

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1196 of 1993

Allahabad this the 24th day of September 1999

Hon'ble Mr. S.L. Jain, Member (J)
Hon'ble Mr. G. Ramakrishnan, Member (A)

Man Mohan Singh, aged about 53 years, Son of Late Sardar Harnam Singh, resident of 29/10, Block No.3, Govind Nagar, Kanpur, presently employed as Store Superintendent, P.No.6955313, in the C.O.D., Kanpur.

Applicant

By Advocate Shri N.K. Nair

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Director General of Ordnance Services, MGO Branch, Army Head Quarters, New Delhi.
3. Officer-in-Charge, AOC(Records), Trimulgherry, Secunderabad.
4. Commandant, C.O.D., Kanpur.

Respondents

By Advocate Shri N.B. Singh

O R D E R

By Hon'ble Mr. S.L. Jain, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for a direction to the respondents to order promotion of the applicant from Senior Storekeeper to the post of Store Superintendent w.e.f. 01.12.1983 instead from 01.5.1985, the

date on which juniors to the applicant were so promoted with all consequential benefits.

2. There is no dispute between the parties in respect of the facts that the applicant was promoted from the post of Storekeeper to the post of Senior Store keeper w.e.f. 20.12.1976, seniority number was 1295 as per seniority list circulated in the year 1977, the applicant was involved in a criminal case, Sessions Trial number 558 of 1975, the said Session Trial was decided by IXth Additional Sessions Judge, Kanpur on 31.10.1979 which ended in conviction of the applicant one year rigorous imprisonment and a fine of Rs.200/- in default of the payment of the same, 3 months rigorous imprisonment. Consequent to it, the applicant was removed from service vide letter no.6955313/SK/ADM (CIV) dated 15.7.1980. The applicant preferred criminal appeal no.2986/79 before the Hon'ble High Court of the Judicature at Allahabad which was decided on 21.8.97, the conviction and sentence of the applicant was set aside. Consequent to it the order of removal was referred above was set aside by order dated 09.6.88 passed by Officer Incharge AOC (Records), Secunderabad with all consequential benefits. By a subsequent order no.69555313/SK/CIV/CA-6/76 dated 15.8.1988 passed by Officer Incharge ACC(Records), Secunderabad. During the said period when removal of the applicant was enforced, there had been promotions of several Senior Storekeepers, the applicant represented the matter before the authorities concerned and vide order no.65/CIV/CA-6, dated 30.12.88, the applicant was promoted as Store Superintendent w.e.f. 01.1.88 in the pay scale of Rs.1400-2300 with financial benefits under 'next below rule'. Feeling aggrieved by the said order, the applicant submitted the representation dated

13.2.89 to the Officer Incharge ACC(Records), Secunderabad requesting retrospective promotion with all consequential benefits w.e.f. ^a the date, the promotion of the juniors to the applicant, followed by representation dated 24.3.89, consequent to it, the date was fixed as 01.5.85 instead of 01.1.88. The applicant further represented the matter with a request to refix the date of promotion 01.2.83 instead of 01.2.85 when Shri S.K. Dwivedi who was at sl. no. 1363 have been promoted on the post of Superintendent

followed by further representation dated 27.11.1989 and another representation in July, 1990 annexure A-12 and A-13 respectively. After the submission of the representation/appeal dated 27.11.1989, a letter no. 13924/Misc./OS-SSC-ii, dated 16.4.90 was issued on behalf of the Director General of Ordnance Services, addressed to OIC, ACC(Records), Sikanderabad to the effect that the appeal of the applicant could not be considered annexure-A-2, the applicant submitted a final appeal addressed to the Ministry of Defence, Government of India, annexure A-14, with reference to the same, it was communicated by a letter no. B/13924/Misc./OS-8-C(2), dated 23.6.93 issued on behalf of the Director General of Ordnance Services addressed to the OIC, ACC(Records) stating that the applicant's representation for anti-dated promotion w.e.f. the date of promotion of juniors was maintainable vide annexure A-3, which was communicated to the applicant vide letter dated 08.7.93 issued by the Record Office on behalf of O.I.C. ACC(Records) to the Commandant, C.O.D., Kanpur annexure A-15.

3. The applicant's case in brief is that his seniority number on the post of Senior Storekeeper was

1295 as per seniority list circulated in the year 1977 while the seniority of S.K. Dwivedi was 1363 who has been promoted to the post of Superintendent Stores w.e.f. 01.2.1983, hence, he is entitled for the said promotion.

4. The respondents have resisted the claim on the ground that the claim is barred by time and also on merits on the ground that as the applicant was out of service from 05th ~~May~~ August, 1980 to 08th July, 1988, his A.C.R.s were not initiated during this period. As per existing procedure for promotion, such cases laid down in para-6, sub para-7 of the Department of Personnel and Administrative Reforms O.M.No.22-011675 Establishment (P) dated 30.12.1986, the promotion date of his immediate junior of Sri Jahid Ahmad Ansari was taken into account i.e. to say 01.1.1988 after obtaining approval of the D.P.C.No.88. Later on, it was noticed that Mehd. Ahmad Ansari could not be promoted earlier due to his inefficiency and was superseded by his juniors, on review by D.P.C. held in May, 1989, the promotion date of the next junior Shri Charan Jeet Singh was taken into account and the applicant was promoted w.e.f. 01.5.85 with financial benefits. The further request of the applicant could not be acceded as Shri S.K. Dwivedi was having ACR 'Outstanding'. Hence, prayed for dismissal of the O.A. alongwith cost.

5. In the rejoinder-affidavit, the applicant submitted that he had been in service, he must have also earn A.C.R.'Outstanding'. He was out of job for none of his faults and reiterated the points taken in the O.A.

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6. As finally the matter was decided on 23.6.93 by the respondents, O.A. filed on 12.8.93 cannot be said to be barred by time. Earlier decision dated 16.4.90 annexure A-2 and 14.12.1989 annexure A-1 emerges in the last decision dated 23.6.93. The period of limitation cannot be counted from 14.9.89 annexure A-1 as appeal is a right which was exercised by the applicant and the decision thereon is annexure A-2, dated 16.4.90. Further appeal/reference is also ~~not arrived~~ and ultimate decision is annexure A-3, dated 23.6.93.

7. The post of Stores Superintendent is a selection post. 'Next below rule' means the next person junior to the applicant, guide lines and D.P.C. stipulated that where one or more A.C.Rs have not been written for any reason during the relevant period, D.P.C. would consider the A.C.Rs of the year preceding the period in question and if in any case even these are not available, the D.P.C. would take the C.R.s of the lower grade in to account to complete the number of A.C.Rs. required to be considered. If this is also not possible, all the available C.Rs. would be taken into account.

8. As the A.C.R.s for the period for which the applicant was out of job, though it was not due to an act of the applicant, but at the same time, it was not possible for the respondents to write his A.C.R.s for the period commencing from 05th ~~May~~ August, 1980 to 15th August, 1988. It was a misfortune of the applicant for which he has to blame himself and not to the respondents.

9. Wishful thinking that he might have earned 'outstanding' A.C.Rs in the said period, is an speculation

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and cannot help. His earlier A.C.R.s have been duly considered by the review D.P.C.

10. In the result, there is no merit in the Q.A. and it deserves to be dismissed and is dismissed accordingly. No order as to costs.



MEMBER (A)

PL-801

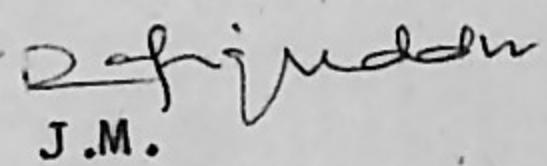
Member (A)

/M.M./

24-9-99

Coram : Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr. Rafiq Uddin, J.M.

Pronounced by us as authorised by Hon'ble Vice Chairman on 17-9-99.



J.M.



A.M.