

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Allahabad : Dated this 6/h day of April, 1998

Original Application No. 85 of 1995

District : Kanpur

CORAM:-

Hon'ble Mr. D.S. Baweja, A.M.

Hon'ble Mr. J.P. Sharma, J.M.

Nanak Chand

S/o Shri Chhote Lal

Supervisor, Ordnance Parachute Factory, Kanpur.

R/o M.A.G, Ordnance Parachute Factory, Kanpur

(Sri Deepak Jaiswal, Advocate)

..... Applicant

Versus

1. Union of India,
Secretary, Ministry of Defence,
New Delhi.

2. General Manager,
Ordnance Parachute Factory,
Kanpur.

(Sri Ashok Mohiley, Advocate)

..... Respondents

Q R D E R

By Hon'ble Mr. J.P. Sharma, J.M.

The applicant has filed this OA for the following
reliefs :-

(i) to set aside the impugned order dated 7-2-1994
passed by the Dy. General Manager (Admin) for
General Manager, Ordnance Parachute Factory, Kanpur.

(ii) to issue direction to the respondents to promote
the applicant w.e.f. 17-12-1984 when his juniors
were promoted and to grant notional seniority as
well as arrears of salary and other consequential
benefits due since December, 1984.

(iii) to issue a direction to the respondents to promote
the petitioner on the post of Chargeman as and when
the vacancy arises.

2. That the applicant's case is that he was working on the post of Supervisor in Ordnance Parachute Factory, Kanpur. While working as such in the year 1986, he had challenged the order of the General Manager dated 28-5-1985, chargesheeting him for misconduct and negligence of duty under CCS(CCA) Conduct Rules and denial of promotion to the post of Supervisor Grade 'B'. Aggrieved by the said order the applicant filed OA No.238 of 1986, which was finally decided by the order dated 4-8-1987, a copy of the judgement is marked as Annexure-1 to the OA. By the aforesaid order it was provided that the action of the respondents in not considering the petitioner for promotion to the higher post was not correct and the respondents were directed to take action in accordance with the instructions contained in the O.M. of 30th January, 1982 and set up a DPC to consider the fitness of the applicant for promotion to the higher post as on the date his immediate juniors were considered and to keep the findings of the committee in sealed cover. It is stated that disciplinary inquiry was concluded in the month of October, 1997 and the applicant was completely exonerated from the charges but the respondents did not act in accordance with the directions of the Tribunal dated 4-8-1987. The applicant on 18-10-1988, made an application to the General Manager to promote him on the post of Supervisor w.e.f. December, 1984 as Inquiry had already been concluded and he was not found guilty of any of the charges. Ultimately the applicant was promoted on the post of Supervisor w.e.f. 17-7-1992 by order dated 17-7-1992 passed by the respondent no.2. A true copy of the order dated 17-7-1992 is annexed as Annexure-2 to the OA. It is further stated that the petitioner's name was neither put in the DPC for consideration of seniority.

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nor he was given the benefit of his seniority on notional basis, from the date on which he would have been promoted in the normal course w.e.f. from 17-12-1984 when juniors to him were promoted as Supervisor. Feeling aggrieved the petitioner made an application to respondent no.2 on 4-8-1992 and requested for fixation of pay and seniority w.e.f. December 1984. He was further made representations on 20-7-1993 and 4-1-1994. The representation of the applicant was rejected on the ground that he was not found fit for promotion on the higher post. A copy of the order dated 7-2-1994 has been filed and marked as Annexure-6 to the OA. It is also alleged that the impugned order has not been passed in accordance with the instructions contained in OM dated 30-1-1982 nor any DPC was set up to consider the fitness of the applicant for promotion and, therefore, the said order is illegal, arbitrary and against the directions of the Tribunal's order dated 4-8-1987. It is further stated that the respondents are going to promote further the juniors of the applicant on the post of Chargeeman, over which post the applicant is entitled to be promoted as and when vacancy arises. The respondents have filed CA and SCA and the applicant has filed RA and SRA to the CA and SCA. In the counter affidavit the respondents have stated that the applicant was caught on 5-4-1990 for attempting theft of Government material and vide Memo dated 26-5-1980 was chargesheeted under Rule 14 of CCS (CCA) Rules, 1965. On proof of the charges of penalty, stoppage of three increments for a period of three years with cumulative effect was imposed on him by order dt.31-7-1982. Against the above order of penalty, the applicant filed a suit before the Additional Munsif, Kanpur, which was dismissed on 30-5-1981, but on appeal, the Additional District Judge, Kanpur by order dated 15-12-1982 allowed the suit and held that the penalty order passed by the Officer-In-Charge was not in his

jurisdiction. Against the order of the Additional District Judge, a Second Appeal No. 989 of 1983 is still pending in the Hon'ble High Court of Judicature at Allahabad. It is further stated that in the meantime the applicant was issued another charge sheet on 14-3-1981 under Rule 14 of the CCS (CCA) Rules 1965, for some discrepancy in his Go down but the same was cancelled and a fresh charge sheet on the same charges was issued to him on 28-5-1985.

3. That as regards promotion from the post of Assistant Storekeeper to the post of Supervisor, it has been stated that in the CA that during 1984 three vacancies of Supervisor 'B' (MT) were existing in the Factory (two for general and one for SC). As such DPC was held on 12-7-1984 to consider the promotions of Assistant Store Keepers to the higher post of Supervisor 'B' (MT). The post of Supervisor 'B' is a selection post. The promotions are made on the basis of merit and not seniority. ^{on the basis of} The applicant's name was at Serial No. 4 in the DPC list and there were only two vacancies unreserved, as such, the individual at Serial Nos. 1 and 2 viz. Shri Mahes Chand and Shri S. D. Pandey, senior to the applicant were promoted as Supervisor 'B' (MT) w.e.f. 12-7-1984 against general vacancies and Shri Mewa Lal, SC candidate, was at Serial No. 5, had got the chance of promotion against the reserved vacancy of SC from 12-7-1984. It is further stated that in December, 1984, two vacancies of Supervisor 'B' (MT) again occurred (one reserved and one for ST). Shri Ram Kishor, who was listed at Serial No. 3 in the earlier DPC-III list held on 12-7-1984 was promoted to the post of Supervisor against the general quota and Shri Ramjit Ram against the SC Quota w.e.f. 15-12-1984. A copy

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of the DPC-III list has been filed and marked as Annexure-CA3 to the counter affidavit. In the month of November, 1985, two more vacancies occurred in the post of Supervisor 'B'(MT), (one for general and one for SC) for which the DPC was again held on 18-11-1985 in which the names of 8 Assistant Storekeepers were put for consideration in order of merit in which the applicant's name was at Serial No. 6 as per his merit position. Shri Gokul Prasad and Shri Ram Prasad, both SCs were at Serial Nos. 1 and 2 respectively, as such, Shri Gokul Prasad was promoted against SC Quota and Shri Ram Prasad against the general vacancy w.e.f. 18-11-1985. The details of DPC-III meeting held on 18-11-1985 have been filed and marked as Annexure-CA ~~4~~^{TV} to the counter affidavit. Shri BBL Bajpai, Assistant Storeskeeper shown at Serial No.3 as per his merit has also been found suitable by the DPC-III for the post of Supervisor and was promoted w.e.f. 5-5-1986 to the post of Supervisor 'B'(MT) (hereinafter referred to as Supervisor). Aggrieved by the above promotions as well as disciplinary action initiated against the Applicant vide charge Memo. dated 28-5-1985, the Applicant had filed the petition under Section 19 of the Administrative Tribunals Act, 1985 being OA No. 238 of 1996, which was decided on 4-8-1987 against which he had filed a review petition No. 13⁹/1987 which was rejected on 22-8-1988. A copy of the order dated 22-8-1988 has been filed and marked as Annexure-CA-9 to the counter affidavit. It is stated further that the case of the applicant does not come within the purview of the instructions contained in Ministry of Home Affairs letter dated 30-1-1982 as due to non-availability of sufficient vacancy in the general quota, he does not come in the merit for promotion in comparison to others, as such, question of keeping recommendation /findings of DPC in sealed cover does not

arise. It is further stated that in July, 1992, two general vacancies in the post of Supervisor occurred ~~and~~ and, therefore, DPC-III meeting was held to consider the suitability of the candidates and the applicant at Serial No.1 and Shri RK Pandey at Serial No.2 were found suitable and were promoted w.e.f. 16-7-1992. The details of DPC meeting dated 16-16-7-1992 has been annexed and marked as Annexure-CA-5 to the counter affidavit. It is stated that the applicant has preferred a representation dated 4-8-1992 addressed to the General Manager Ordnance Parachute Factory, Kanpur, referring to the order of the CAT dated 4-8-1987. Accordingly, as per the direction of the order of the CAT dated 4-8-1987, IIIrd Review DPC was held on 15-5-1993 to find out the suitability or otherwise for giving benefit of notional seniority from the date his juniors were promoted i.e. from 18-11-1985 but the petitioner was not found suitable due to imposition of penalty and pendency of other disciplinary action against him. A copy of the DPC has been filed and marked as Annexure-CA-6 to the counter affidavit. The applicant was informed of the same by letter dated 29-10-1992, copy of which has been filed and marked as Annexure-CA-7 to the counter affidavit. The applicant also preferred an appeal against the General Manager letter dated 29-10-1992 which was disposed of by the respondent no.2 vide his letter dated 21-8-1993 against which this OA has been filed by the applicant. It is further stated that the petitioner could not get promotion due to his lower merit position in the select list prepared by the DPC held on 12-7-1984 and non-availability of post as well as and not due to disciplinary action pending against him. In this way disciplinary action pending against him did not effect his promotion otherwise a sealed cover invariably would have been prepared for re-opening after

completion of disciplinary proceedings in accordance with the instructions contained in OM dated 30-1-1982. It is further stated that the applicant's name was further considered in the Review DPC in 1995 to consider his notional seniority from 18-11-1985, the date from which his juniors were promoted but he was not found suitable. The details of the DPC held on 16-2-1995 have been filed and marked as Annexure-CA-6-A to the counter affidavit.

4. The applicant in the RA to the CA has agitated that he has been exonerated from all the charges framed against him vide Memo. dated 28-5-1985 in October, 1987. Promotions on the posts of Supervisor were made on the basis of seniority, not on the basis of merit. Shri Vijai Shanker Shukla and Shri S.K. Negi, who were much junior to the petitioner were promoted on 8-7-1985 by overtaking the petitioner and this material fact has been deliberately concealed by the respondents. Not only that but Shri Gokul Prasad and Shri Ram Prasad, who were junior to the applicant were also promoted on the post of Supervisor. No explanation has been given as to why the DPC has not been held just after service of the order dated 4-8-1987 nor there is any explanation for the same after a gap of ~~five~~ ^{five} years.

5. In the SCA filed by the respondent, it is stated that the second charge sheet dated 28-5-1985 was disposed of by taking lenient view and imposed recorded warning on ~~on~~ the applicant vide order dated 26-8-1988. The post of Supervisor is a selection post as provided in the Rules, "Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and Condition of Service) Rules, 1989. A copy of the said Rules is annexed and marked as Annexure-SCA-1 to the SCA. As regards promotion of Shri Ram Kishore in general quota,

it is stated that he was promoted ~~rank~~ in order of merit
[redacted] finalised by the DPC convened on 12-7-1984. Shri Vijay Shanker and Shri R.S. Negi were promoted to the post of Supervisor vice order dated 8-7-1985 as per recommendations of the DPC held on 12-7-1984. It is further stated that the applicant could not be considered for the post of Supervisor as penalty imposed on him was in currency at that time. Regarding the delay in holding the DPC it is stated that the Department was awaiting the decision of the Tribunal in Review Petition and after rejection of the Review Petition, the applicant for the first time moved an application dated 4-8-1992 for grant notional seniority. It is further stated that one vacancy for the post of Supervisor also arose in 1990 but the same was reserved for the SC candidate and so only the candidates belonging to the SC were considered.

[redacted]
[redacted] Regarding promotion to the post of Chargeman Grade-II, it is stated that Shri Gokul Prasad, a SC candidate, much senior to the applicant was promoted [redacted] w.e.f. 23-6-1995 vice order dated 30-6-1995. The applicant has also filed further SRA to the SCA filed by the respondents and reiterated the facts mentioned in the OA.

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6. Heard learned counsel for the applicant and the respondents and also perused the record. The following points arise for consideration:-

- (i) Whether the post of Supervisor is a selection post or not?
- (ii) When junior of the applicant was first promoted to the post of Supervisor?
- (iii) Whether the order passed by the Tribunal in OA No. 238 of 1996 dated 4-8-1987 has been complied with?

For
(iv) What reliefs the applicant is entitled to?

7. The contention of the applicant is that the post of Supervisor is a non-selection post and requires to be filled up on the basis of seniority and not on the basis of merit. The proceedings of the DPC held for considering the promotion for the post of Assistant Storekeepers to the post of Supervisors marked as Annexure-CA1 show that the promotion was considered on the basis of merit and not on the basis of seniority. The learned counsel for the applicant has not submitted the concerned rules providing for promotion from the post of Assistant Storeskeeper to the post of Supervisor on the basis of seniority. On the other hand promotions have been considered for the said post on the basis of merit and Rules 1989 referred to above also provide for promotion to the post of Supervisor on the basis of selection. In view of these facts, the contention of the applicant that the post of Supervisor is a non-selection post, cannot be accepted.

8. The respondents in the CA have stated that out of three vacancies two were of general category and one reserved for SC and Shri Mahesh Chand and Shri S. D. Pandey, who were at Serial Nos. 1 and 2 in the seniority were promoted as Supervisor on the basis of merit as against general vacancy and Shri Mewa Lal at Serial No. 5 was promoted against SC vacancy. Admittedly Shri Mahesh Chand and Shri SD Pandey were senior to the applicant and Shri Mewa Lal though junior to the applicant was promoted against SC vacancy. It cannot, therefore, be said that out of these three any junior to the applicant was promoted against general vacancy.

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It is, however, admitted by the respondents in the SCA filed on 9-10-1995 that Shri Vijai Shanker Shukla and Shri RS Negi, who are placed at Serial Nos. 7 and 8 respectively are junior to the applicant in seniority were promoted to the post of Supervisor w.e.f. 8-7-1985 as per the recommendations of the meeting held on 12-7-1984.

9. The respondents have also admitted that in December, 1984, two vacancies of Supervisors occurred, one reserved and one for ST and Shri Ram Kishore, who was listed at Serial No.3 in the DPC proceedings held on 12-7-1984 was promoted against the general quota and Shri Ranjit Ram against ST quota. The applicant, therefore, cannot contend that Shri Ram Kishore was junior to him, who was promoted against general quota.

10. From the above discussion, it is evident that Shri Vijai Shanker Shukla and Shri RS Negi, who were junior to the applicant were promoted to the post of Supervisor w.e.f. 8-7-1985 for the first time.

11. As stated above, the Tribunal vide its order dated 4-8-1987 in OA No.238/1986 directed the respondents to take action in accordance with the instructions contained in OM dated 30-1-1982 and ~~set~~ up a DPC to consider the fitness of the applicant for promotion ^{to} the higher post from the date his juniors were promoted and to keep the findings of the committee in sealed cover till conclusion of the inquiry. It may be stated that by the time the above order was passed by the Tribunal, the DPC had already been held on 12-7-1984, 15-12-1984 and 18-11-1985. Admittedly, the respondents did not follow the procedure of sealed cover. In order to comply with the above

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order of the Tribunal, DPC was held on 15-5-1993 and 16-2-1995, the proceedings of which have been marked as Annexures-CA-6 and CA-6A. These review DPCs had been held with reference to the DPC meeting dated 18-11-1985 and not with reference to the DPC meeting held on 12-7-1984 on the basis of which Shri Vijai Shanker Shukla and Shri RS Negi who were junior to the applicant were given promotion w.e.f. 8-7-1985. It is thus evident that the respondents have not complied with the order of the Tribunal by holding DPC to consider the fitness of the petitioner for promotion to the higher post on which his immediate juniors were considered i.e.

Shri Vijay Shanker Shukla and Shri RS Negi were promoted.

11. Learned counsel for the respondents have cited the case of State of Tamilnadu and Ors Vs. Thiru K.S. Murugesan and Ors reported in (1995) 3 SCC 273 in which it has been held that when promotion is under consideration, the previous record forms the basis and when promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct.

Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 , nor Article 14 read with Article 16 of the Constitution.

11. It may be stated here that the respondents have not come with a clear stand. On the one hand in the

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counter filed on 1-8-1995, in Para 9, it is stated that since there were only three vacancies out of which two were general and one reserved and candidate at Serial Nos. 1 and 2 who were much senior to the applicant were promoted and one vacancy was filled from SC candidate, the applicant could not be promoted though he was having very good gradings in the ACRs. Not only this, but in Para 19, it has been stated clearly that the applicant could not be promoted due to his lower merit position and non-availability of the posts as well and not due to disciplinary action pending against him. On the other hand, in Para 9, of the SCA filed on 9-10-1995, it has been stated that the applicant could not be promoted as the previous penalty imposed on him was operative till 1-1-1986. Thus, contrary stand has been taken by the respondents regarding not promoting the applicant, with reference to the DPC held on 12-7-1984. In this connection, it would not be proper on our part to express any opinion on merits of the applicant for promotion to the post of Supervisor and would like to leave to consider the candidature of the applicant for promotion to the post of Supervisor on notional basis with reference to the date the applicant's junior Shri Vijay Shanker Shukla and Shri RS Negi were promoted according to Rules.

12. In view of the above discussion, the OA is allowed in the following terms:-

- (i) the impugned order dated 7-2-94 by which the applicant's representation has been rejected is set aside.

(ii) the respondents are directed to convene a Review DPC in compliance with the order dated 4-8-1987 passed by the Tribunal in OA No. 238 of 1986 taking into consideration the observations made above.

(iii) in case the applicant is found suitable for notional promotion to the post of Supervisor from the date earlier to the date on which he has already been regularly promoted, the respondents are directed to consider him for further promotion to the post of Chargeman. However, it is clarified that he will not be entitled for any arrears of salary for notional promotion.

13. No order as to costs.

Dr. Shau
Member (J)

S. R. Singh
Member (A)

Dube/