

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 26th day of APRIL 2004.

Original Application no. 855 of 2003.

Hon'ble Maj Gen K K Srivastava, Member (A)
Hon'ble Mr A K Bhatnagar, Member (J).

Gulzari Lal, S/o Sri Kewal Ram,
R/o Bandu Katra,
AGRA.

... Applicant

By Adv : Sri A.K. Jaisawal

V E R S U S

1. Union of India through the Secretary,
Ministry of Defence, A.H.Q.,
NEW DELHI.
2. Director General Ordinance Services, A.H.Q.,
NEW DELHI.
3. O I/C, A.C.C. Records, Trimulghary,
SECUNDERABAD.
4. Commandant, C.C.D.,
AGRA.

... Respondents


By Adv : Sri A. Mohiley

O R D E R

Maj Gen K K Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 18.4.2002 by which the name of the applicant has been deleted from the list of Officers promoted as Ordinance Officer Civilian (Stores) (in short OOC (S)) on regular basis from the list of 18.3.2002 (Ann 5) and also order dated 12.06.2002 (Ann 1) by which the respondent no. 4 has intimated that due to the pendency of the criminal case against the applicant he cannot be promoted. The applicant has prayed that the impugned

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orders dated 12.06.2002 & 18.04.2002 ~~be~~ quashed. He has ^{for direction to the respondents} also prayed ^{to} allow the applicant to join on the promotional post of OOC (S) COD Agra with all consequential benefits.

2. The facts of the case, in short, are that the applicant was initially appointed on 05.09.2002 as store keeper. He was granted promotion from time to time and was working as Senior Store Supdt. since 1996. The applicant was ^{ordered to be} promoted as OOC (S) by order dated 10.05.2000. The applicant refused the promotion, which is accepted by the applicant's counsel. The applicant was again promoted vide order dated 18.3.2002 and his name is shown at Sl. 'T' of para 2 of the order of Promotion-Cum-Posting list. The applicant has submitted acceptance to join, yet he has not been promoted and posted and the respondents passed the impugned order, referred to above, with which the applicant is aggrieved. The applicant superannuated on 31.8.2003 and this OA was instituted on 29.7.2003, which has been contested by the respondents.

3. The learned counsel for the applicant submitted that once the order for promotion, in respect of the applicant, ^{was} issued on 18.3.2002, the respondents have no right to delete the name of ~~the name of~~ the applicant from the list of promotion without giving reasonable opportunity to the applicant. The action of the respondents is illegal and it amounts to denial of principles of natural justice.

4. Another point raised by the learned counsel for the applicant is that the respondents were fully in knowledge of the pendency of criminal case against the applicant and

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^{ordered to be}
yet the applicant was ^{was to} promoted. If that be so, it is not under-stood/what were the considerations of the respondents for deleting the name of the applicant. They could have adopted sealed cover procedure as per rules on the subject. The learned counsel for the applicant has placed reliance on the following judgments:-

- i. S. Govindaraju Vs. K.S.R.T.C. and another, ATR (1986)2 SC 362
- ii. Mrs J.S. Pandya Vs. Director General of Police and Inspector General of Police Gujarat, 1986 (1) AISLJ 473
- iii. Vivek Prakash and others Vs. State of Rajasthan and another 1988 (6) SLR 761
- iv. Lal Audhraj Singh Vs. State of Madhya Pradesh, 1986 SLR 88
- v. Dev Raj Vs. State of H.P. & Ors, 1989 (7) SLR 517

5. Opposing the claim of the the applicant, learned counsel for the respondents submitted that no illegality was committed by the respondents in deleting the name of the applicant from the list of promoted officers because of the pendency of the criminal case.

6. Heard learned counsel for the parties, considered their submissions and perused records.

7. The short controversy in this case is whether the applicant is entitled for promotion as OOC (S) inspite of pendency of the criminal case or not. Admittedly, the Promotion-cum-Posting list was issued on 18.03.2002. It is admitted by the applicant that the criminal case was pending against him, which has still not been decided by the Trial Court. The sole contention of the applicant is that once the applicant was selected for promotion as OOC (S), his name could not be deleted in view of the

judgment of Hon'ble Supreme Court in case of S. Govindraju (supra). The Hon'ble Supreme Court has held as under :-

"Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary....."

In view of the above the respondents should have given opportunity to the applicant before his name was deleted from the promotion list. However, we would like to observe that the situation would not have been changed, in case the opportunity was given to the applicant. The criminal case against the applicant was pending on the date the order dated 18.03.2002 was issued and, therefore, no material difference would have been made, if respondents had given an opportunity to the applicant or else put his case under sealed cover. We have no doubt in our mind that the promotion as claimed by the applicant could not be granted during the pendency of the criminal case.

8. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble Gujarat High Court in case of Mrs. J.S. Pandya (supra), the same is easily distinguishable because the important point laid down by the Hon'ble High Court is regarding ^{promotion during the} pendency of ~~the~~ disciplinary proceedings. The learned counsel for the applicant submitted that in larger ^{connotation} disciplinary proceedings do include

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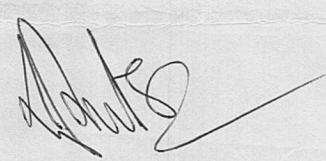
~~employee~~ the criminal proceedings as well. We are not persuaded to accept this plea of the applicant's counsel. Another case law relied upon by the applicant's counsel is of Hon'ble Rajasthan High Court in case of Vivek Prakash (supra). The same is also regarding violation of principle of natural justice in case opportunity in such circumstances is not given. In view of our above discussions, the case law cited by the applicant's counsel shall not be helpful to him. Similarly, the case law laid down by the Hon'ble High Court of MP in case of Lal Audhraj Singh (supra) and also the law laid down by Himachal Pradesh Administrative Tribunal : Simla, in case of Dev Raj (supra) shall not be helpful to the applicant.

9. In the end, we would like to observe that since the criminal proceedings were pending against the applicant right upto the date of superannuation on 31.8.2003, the applicant was not entitled for promotion as OOC (S) and, therefore, we are not inclined to grant any relief. There is no good ground for interference.

10. In the facts and circumstances and our aforesaid discussions the OA is dismissed as devoid of merit. However, the applicant may make representation for his promotion in case he is acquitted of the criminal charges by Trial Court.

11. There shall be no order as to costs.


Member-J


Member-A

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