Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 25th day of April 1997.

Original Application no. 396 of 1992.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Ashok Kumar Mishra, S/o Late Sri S.N. Mishra, R/o G-1/542, Armapur Estate, Kanpur, Presently employed as Senior Auditor, A/No. 8292401, Office of the Deputy Controller of Accounts I/C, Accounts Office, Ordnance Factory, Kanpur.

... Applicant

C/A Sri N.K. Nair

Versus

1. Union of India, through the Secretary, Ministry of Finance (Defence), Government of India, New Delhi.
2. Controller General of Defence Accounts (CGDA), West Block-5, R.K. Puram, New Delhi-66.
3. Chief Controller of Accounts (Fys), 10A, Auckland Road, Calcutta-1.
4. Officer I/C, Accounts Office, Ordnance Factory, Kalpi Road, Kanpur.

... Respondent

C/R Sri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under Section 19 of the Administrative Tribunals Act, 1985.

The applicant has come to the tribunal for a direction to the respondents to promote the applicant from the post of clerk to auditor with effect from 22-6-81 in place of promotion given to him with effect from 2-2-84 with all consequential benefits.

The facts as given by the applicant in his application are that he joined as a lower division clerk in C.D.A. (Pensions) Allahabad in April, 1969, and was transferred in September, 1971, to Accounts Office, Ordnance Factory, Kanpur. While in Kanpur, he was shown to have participated in cessation of work between 29th April, 1981 and 16th May, 1981, along with other employees of the factory in Class III and IV. In a list of 142 employees, the applicant's name appeared at Serial no 75 as those who resorted to Cessation of work. He was shown to have abstained from working on 29th & 30th April, 1st and 2nd May, 4th to 8th May and 11th to 16th May, 1981. The list of individuals, who ceased to work, was served on them in February, 1982, and the applicant sent his representation on 12-3-82 claiming that he attended to general office duties during the period and also assisted the Accounts Officer in disbursing pay and allowances on 30-4-81. He requested that his name should be deleted from the list. It is claimed that no memo, charge sheet, warning or adverse entry in A.C.R. were given to the applicant. He claims that in the list of promotions contained in Part II Office Order no 1330 dated 7-9-81, his name was not included although the list contained many clerks from his batch and some of his juniors. The applicant represented on 20-10-81 for inclusion of his name in the list. He made another representation on 12-3-82 and a reminder on 7-4-82. He was shown a letter of Controller of Accounts (Factories) Calcutta, informing that his representation had been referred to higher authorities. He sent another representation dated 2-3-83. He received a reply on 12-1-84 that his promotion along with his batch mates was under consideration of the Controller of Accounts (Factories) Calcutta. He sent another representation dated 29.3-84. He received a reply dated 18-6-84 informing that the applicant and three of his juniors had been promoted to Auditor's grade with effect from 31.5.84. He made a representation dated 3-7-84 about his belated promotion in place of promotion claimed by him on 22-6-81 to the Controller of Accounts requesting investigation into cessation of work in April / May 1981 and seeking promotion with effect from 22-6-81. The promotion of the applicant was advanced to 2-2-84 by a Part II office order no 1805 dated 23-7-84. He made several representations against this order including one on 8-1-85 and was informed by the Assistant Controller of Accounts (Factories) by letters dated 12-4-85 and 21-5-85 that the matter regarding ante-dating of applicant's promotion had been taken up with CGDA, New Delhi. The applicant made another representation dated 17-2-86. He was informed by a letter dated 3-6-86 of Accounts Office, Ordnance Factory, Kanpur, that his representation was considered by the Controller of Accounts but not acceded to. The applicant claims that his batch mate Shri Isher Singh who was similarly placed was granted promotion retrospectively with effect from 22-6-81 despite his involvement in cessation of work. He was informed by a letter dated 30-7-86 that his earlier representations dated 17-6-85 and 19-8-85 had not been acceded to by CGDA, New Delhi. He made another representation dated 2-4-87 and was informed by a letter dated 12-8-87 that the applicant was involved in cessation of work in April/May, 1981 and was considered unfit for promotion on account of that upto the review DPC of 1983 and was considered fit by the DPC held in 1984. It was also mentioned that the case of the applicant along with similar cases was taken up for notional promotion and seniority with retrospective effect but the CGDA had not acceded to it. The applicant's appeal dated 22-5-88 addressed to CGDA New Delhi. The applicant was informed by a letter dated 25-10-89 by Assistant Controller of Accounts (Fys) that his appeal was turned down by the C.G.D.A. He sought reasons for rejection of appeal by his letter dated 9-11-89 and he was informed by the Deputy Controller of Accounts (Fys) in a letter dated 24-3.90 that Controller of Accounts had informed that his appeal was rejected because no proof existed regarding the performance of duties by the applicant during 29-4-81 to 16-5-81. Applicant's request for reconsideration made on 2-4-90 evoked a response from the Deputy Controller of Accounts (Factories) directing the applicant to submit copies of documents in support of his case in a letter dated 9-11-90. The applicant sent a letter dated 15-11-90 and a reminder dated 15-1-91 and he received a response from Deputy Controller of Accounts (Factories) that Controller of Accounts, Avadi, had conducted a spot study regarding cessation of work and thereafter CGDA rejected his appeal. He was advised by a letter dated 19-8-91 to file a fresh appeal if he still felt aggrieved. The applicant made a representation dated 28-8-91 and filed this application after waiting for a period of six months.

The arguments of Shri N.K. Nair for the applicant and Km Sadhana Srivastava for the Respondents were heard.

The learned counsel for the respondents took up the plea of bar of limitation in relation to the application. The application was made on 17.3.92 while his representation had been rejected as early as 1-12-81. We have deliberately dealt with the facts narrated by the applicants regarding a number of representations made by him during the decade ending 1991 and the number of replies received by him. The appeal of the applicant dated 22-8-88 was rejected by letter dated 24-3-90.

The reasons for rejection of appeal were furnished to the applicant by letter dated 19.8.91 which is annexed to the OA as Annexure A-5. Therefore, the plea of bar of limitation of the respondents cannot be accepted and the applicant has filed his application within time.

The learned counsel for the applicant has alleged that the applicant was denied promotion because of his alleged absence in April/May, 1981 on account of cessation of work by class III and IV employees of Accounts Branch of Ordnance Factory, Kanpur. This contention has been admitted by the respondents in their counter reply. The learned counsel for the respondents has contended that the applicant failed to submit any documents to establish his presence. The learned counsel for the respondents has also drawn attention to the preliminary enquiry conducted by the Controller of Accounts (Fys) Avadi. The applicant has stated in paragraph 4.2 of his O.A. that no memo, charge-sheet, warning or adverse entry in the ACR was given to him regarding his alleged absence. The respondents have not denied this averment of the applicant in their counter reply. The applicant's contention that no adverse view was taken of his alleged cessation of work in his service record is substantiated by non-action of the respondents on his alleged cessation of work in April/May, 1981 through departmental enquiry, departmental action or adverse entry in the character roll. The respondents by not taking any action denied the opportunity ~~of~~ show cause to the applicant. No adverse note of alleged cessation of work could have been taken by the Respondents in the record of the service of the without such an opportunity to show cause. Yet the respondents have admitted denial of promotion to the applicant on the ground of his alleged cessation of work. In considering promotion of an official, it is the record of service which is material. The respondents have, therefore, denied promotion to the applicant on extraneous considerations and acted in an arbitrary manner.

The respondents have mentioned that they had informed the applicant on 1-12-81 that he had resorted to cessation of work by including his name in the list of those who ceased to discharge their duties on the dates shown against their names in the list. Thus he was informed of the reason of his not getting promotion as early as 1-12-81. The applicant in his O.A. in paragraph 4.2 mentions that this list was served on him in February, 1982. The applicant has mentioned that he requested for deletion of his name from the list by representation dated 12-3-82. The respondents have admitted that they received this representation (Paragraph 7 of the counter reply) and forwarded it to Calcutta authorities. The respondents had published a promotion list for the post of clerk to the post of auditor by order dated 7-9-81. The applicant has claimed (in paragraph 4.3 of the O.A.) that this list included several persons of the applicant's batch and several juniors of subsequent batches. There is no denial of this averment in (paragraph 8 of) the counter reply. It is very strange that the applicant was not promoted by inclusion in the list dated 7-9-81 and he was informed by order dated 1-12-81 about his alleged cessation of work in April/May 1981 although this admittedly weighed against the applicant in denial of promotion in the D.P.C. resulting in list dated 7-9-81. It is also very strange that the alleged cessation of work weighed with the respondents even though no other adverse consequence ensued from it in the service career of the applicant and he was paid salary for the period of alleged cessation of work (a fact averred by the applicant in para 4.2 of his OA; and not denied by the respondents).

In rejoinder, the applicant has annexed copy of letter no. G/102/Confdl dated 8-6-81 from Accounts Officer to J.C F & A (Fys) I/c Kanpur Group of Factories in which he has mentioned that 18 officials of class III and IV category including the applicant and one Shri Ishar Singh, P.C. attended to official duties and recommended that no disciplinary action regarding cut of salary, break of service may be taken against the officials mentioned in the letter. The Accounts Officer is said to have written another letter dated 17-11-85 no. G/102/Confdl enumerating the duties performed by the applicant during the alleged period of cessation of work and recommending deletion of his name. Another letter no G/45/Party AKM dated 6-9-91 from the ACA (Fys) stating that the applicant had performed his duties during the period of alleged cessation of work and that the report of Controller of Accounts (Fys) Avadi was not available in the Accounts Office of Ordnance Factory of Kanpur and that the office was sure of performance of duty by the individual. It is clear from the Cryptic orders of the respondants annexed to the OA and the counter reply filed by them that they had taken a stand and there is nothing to show that the recommendations of the local office, which was the only office to have known the presence of or absence of the applicant during the alleged period of ~~absence~~ cessation of work, were not given any credence to by the respondents. This is another instance of their arbitrariness.

The applicant has claimed that Shri Ishar Singh, who was also included in the list dated 1-12-81 of those who resorted to cessation of work was promoted subsequently with retrospective effect with effect from 22.6.81, (para 8 and 11 of the OA). This has not been denied by the respondents. There is no explanation in the counter reply as to why the treatment given to Shri Ishar Singh was different from that given to the applicant. The complete silence of the respondents on this issue is quite revealing and further lends credibility to the allegation of the applicant that the denial of promotion was arbitrary.

We, therefore, direct the respondents to consider the promotion of the applicant with effect from the date on which any of his juniors was considered for promotion, and, in review D.P.C., the respondents shall not bring in the question of alleged cessation of work between 16th April 1981 and 16th May 1981. We direct the respondents to promote the applicant after review D.P.C. if the applicant is otherwise found fit with effect from the date of promotion of any of his juniors. The respondents shall complete the above process within a period of three months from the date of intimation of this order.

The cost of the application quantified at Rs Five hundred shall be paid by the respondents to the applicant.

A.M.

J.M.