

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 28th day of April 2004.

Original Application No. 1246 of 1999.

Hon'ble Mr. A.K. Bhatnagar, Member- J.
Hon'ble Mr. D.R. Tiwari, Member- A.

S.N.S Tyagi S/o Sri O.P. Tyagi
Senior Auditor, working in the office of the L.A.O,
(IGS), Kanpur.

.....Applicant

Counsel for the applicant :- Sri H.S. Srivastava

V E R S U S

1. Union of India through the Secretary,
M/o Defence (Finance), New Delhi.
2. The Controller General of Defence,
West Block-V, R.K. Puram, New Delhi.
3. The Joint Controller of Defence Accounts (Funds),
Meerut Cantt, Meerut.

.....Respondents

Counsel for the respondents :- Sri Prashant Mathur

O R D E R

By Hon'ble Mr. D.R. Tiwari, Member- A.

By this O.A filed under section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs :-

- i. to quash the order dated 19.06.1990 and 07.07.1999 (Annexure A-6 and A-1) issued by the respondent No.3.
- ii. to issue suitable orders/directions to the respondents to confirm the applicant in Clerk's grade w.e.f 01.01.1975 alongwith his confreres with all consequential effects including monetary benefits.
- iii. to pass or issue orders/directions to pay interest @ 18% per annum on the arrears of pay and allowances etc. On refixation of pay at par with his confreres after grant of promotions from the date his confreres were promoted as a result of consequential benefits.

D.R. Tiwari

2. The facts of the case, in brief, are that the applicant at the relevant time was working as Lower Division Clerk (L.D.C) in the office of Joint Controller of Defence Accounts (Funds), Meerut. His work was satisfactory which is evident from the Summary of his Annual Confidential Reports (ACRs) for the period from 1969 to 1976. He was fulfilling all the conditions for confirmation in the Clerk Grade and for that purpose meeting of the Departmental Promotion Committee was held on 17.09.1975 and the case of the applicant alongwith others was considered. He was found fit for confirmation. The proceedings of the committee were submitted to the competent authority. After approval on 13.11.1975 the competent authority sent it to respondent No. 3 for publishing the confirmation of the applicant in para 2 of the office order (Annexure- 2). It came as a surprise to the applicant that his name was not published and contrary to his ^{expectation} ~~acceptation~~, he recieved a letter dated 01.12.1975 calling for his explanation for fraudulent withdrawl from the G.P.F advance amounting to Rs. 3574/-. The disciplinary proceedings for major penalty under rule 14 was initiated which resulted in award of punishment. His pay was reduced to two stages for a period of 2 years w.e.f 02.02.1980. It was also provided that he will not earn increments during this period (Annexure- 5). Aggrieved by the penalty the applicant filed O.A No. 620/91 seeking relief for setting aside the penalty of reduction of pay. The Tribunal by its order dated 15.12.1998 disposed of the above O.A with direction to the respondents to decide the representation of the applicant by a self speaking order within a period of three months from the date of receipt of a copy of the order (Annexure- 7).

3. The applicant has challenged the impugned order on various grounds mentioned in sub para 'a' to 'h' of para 5 of the O.A. However, during the course of the arguments, the

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counsel for the applicant argued the point that the confirmation order could not have been delayed in view of the decision of Hon'ble Supreme Court in the case of Janki Raman. We will dealing with this subsequently in the latter part of this order.

4. The respondents have opposed the contention of the applicant by filing counter reply. They have submitted that the applicant while working as quasi permanant Clerk (Accounts) No. 8288221, before actual notification of the confirmation, was involved in a serious case of fraudulent of withdrawl of GPF advance from G.P.F accumulation of other person of the same name i.e. Sri S.N.S Tyagi. He was punished after disciplinary proceedings for that misconduct and the action was taken as per the instructions contained in the O.M No. 22011/2/86/Estt (A) dt. 12.01.1988 and letter No. 22011/4/91/Estt (A) dated 14.09.1992 issued by the M/o Personnel, Public Grievances and Pension, Govt. of India (Annexure CA-1 and CA-2). The respondents have further argued that it is the applicant who by his conduct did not fulfil the conditions as laid-down by Head of Department as circulated vide letter No. dated 13.11.1975. This order is in consonance with the standing instructions contained in the O.M issued by the M/o Personnel, Public Grievances and Pension, Govt. of India mentioned earlier.

5. We have heard and considered the rival contentions of the parties and perused the pleadings.

6. During the course of arguments learned counsel for the applicant relied on the decision of Hon'ble Supreme Court in U.O.I and Ors. Vs. K.V. Janki Raman 1991 (4) SCC 109 and U.O.I & Ors. Vs. Dr. (Smt) Sudha Salhan (AIR) 1998 SCC 1094. Learned counsel has strenuously argued that the confirmation/promotion cannot be withheld until or unless the charge-sheet

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for disciplinary action has been issued prior to the date of the D.P.C. In the present case, the D.P.C meeting was held on 17.09.1975 and the show cause notice was issued to the applicant on 01.12.1975. It is undisputed fact that no charge-sheet has been issued to the applicant before 17.09.1975 and according to the averment made by the applicant in para 4.3 of the O.A, which has not been disputed by the respondents, his ACRs are satisfactory which entitle him for confirmation. The reliance of the applicant on the decision of the Apex Court in case of Janji Raman (Supra) to this extent is valid. The counsel for the respondents has placed reliance on the circular of the Govt. of India of the year 1988-92 (Supra). They have also cited the case of Vinod Prakash Vs. U.O.I decided by the Principal Bench in O.A No. 902/95 decided on 24.11.1999 (Annexure CA-3).


7. The only question which needs for consideration is whether the denial of the applicant's confirmation in due time is ^{justified} ~~satisfied~~ or not. The contention of the counsel for the applicant cannot be sustained in view of the facts and circumstances of the case. There is no doubt that Janji Raman (Supra) has conclusively laid-down the law that the promotion could not be withheld in case the charge-sheet has not been issued before or on the date of D.P.C. In this case also his confirmation was not withheld rather he was found fit and D.P.C recommended him for promotion. The competent authority also accepted the recommendation of the D.P.C and sent it to the appropriate authority for issuance of the order of confirmation. However, there are certain conditions laid-down in the O.M dated 12.01.1988 (Supra) which provides that the action could be taken before one is actually promoted/ confirmed and this principle has been circulated by the Head Of Department vide letter No. 23014/A/75-AN-1 dated 13.01.1975. Para 7 of the O.M dated 12.01.1988 reads as follows :-

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" A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the D.P.C are received but before he is actually promoted, will be considered as if his case has been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated by the charges against him and the provisions contained in this O.M will be applicable in his case also."

A perusal of this para clearly indicates that the action could be taken even after the recommendation of the D.P.C but before it is actually implemented. There is no doubt that on 17.09.1975 when the D.P.C met, the applicant has not been issued any charge-sheet. ^{However,} but before the order was implemented, the disciplinary proceeding was initiated against the applicant and withholding of confirmation was justified as per para 7 of the O.M cited above. It speaks of a situation with regard to post-recommendatory period i.e. after the recommendation have been submitted by the D.P.C to the competent authority prior to actual implementation. Before the actual implementation, if any disciplinary proceedings are initiated then competent authority has to consider the case of the candidate as if his case is being initially considered and the action is to be taken as provided in para 7 of the O.M mentioned supra.

8. In view of the facts and circumstances and discussions mentioned in the preceding paras, the O.A is devoid of merits and is accordingly dismissed. No costs.


Member- A.


Member- J.

/Anand/