by

giving effect to certain principles of law enunciated by the Supreme Court the seniority was revised. He might have gained a few places but that does not necessarily mean his promotional prospects also would need to be reviewed. We do not have any finding of the review DPC that on the date of review he was found fit for promotion on that date. It must not be forgotten that in the year 1989 he had already been accused of committing the act of making a false claim of LTC. The charge sheet having been served on 18.1.1990 the departmental authorities have recorded their satisfaction well before that. The departmental authorities were aware of the misdemeanour of the applicant and could not have considered him for promotion. It is not merely the currency of penalty after its imposition that disables a person from enjoying fruits of promotion but before the charge sheet is issued i.e. even after the satisfaction to initiate disciplinary proceedings is recorded, there can be no question of considering him for promotion. In the case of Union of India vs. Kewal Kumar, (1993) 24 ATC 770 it is held by the Hon'ble Supreme Court that "When the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise.". In the circumstances the department cannot be accused of shifting its position simply because by a fortuitous chance the applicant had gained a few places on the resolution of a seniority dispute. We may go even a step further. We must look into the origin of the fraudulent LTC claim. Was not the applicant psychologically guilty much before? In that event how could he claim to be innocent? It was just a chance

that a review DPC had taken place at a particular date. A review DPC is not meant to revive closed matters. We must, therefore, view the revision of seniority in the strictly limited aspect of giving him the benefit of a few places senior to his earlier colleagues. This cannot ipso facto mean promotion also. The arrears of pay that the applicant claimed from 1989 could not be given to him because he had not worked in the promoted post and no one who had not discharged the higher responsibilities in the promoted post could be given the benefits of the higher pay.

5. In the result, the OA is dismissed. No costs.

*KM*  
(K.M. Agarwal)  
Chairman

*N.Sahu*  
(N. Sahu)  
Member (Admnv)

rkv.