

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 15th day of July, 1996
Original Application No.1202 of 1992

District : Kanpur

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

B.G. Sachan

Asst. Accounts Officer

R/o 128/187-E/Block Kidwainagar
Kanpur.

(By Sri Sudhir Agarwal, Advocate)

..... Applicant

Versus

1. The Union of India through Secretary
Ministry of Defence/Finance and Financial
Advisor, New Delhi.
2. The Controller General of Defence Accounts
West Block, 5/R.K. Puram, New Delhi.
3. The Controller of Accounts (Factories),
Kanpur.
4. The Chief Controller of Defence Accounts(P)
Allahabad.
5. The Controller of Defence Accounts(P)
Meerut Cantt. Meerut.

(By Sri N.B. Singh, Advocate)

..... Respondent

O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

Through this application filed under Section 19 of
the Administrative Tribunals Act, 1985, the applicant has
challenged three orders issued by the respondents. The

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Through this application filed under Section 19 of
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first order is dated 7-7-1989 by which it was communicated that the applicant shall not be promoted until he was completely exonerated of the charge against him and the recommendations by the Departmental Promotion Committee regarding his selection shall be deemed to have been placed in a sealed cover. The second order is dated 7-1-1991 by which the applicant was promoted on transfer to Palampur. The third order challenged is the one dated 25-5-1992 by which the applicant's selection for promotion was cancelled with immediate effect and the applicant was directed to report to Palampur in the existing grade. He has sought quashing of all the three orders and has inter alia prayed that a direction be issued to the respondents to allow the applicant to join the promotional post of Accounts Officer pursuant to the promotion order dated 16-6-1989 at Ordnance Equipment Factory, Hazratpur, Tundla w.e.f. 19-6-1989 with all consequential benefits. The case basically relates to the applicant's initial promotion and the subsequent cancellation of the promotion order. As the case has ^{La} somewhat chequered history, the facts of the case are required to be stated in some details.

2. The applicant was initially appointed as an Upper Division Clerk in the Defence Accounts Department and through successive promotions, he reached the level of Assistant Accounts Officer on 1-4-1987. In 1989, the Departmental Promotion Committee met for the purpose of selection for promotion to the post of Accounts Officer. The applicant was selected and ~~notified~~ his promotion to the post of Accounts Officer ^{was notified by} the order ~~was~~ issued by respondent no.2 ~~by~~ on 30-5-1989. Subsequently, by the order dated 16-6-1989, the applicant's order for promotion and posting to the Ordnance Equipment Factory, Hazipur, Tundla was issued. A copy of this order is at

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Annexure-A-3. The applicant was, however, not relieved by respondent no.4, under whom he was working, for posting to the Ordnance Equipment Factory and a letter dated 20-6-89/ 27-6-89 (Annexure-A-4) was issued to the applicant directing him to submit his explanation regarding certain alleged payment of Rs.675/- towards pension in August, 1987. The applicant ~~was~~ submitted his explanation by his letter dated 7-7-1989 stating that there was no fault on his part. However, respondent no.2 issued the impugned letter dated 7-7-1989 stating that the applicant would not be promoted unless he is fully exonerated of the charge and the recommendations of the Departmental Promotion Committee would be deemed to be kept in a sealed cover. Thereafter the office of respondent no.4 vide his letter / Annexure-A-6) dated 11-8-1989 informed respondent no.3 that the applicant had been exonerated from the allegations and thus necessary action with regard to his promotion be taken. The respondents, however, did nothing in this regard despite various representations sent by the applicant from time to time. He was only informed that the matter was receiving consideration. Vide letter dated 16-3-1990 the applicant was served a charge memo under Rule 16 of CCS(CCA) Rules, 1965. The applicant submitted reply to the said charge memo and the respondent no.5 by the letter dated 9-10-1990 (Annexure-A-11) communicated to the applicant that his reply was not considered to be satisfactory and a non-recordable warning was being given to him. Thereafter, respondent no.5 vide his letter dated 6-12-1990 (Annexure-A-13) passed an order cancelling the earlier order dated 9-10-1990 and exonerated the applicant from the charges levelled against him. Thereafter, instead of promoting the applicant based on his earlier order of promotion, the applicant's case for promotion was considered by subsequent Departmental

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Promotion Committee and based on its recommendations, respondent no.2 in modification of the earlier promotion order dated 16-6-1989, issued order dated 7-1-1991 promoting the applicant to the post of Accounts Officer and posting him in the office of DPDO, Palampur. The applicant represented against this order requesting respondent no.2 to post him either at Kanpur itself or at any other station like Allahabad, Lucknow or Delhi. The representation was followed by several reminders. However, by order dated 4-6-1991 (Annexure-A-16), the respondent no.3 relieved the applicant and directed him to report for duty in the office of DPDO, Palampur. The applicant, therefore, applied for earned leave to respondent no.5 ^{who} informed him that until and unless he submitted his joining report his leave cannot be sanctioned by respondent no.5 and the applicant must seek leave from the office of respondent no.3 at Kanpur. The applicant applied for leave to the respondent no.3 who refused to pass any order stating that the leave application can be considered only by respondent no.5. The applicant thereafter sent a letter to the respondent no.2 requesting him to grant leave to the applicant. Respondent no.2, however, directed the applicant to join the post of Accounts Officer at Palampur. Finally a letter dated 25-9-1992 was issued by respondent no.5 ^{recommendation of} stating that the life of ^{the} Departmental Promotion Committee had already expired and, therefore, the promotion of the applicant to the post of Accounts Officer stood cancelled. The applicant was directed to join as Asst. Accounts Officer at Palampur. A copy of this letter is at Annexure-A-2. His representation against cancellation of promotion order having failed to elicit favourable response, the applicant has approached this Tribunal for the reliefs aforementioned.

----- discussion prior to that stage would not be sufficient to enable the authorities to adopt

3. The applicant's case is that at the time when the order for his promotion was issued, there was no disciplinary action pending against him. He could not have been deprived of his promotion as a result of the subsequent show cause notice and a charge memo ~~was~~ issued even later. Moreover, he was fully exonerated of the charges levelled against him and, therefore, it was incumbent upon the respondents to allow the applicant to join the promotional post in terms of earlier promotion order dated 16-6-1989. Issuance of a fresh promotion order based on ~~XXX~~ subsequent Departmental ^{Promotion} Committee recommendations was wholly arbitrary and contrary to law. He has also stated that the action of respondent no.2 in treating the recommendations of the Departmental Promotion Committee as deemed to have been placed in a sealed cover ~~xxx~~ is wholly illegal and contrary to law. He has also made an allegation that the respondents were interested to accommodate one Sri Rajiv Mishra as Accounts Officer in Ordnance Equipment Factory, Hazratpur, Tundla and because of this the entire illegal activities to deprive the applicant of his promotion were initiated.

4. The respondents have filed a counter affidavit, in which it has been admitted that the applicant was initially considered for promotion to the post of Accounts Officer by the Departmental Promotion Committee held 19-5-1989 and was selected for promotion. However, an intimation was given by the Controller of Accounts (Fys), Kanpur vide their DO letter dated 4-7-1989 that the applicant was involved in a fraudulent payment of pension while serving as Asst. Accounts Officer in DPDO, Kanpur and as a result his promotion to the post of Accounts Officer was stopped by the impugned order dated 7-7-1989. It has been further admitted that the applicant's case was again considered

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by the subsequent Departmental Promotion Committee on 22-8-1990 and the recommendations with regard to the applicant was kept in a sealed cover due to the pendency of the disciplinary proceedings against him. As the applicant was finally exonerated, he was promoted and posted to DPDO Palampur. The respondents have alleged that although the applicant was relieved of his duties in the office of Controller of Defence Accounts (Fys), on 5-6-1991, he did not report for duty in the office of DPDO Palampur inspite of repeated directions from the department. Instead, he started writing for cancellation of his posting at Palampur on one ground or the other. The applicant was informed that he should apply for refusal of promotion but the applicant did not comply with the same. Meanwhile, validity of the panel drawn up by the Departmental Promotion Committee on 26-6-1990 had expired and hence the promotion was cancelled by the impugned order dated 25-5-1992. The respondents have also stated that as per the then existing rule, contained in Para 7 readwith Para 2 (iv) of DOPT OM. No.22011/2/86-ESTT(A) dated 12-1-1988, as the applicant was recommended for promotion by the Departmental Promotion Committee but an investigation of serious allegation of misconduct was pending against him, the recommendations of the Departmental Committee were deemed to have been placed in the sealed cover. It has been further stated that the same OM stipulated that a Government servant would not be promoted unless he is completely exonerated of the charges against him.

5. The applicant has filed a rejoinder affidavit in which apart from reiterating the contentions made in the OA, he has stated that in view of the law laid down by

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the Hon'ble Supreme Court in the case of K.V. Jankiraman and also the Managing Director Food Corporation of India Vs. N.K. Jain, the promotion of an employee would not be withheld as a result of any subsequent order of inquiry, when no charge sheet was issued till the date of order of promotion.

6. We have heard learned counsels for both the parties and perused the records carefully.

7. From the facts which have been brought out in some detail in the preceding paragraphs, it is absolutely clear that the applicant's order of promotion and posting as Accounts Officer in the Ordnance Equipment Factory, Hazratpur, Tundla was issued by the order dated 16-6-1989. The promotion was to take effect from 19-6-1989 or from the date of his assumption of the new charge, whichever is later. It is also clear that at that point of time, no charge sheet had been issued to the applicant, nor even show cause notice was issued. As admitted by the respondents, it was only by a DO letter dated 4-7-1989 that an intimation was received by the applicant alleging involvement in a fraudulent payment of pension. From 16-6-1989 till 4-7-1989, there was time enough to relieve the applicant for joining at Tundla. This was not done and only on 16-8-1990, the applicant was served with a charge memo for minor penalty. Meanwhile, the impugned letter dated 7-7-1989 had been issued keeping the applicant's promotion in abeyance and treating recommendations of the Departmental Promotion Committee as deemed to have been placed in sealed cover. It is also on record that respondent no.4 vide his letter dated 11-8-1989

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informed respondent no.3 that the applicant had been exonerated from the allegations and necessary action for his promotion be taken. Yet, strangely no action appears to have been taken on this letter and it was considered necessary to issue charge sheet dated 16-8-1990. The disciplinary action initiated against the applicant by issue of the charge memo also reached ~~the~~ finality through a devious route. Initially, a non-recordable warning was issued to him after taking into account the reply submitted by the applicant to the charge memo.

Subsequently, ^{/such} ~~/~~ non-recordable warning was also cancelled and it was communicated that the applicant was fully exonerated of the charges levelled against him. Even thereafter, the applicant was not given the promotion on the basis of the order which was earlier issued, even notionally. The respondents chose to get the applicant's case considered by a subsequent Departmental Promotion Committee and to issue a fresh order of promotion based on the recommendations of ^{that} Departmental Promotion committee and incidentally changed his posting from Hazratpur, Tundla to Palampur.

8. The circumstances in which the promotion of a Govt. employee against whom a disciplinary action is ^{/can be withheld} pending ^{/came} under close judicial scrutiny of the Hon'ble Supreme Court in the celebrated case of K.V. Jankiraman, A.I.R. 1991 S.C. 2010. Their Lordships had in particular considered the question as to the circumstances in which 'sealed cover' procedure can be validly adopted. While considering this issue, the DOPT OM dated 12-1-1988 was also considered. Their Lordships inter alia held that the ^{/can be} sealed cover procedure [/] resorted to only after charge memo/charge sheet is issued to the employee and pendency of preliminary investigation prior to that stage would not be sufficient to enable the authorities to adopt

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such procedure. It was also held that even where sealed cover procedure was adopted, on exoneration of the employee, he cannot be deprived of any benefit including salary of promotional post.

9. The decision of the Hon'ble Supreme Court in K.V. Jankiraman case is fully applicable to the present applicant. We need look no further. The action of the respondents in treating the recommendation of the earlier Departmental Promotion Committee in respect of the applicant as deemed to have been placed in sealed cover is totally illegal. As no disciplinary proceeding has been initiated against the applicant at the time when the initial order or promotion dated 16-6-1989 was issued, the question of placing the recommendations of the Departmental Promotion Committee in sealed cover would not have arisen. Moreover, the Departmental Promotion Committee recommendations had already been acted upon and a positive order of promotion had been issued. Therefore, the question of keeping of the Departmental Promotion Committee recommendations in the sealed cover should not arise under ^{any} circumstances. All that could have been done to ^{was} withhold the applicant's promotion in case the promotion had not become effective when the charge sheet was issued to him. As the applicant was wholly exonerated of the charges, it was incumbent on the respondents to allow promotion to the applicant w.e.f. 19-6-1989, which was stated to be the effective date for promotion in the order dated 16-6-1989.

10. Regarding the controversy as to whether the applicant should have been posted at Hazratpur or Palampur, the matter is entirely within the discretion of the

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respondent. It is for them to decide where the applicant should be posted on promotion and the Tribunal cannot interfere unless it is abundantly clear that the change of posting was actuated by malafide intention. Although the applicant has alleged ~~xxxmukh~~ that there was a malafide intention of accommodating another person at Hazratpur, the said allegation is in very vague and general terms. No presumption of malafide can be made from such bald averments.

11. In view of the foregoing, we give following directions to the respondents :-

- (i) the applicant shall be deemed to have been promoted as Accounts Officer w.e.f. 19-6-1989. He shall be entitled to seniority on the basis of such promotion as well as arrears of salary.
- (ii) it will, however, be upto the respondents to decide where the applicant shall be posted as Accounts Officer and once such a decision is taken, the applicant must join at the place of posting decided by the respondents. The respondents shall be at liberty to take appropriate action in accordance with law in case the applicant does not comply with the posting order.
- (iii) the intervening period from the date the ~~xxxmukh~~ applicant was relieved by the Controller of Defence Accounts(Fys), Kanpur, till ¹⁵/date he actually joins at the place of posting to be decided by the respondents shall be regularised by grant of leave as due..

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11. This application is disposed of on the above terms leaving the parties to bear their own costs.

J. Verma
Member (J)

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Member (A)

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