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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.185 OF 1996

Cuttack, this the 21st day of May, 1996

Srinivasan Sugunan

...

Applicant

Vrs.

Union of India & others

...

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Yes*
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

Narasimhan
(N.SAHU) 21/5/96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.185 OF 1996
Cuttack, this the 21st day of May, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE).

...

2. Sri Srinivasan Sugunan, aged about 44 years,
son of late P.K.Srinivasan, working as A.A.S.O.,
against higher vacancy of D.A.S.O.II in
Naval Armament Depot, Sunabeda-763004,
Dist.Koraput, Orissa. ... Applicant

By Advocates - M/s Ganeswar Rath, Sradhananda Misra &
A.K.Panda.
-versus-

1. Union of India, represented by its
Cabinet Secretary, Central Secretariat,
New Delhi-1.

2. The Secretary, Defence,
Central Secretariat,
New Delhi-1.

3. The Chief of the Naval Staff,
South Block, Central Secretariat,
New Delhi-1.

4. The Flag Officer, Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Naval Base, Visakhapatnam, A.P.

5. The Deputy General Manager,
Naval Armament Depot, Sunabeda,
Koraput-763 004, Orissa

.... Respondents

By the Advocate - Mr.Ashok Mohanty,
Sr.Central Govt.Standing Counsel.

...

O R D E R

N.SAHU, MEMBER (ADMN.)

This application prays for quashing the communication dated 21.2.1996 (Annexure-6) and the signal of the NHQ.151633/Feb. and as an interim measure, to relieve the applicant from the present post notwithstanding the communication (Annexure-6) and NHQ signal 151633/Feb. to facilitate him to join the promotional post at the Headquarters. Annexure-6 is dated 21.2.1996. The subject is "Transfer/promotion of Shri S.Sugunan, AASO". Annexure-6 reads as follows:

"It is intimated that information has been received from NHQ that your transfer/promotion is held in abeyance pending finalisation of investigation of charges of misconduct and adverse comments on Integrity recorded in the latest ACR."

Signal 151633 is extracted as under:

"NEC.NHQ CP(G)/0378/DASO II DATED 15 JAN AND 22 JAN REGARDING POSTING/TRANSFER OF IN-AS OFFICERS. TRANSFER/PROMOTION OF SHRI SUGUNAN AASO HELD IN ABEYANCE PENDING FINALISATION OF INVESTIGATION OF CHARGES OF MISCONDUCT AND ADVERSE COMMENTS ON INTEGRITY RECORDED IN OFFICERS LATEST ACR. REQUEST INFORM OFFICER ACCORDINGLY.

2. COPY OF LATEST ACR BEING FORWARDED FOR COMMUNICATION OF ADVERSE REMARKS TO OFFICER BY FOCING EAST."

The prayer of the applicant is that his transfer should be given effect to and the impugned Annexure-6 and the signal referred to above be quashed.

2. The undisputed facts leading to the dispute are that the applicant was promoted to the post of AASO (from Senior Foreman Factory) vide order dated 24.11.1993 to implement the order of the C.A.T., Bombay Bench. As there was no vacancy in the post of AASO, the applicant was

appointed in the available vacancy of DASO-II. The applicant claims that he was eligible for promotion to the post of DASO-II from 17.7.1995 by virtue of completing three years of service as AASO. Paragraph 9 of the application states that the applicant was empanelled for promotion to the post of DASO-II in consequence of the recommendation made by the D.P.C. The name of the applicant is at Sl.No.12 in the aforesaid panel. The panel is dated 10.1.1996 and this panel for promotion to the grade of Deputy Armament Supply Officer Gr-II was prepared consequent on the implementation of the judgment of the C.A.T., Bombay Bench, in O.A.No.574 of 1987 (Naval Armament Depot Engineering Supervisors Association vs. Union of India). D.A.S.O-II is a selection post and the applicant though^{15th} in the order of seniority has been placed at Sl.No.12. On 15.1.1996 the authority notified the promotion of the applicant vide its letter No.CP(G)/0378/DASO-II along with other names occurring in the panel with a stipulation that "the move should be completed by 28 Feb 96" and "the charge assumption report may please be forwarded to Naval Headquarters". As far as the applicant is concerned, he has been transferred from NAD, Sunabeda to NHQ/DGAS against an existing vacancy on promotion to the post of DASO-II. By a letter dated 22.1.1996 it is mentioned that the promotions of individuals as D.A.S.O.-II are subject to the condition that no disciplinary/vigilance case is pending/contemplated against any of them on 15.1.1995 which was corrected as 15.1.1996 by a notification of the NHQ dated 12.2.1996. Soon after this, the applicant requested for relief and to strike him off from the strength of Sunabeda from 27.1.1996 vide Annexure-4. He was not allowed to be relieved on 27.1.1996 for which he represented on 13.2.1996 and 16.2.1996.

On 15.2.1996 NHQ sent the impugned signal keeping the promotion order of the applicant in abeyance pending finalisation of investigation and this was formally communicated to him by Annexure-6 dated 21.2.1996. He was served with a chargesheet dated 20.2.1996 issued by Respondent No.4 regarding misconduct. The brief ground of the applicant is that as no proceeding is contemplated or initiated before 15.1.1996, the order of promotion and transfer on 15.1.1996 cannot be kept in abeyance and the impugned signal is liable to be quashed. In the counter affidavit it is stated that "decision to take disciplinary proceedings against the applicant was taken by the competent disciplinary authority on 06 Dec.95 after due examination of the case on file. This decision was communicated to NHQ vide HQENC letter dated 05 Jan.96. The letter was however addressed to a different department, namely, Directorate of Personnel Services (DPS) in NHQ as certain aspects of the case were being dealt with by that department. As a result the Director of Civilian Personnel (DCP) did not receive this letter in time and consequently issued the promotion Notification dated 15 Jan 96". After the promotion notification was received, the Headquarters, Eastern Naval Command, Visakhapatnam, drew the attention of NHQ vide letter dated 5th January 1996 and signal issued on 19.1.1996 whereafter the transfer/promotion of the applicant was kept in abeyance. The applicant was charged for making baseless reports to I.B., RAW and Prime Minister's Office. The brief question is whether the issue of

charge memo under Rule 14 of the CCS (CCA) Rules, 1965 on 20.2.1996 can keep the promotion already notified in abeyance. It is submitted by the Respondents that action of withholding of promotion taken by the NHQ is in conformity with paragraph 7 of the DOP&T O.M.No.22011/4/91-Estt.(A) dated 14.9.1992 which was issued after taking into consideration the judgment of the Supreme Court in the case of Union of India, etc.etc. v. K.V.Jankiraman, etc.,etc., reported in AIR 1991 SC 2010.

3. The point at issue is whether the Respondents can keep the transfer ~~xx~~ on promotion in abeyance, after the notification of the said promotion and transfer, on the basis of a chargesheet issued much later than the date of promotion notification. Clause 7 of the executive instructions issued on 14.9.1992 lays down:

"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 DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

Clauses 2 and 7 of the O.M. dated 14.9.1992 came up for consideration before the Principal Bench of the Central Administrative Tribunal in O.A.No.1510/91, decided on 15.1.1993 (Shivlal Sagar v. Union of India (through its Foreign Secretary)) and the Chandigarh Bench of the C.A.T. in O.A.No.1232 HP of 1992,

decided on 7.12.1993 (Som Nath Sharma v. Union of India and others). In the first case, the Principal Bench following the decision of the Supreme Court in Jankiraman's case (supra) held that if a chargesheet had been issued in the departmental proceedings to a Government servant after the recommendations of the D.P.C. are received but before he is actually promoted, it will be considered as if his case had been placed in a sealed cover by the D.P.C. Such a provision existed in the O.M. dated 12.1.1988 and this was not struck down by the Supreme Court. In fact in the first case the promotion order was issued on 27.5.1992, but the chargesheet had been served on 30.4.1992. Therefore, the Respondents' treatment of the applicant's case in a sealed cover was upheld. But the facts in this case are totally different. As mentioned above, the D.P.C. empanelled the applicant on 10.1.1996. The NHQ has notified the promotion of the applicant on 15.1.1996 and transferred him from Sunabeda to Naval Headquarters against an existing vacancy on promotion to the post of D.A.S.O-II. Subjecting this promotion to disciplinary or vigilance case pending or contemplated as on 15.1.1995 and corrected as on 15.1.1996 is an unjust condition. All clearances are taken, both vigilance and administrative, before the D.P.C. meets according to the Jankiraman's case (supra). To subject the promotion to condition of vigilance and disciplinary action is to put the cart before the horse or to lock the stable after the horses left the stable. This matter has been fully discussed in the case of N.Sanjeevi v. Union of India, (1991) 18 ATC 758 (Mad.). The applicant in that case

was considered for ad hoc promotion in December 1987 and for regular promotion on 30.3.1988. The chargesheet was yet to be served on the applicant though a note had been received from the Central Bureau of Investigation recommending departmental action against him. The adoption of sealed cover procedure was held invalid by the Madras Bench of C.A.T. The subsequent serving of chargesheet on the applicant on 29.6.1989 did not cure the defect. The Madras Bench of C.A.T. extensively interpreted the Office Memorandum of the Department of Personnel & Training dated 12.1.1988. In Lachhman Dass Gandhi v. Chief P.M.G. (1992) 20 ATC 100, it was held that sealed cover procedure can be applied only when a chargesheet has been served and not before that. An employee cannot be denied ad hoc promotion merely on the ground that his case has been referred to CBI for enquiry. In the present case there was a regular notification of promotion by a validly constituted D.P.C. which was translated into a posting order posting the applicant to a promoted post by the Naval Headquarters on 15.1.1996. It was directed that the officers at Sl.Nos.12 and 19 are on permanent duty and are eligible for TA/DA, joining time, etc., as admissible under the existing rules and that they should move from their present places of posting by 28.2.1996 and should assume charge. This was supplemented by a letter dated 22.1.1996 that this is subject to disciplinary/vigilance case pending or contemplated. This letter dated 22.1.1996 cannot in any way

stay or dilute or dent or abridge the rights that accrued to the applicant by the findings of the D.P.C. and the order of the duly constituted authority promoting him, as D.A.S.O-II and transferring him to that place. In a way the wide words used in the letter dated 22.1.1996 stating that even contemplated disciplinary case will influence the promotion order are not legal and are liable to be struck down. There is no justification whatsoever to keep the promotion and transfer in abeyance simply because a chargesheet has been served after the promotion and the transfer are notified.

4. Learned counsel for the applicant, Shri Ganeswar Rath has made a valid claim that the action of the respondents in staying the promotion order without giving him an opportunity^{of} hearing violates the principles of natural justice and for this purpose, he cited the decision in the case of Shridhar son of Ram Dular v. Nagar Palika, Jaunpur and others, AIR 1990 SC 307. The Supreme Court held that the order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector and that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. I agree this principle squarely applies to the abeyance of the transfer order following a promotion order and because it violates the principles of natural justice, it is declared void and quashed.

5. I have given my earnest and careful consideration to all the pronouncements of the Supreme Court in this regard and all the instructions of the Government, but I could not

find any justification whatsoever for such a course of action. This course of action is contrary to the principles laid down by the Supreme Court, and the Department of Personnel and Training instructions do not support such a course of action. It is unnecessary for me at this stage to go into the merits of the charges or the time taken by the various Departments of the NHQ to process the case of the applicant. It is for the respondents having initiated the enquiry to go into the merits of the charges in accordance with the procedure established in law. The only point before me is whether the transfer consequent on a promotion order can be kept in abeyance because a charge memo has been issued much after the date of promotion. In my view and in view of the settled principles of law as I perceive, there is no justification for such a move. Annexure-6 and the signal 151633 are hereby quashed. The respondents are directed to give full effect to the promotion order and relieve the applicant to join the post as notified in the promotion order within a fortnight of receipt of this order. The order of stay dated 13.3.1996 shall automatically cease the moment the applicant is relieved to join his posting at NHQ vacant post on promotion as D.A.S.O-II vide Sl.No.12 of the promotion order dated 15.1.1996. The other relief claimed, namely, "to promote the applicant from the date of the panel" is to be read as date of notification and the relief "to direct the Respondents to give all other service benefits" is vague and is rejected.

The application is disposed of. Parties will bear their own costs.

Narasimhaswami
(N.SAHU) 21/5/96
MEMBER (ADMINISTRATIVE)

A. Nayak, P.S.