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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 13<sup>th</sup> DAY OF MARCH, 1996

HON.MR.JUSTICE B.C.SAKSENA, V.C.

HON.MR.D.S.BAWEJA, MEMBER(A)

Original Application No. 871 of 1993

1. D.N. Pandey, s/o Shri Ram Rekha Pandey aged about 52 years resident of 92 D/5B New Sohbatia bagh, Allahabad, Asstt. Accounts Officer presently serving in the office of Local Audit Officer at C.O.D Chheoki, Allahabad.

BY ADVOCATE SHRI D.K. AGRAWAL

Applicant

Versus

1. Union of India through its Secretary Ministry of Defence(Finance) New Delhi
2. Controller General of Defence Accounts, West Block, 5 R.K. Puram, New Delhi
3. Controller of Defence Accounts, Kariappa Road, Lucknow.
4. Local Audit Officer, C.O.D Chheoki, Allahabad
5. Yamini Kant Accounts Officer, P.A.O(ORS) D.R.C, Faizabad
6. Chandan Singh Rana, Accounts Officer, D.R.D.L, Haldwani(ENCADRED)
7. N.P. Mishra, Accounts Officer, Office of L.A.O Ordnance Depot, Allahabad.

Respondents

BY ADVOCATE SHRI ASHOK MOHILEY

O R D E R (Reserved)

JUSTICE B.C.SAKSENA, V.C.

Through this O.A, the applicant seeks a direction to be issued to respondents no. 1 to 4 to treat him as promoted from 1.10.92 as Accounts Officer and he be paid salary and allowances accordingly from the said date. He further prays that the respondents be directed to assign him seniority on that basis and he be declared senior to respondents 5,6 and 7. The applicant was

working as Accounts officer. He claims to be senior to respondents 5 to 7 on the basis of a roster of Asstt. Accounts Officers(Group B) as on 1.3.1991, copy of which is Annexure A-2. He has filed copies of orders of promotion of respondents 5 to 7 and has also filed copy of an order dated 1.10.92. The said letter was confidential and was addressed to the CDA Lucknow. The said letter shows that the applicant had been selected for promotion to the Accounts Officer grade and for being posted to PAO(ORS) CDS, Jabalpur under the organization of the CDA(ORS) Central, Nagpur. It was requested that the applicant may be relieved of his duties in your organisation and directed to report for duty in the office of his posting on 16th October, 1992 after availing the usual joining time and TA/DA as admissible under the rules, if required. The said letter in para 2 further required the CDA Lucknow to ensure before the promotion of the applicant that no charge sheet has been issued to him and no disciplinary proceedings are pending against him and no prosecution for a criminal charge is pending against him. The applicant's grievance is that the said order of his promotion to the post of Accounts Officer was not communicated to him and was withheld.

2. The respondents have filed a counter affidavit in which they have pleaded that the said letter dated 1.10.92 was addressed to the CDA, Lucknow and was confidential and the applicant has not disclosed the source of the receipt by him. As far as the letter for promotion of respondents 5,6 and 7 it has been indicated that they were not addressed to the said respondents. They were addressed to respondent no.3 who was to ensure the requirement contained in para 2 above. It has been

pleaded that condition precedent for the release of the promotion order was that no disciplinary proceedings were pending and no charge sheet had been issued. It has been indicated that as the Disciplinary Authority had initiated a disciplinary case against the applicant, the respondent no.3 <sup>was</sup> / justified in withholding the order of promotion. It has further been indicated that a charge sheet dated 15.10.92 was issued against the applicant and the crucial date for promotion was 16.10.1992 by which date the charge sheet had also been issued. The plea of the applicant that his promotion was to take effect from 1.10.92 has been disputed.

3. Reliance has been placed on para 7 of DOPT O.M. dated 14.9.92 and it is pleaded that the crucial date as per para 2(ii) of the said O.M is the date of issue of charge sheet and not the date of receipt thereof as is sought to be made out by the applicant.

4. The applicant has filed a rejoinder affidavit in which he reiterates his plea that the crucial date of promotion is 1.10.92 i.e. the date of order of promotion. He further avers in the rejoinder that the applicant should have been relieved by 5.10.92 so as to avail the joining time. The applicant further in the rejoinder, has taken the plea that the charge sheet was served upon him with a covering letter dated 2.11.92 and was received by the applicant on 12.11.92. Thus he alleges that there was no warrant to withhold the order of promotion. From the rejoinder affidavit it appears that some punishment was imposed, though the nature of punishment has not been indicated. It has also been indicated that an appeal against the ~~sand~~ was dismissed on 29.8.93 and he has filed a revision before the respondent no.2. The

applicant also filed a misc. application on 11.10.95, annexing thereto / copy of an order dated 31.5.94 which indicates that the applicant had joined the promotional post of Accounts officer on 21.4.94 and he has been taken on the strength of the organisation, Controller of Defence Accounts P.D., Meerut Cantt.

5. We have heard the learned counsels for the parties.
6. The learned counsel for the applicant cited a decision of the Hon'ble Supreme Court reported in 1991(4) SCC 109 Union of India Vs. Janki Raman.

7. The learned counsel for the respondents, on the other hand, cited a decision of the Hon'ble Supreme Court reported in(1993) 24 ATC 763 Delhi Development Authority Vs. H.C. Khurana. In this case the decision in Janki Raman's case was explained. After referring to various O.Ms issued by the Department of personnel and Training, Govt. of India it was held that clause(ii) of Para 2 of O.M. dated 12.1.88 which provided "government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings was substituted by O.M. dated 14.9.92. The new clause(ii) reads as follows:

"government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and....."

The contention advanced on the basis of O.M. dated 14.9.92 was analysed. The contention was that even though mere issuance or despatch of the charge sheet without the further requirement of its actual service on the employee would now be sufficient according to the O.M. dated 14.9.92 for following the sealed cover

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procedure, it was held that the meaning of the word 'issued' has to be gathered from the context in which it is used. The decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge sheet, since issue of the charge sheet is a consequence of the decision to initiate disciplinary proceedings. The service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after having framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion inspite of that decision. It was further held:

"The plain meaning of the expression used in clause(ii) of Para 2 of O.M. dated 12th january 1988, also promotes the object of the provision. The expression refers merely to decision of the authority, and knowledge of the government servant, thereof, does not form a part of that decision. The change made in clause(ii) of Para 2 of O.M. dated 14.9.92, merely clarifies this position by using the expression 'charge-sheet has been issued' to indicate

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that service of charge-sheet is not necessary; and issue of the charge-sheet by its despatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken. "

8. After the said categorical decision and unambiguous propositions of law, in the present case, we have to hold that since a decision to initiate disciplinary proceedings ~~had~~ <sup>in</sup> been taken which culminated issuance of charge-sheet dated 15.10.92. The fact that it was communicated to the applicant on 6.11.92 is irrelevant. From the pleadings of the parties it is not clear whether sealed cover procedure was adopted. What is clear only is that because of a decision to initiate the departmental proceedings having been taken the order of promotion was not acted upon and the applicant was therefore not released to take his posting as Accounts Officer under the organisation by the CDA, Lucknow.

9. In the light of the above discussion, in our considered opinion, no case for grant of relief prayed for is made out. The O.A. accordingly fails and is dismissed. Cost easy.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: March..... 1996

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