

(7/6)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 257/2004.

Date of Order : 1.4.2008.

CORAM :

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

Anand Singh Kachhawaha S/o Shri Nand Lal Ji aged 54 years, Resident of 12/6/B Paota B-4 Road, Jodhpur, Official Address Office Superintendent in the Office of Joint Commissioner (Departmental Representative) ITAT, Jodhpur (Raj).

Mr. Ashok Thakwani, Adv.

.....Applicant.

VERSUS

1. Union of India through the Ministry of Finance, Government of India, New Delhi.

2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagvan Das, Road, Jaipur.

3. Commissioner of Income Tax and Senior Authorised Representative (DR) Income Tax Appellant Authority, Jodhpur Bench, Jodhpur.

Mr. Varun Gupta, Adv.

.....Respondents.

**ORDER (ORAL)
[PER M.L. CHAUHAN]**

The applicant has filed this O.A. thereby praying for the following

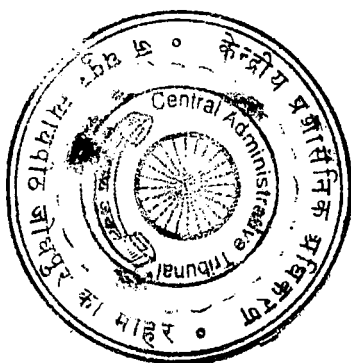
reliefs :-

"That the impugned order dated 30.3.2004 (Annex.A/1) and the impugned seniority list dated 2.9.2003 (Annex.A/2) so far having detrimental effect on applicant's right may be quashed and set aside with all consequential benefits.

That the respondents may be directed to allow promotion from the date of entitlement or w.e.f. the date the junior was allowed.

Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

Costs of the application may kindly be awarded in favour of the applicant."



2. Briefly stated the facts of the case, so far as relevant for the decision of this case, are that the applicant was initially appointed as Clerk in the respondent - Department on 12.7.1971. He was granted

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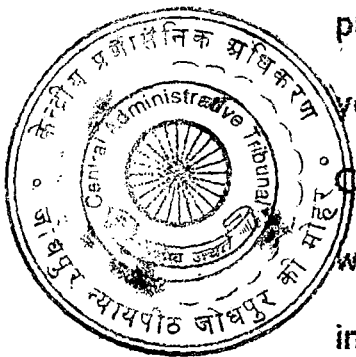
further promotion to the post of UDC, Tax Assistant and lastly as Head Clerk/Assistant on 1.9.1999. It may be stated that while working as Tax Assistant, he was issued a Chargesheet in the year 1992 which resulted into the imposition of minor penalty in the year 1998. During the pendency of the Chargesheet, the respondents convened DPC for promotion to the post of Assistant in the year 1995. Since the disciplinary proceedings were pending against the applicant, the recommendation made by the DPC in respect of the applicant was kept in sealer-cover. Since the applicant was not exonerated of the charges levelled against him and minor penalty of with-holding of one increment for a period of six months w.e.f. 1.10.1998 without cumulative effect under Rule 11 (iv) of the CCS (CCA) Rules was imposed, As such, his case for promotion to the post of Head Clerk was considered in the next DPC held on 30.8.1999 i.e. after the completion of period of penalty and the applicant was granted promotion to the post of Head Clerk/Assistant much after the date of promotion of so called junior persons to the applicant who were promoted as Head Clerk / Assistant in the year 1995. At this stage, it may be relevant to mention here that the applicant has not made any grievance regarding the promotion of so called junior persons in the year 1995 while he was granted promotion in 1999. The applicant was further promoted to the post of O.S. vide order dated 25.6.2001 along with other persons. Based on such promotion, the respondents issued a Seniority List dated 2.9.2003 whereby, the name of the applicant was placed much below the persons who, though junior to the applicant in the entry grade, but were granted promotion as Head Clerk / Assistant prior to the applicant. The applicant raised an objection regarding the said Seniority List vide his letter dated



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30.10.2003 (Annex.A/8) and the said representation was rejected vide impugned order dated 30.3.2004 Annex. /1. It is this order as well as the Seniority List dated 2.9.2003 (Annex.A/2) which is under challenge in this O.A. as can be seen from the prayer clause as reproduced above.

3. Notice of this O.A. was given to the respondents. Respondents have filed reply. In the reply, respondents have raised an objection regarding maintainability of this O.A. on the ground that applicant has not impleaded affected parties as respondent(s) as he is seeking relief regarding review of Seniority List vis-à-vis his juniors. Second objection, as raised by the respondents is, regarding limitation contending that the present O.A. is barred by limitation. For that purpose, it is pleaded that the grievance of the applicant relates to the year 1995 when the so called junior person was promoted as Head Clerk / Assistant whereas, the applicant could not be promoted as he was served with a Chargesheet in the year 1992 and the penalty was imposed in the year 1998. It is further pleaded that between this period, a DPC was held in the year 1995 promoting the junior persons as Head Clerk / Assistant. Thus, those persons who have been promoted in the year 1995 have automatically become senior to the applicant for the subsequent promotion. Applicant has not challenged the punishment order and, therefore, order regarding imposition of the punishment has become final. Thus, according to the respondents applicant is indirectly challenging the promotion of the junior persons in the year 1995 which is absolutely barred by limitation.



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4. On merits, respondents has justified the promotion of the applicant as Head Clerk / Assistant pursuant to the DPC held on 30.8.1999. According to respondents, since the applicant was under the currency of the penalty, as such, in terms of the rules governing the sealed cover procedure which stipulates that where the penalty has been imposed on a Government servant as a result of the disciplinary proceedings, the findings of the sealed cover/cover(s) shall not be opened and in such cases, promotion may be considered by the next DPC in normal course having regard to the penalty imposed on the individual, the applicant was not entitled to retrospective promotion from 1995.

5. The applicant has not filed rejoinder thereby, the plea taken by the respondents in the reply, remains un-controverted.

We have heard the learned counsel for the parties and have gone through the material placed on record.

7. We are of the firm view that the applicant is not entitled to any relief for more than one reasons.

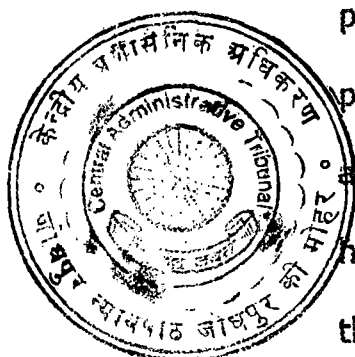
8. Admittedly, the applicant was not promoted as Head Clerk / Assistant in the year 1995 when the persons junior to him were granted such promotion and the case of the applicant was kept in sealed-cover as a Chargesheet was served on the applicant in the year 1992.

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9. From the facts stated above, it is also clear that the applicant was not fully exonerated. He was imposed a minor penalty of stoppage of one grade increment for a period of six months w.e.f. 1.10.1998. It is also borne out from the material placed on record that the case of the applicant was considered by the next DPC held on 30.8.1999 and he was granted promotion after the completion of the period of penalty. . Applicant has neither challenged the validity of the order whereby a minor penalty was imposed on him nor he has challenged the validity of the order whereby, he was granted promotion as Head Clerk / Assistant in 1999. The applicant has also not challenged the order of promotion of his junior persons as Head Clerk / Assistant in the year 1995. Thus, the fact remains that the applicant has accepted his promotion as Head Clerk / Assistant w.e.f. '1999' whereas, the persons junior to the applicant in the entry grade, were granted promotion as Head Clerk / Assistant in the year 1995. Thus, the applicant cannot make any grievances regarding seniority list of the higher post of O.S. on the ground that at one time he was senior to the person who were granted promotion in the feeder grade of Head Clerk / Assistant much earlier to the applicant. That apart, the applicant has also not impleaded the affected parties - as respondent(s) in this O.A., as such, on this ground also, the applicant is not entitled to any relief.



10. The respondents have taken this objection regarding non-joinder of parties in the reply which was filed as far back as on 6.1.2005. The applicant being aware of this objection, has not taken any steps for impleading affected person(s) as party-respondent. Thus, in view of the law laid down by the Apex Court, this O.A. is liable

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to be dismissed on account of non-joinder of necessary parties. At this stage, it will be useful to quote the decision of the Apex Court in the case of **Prabodh Verma and Others and a batch Vs. State of Uttar Pradesh and Ors.** reported in 1984 SCC (L&S) 704, whereby the Apex Court in its judgement at para 50 (1) has made the following observation :-



"50(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgement being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

11. To the similar effect, is the decision of the Apex Court in reported in 1998 SCC (L&S) 541 - **Arun Tewari and Ors. Vs. Zila Mansavi Shikshak Sangh and Ors.** whereby, the Apex Court has held that where in the application filed by the person before the Tribunal did not make the selected / appointed candidate who were directly affected by the out-come of their application, as partly-respondent, the decision of the Tribunal is vitiated on this account alone.

12. Even on merit, the applicant is not entitled to any relief. The matter is squarely covered by the judgement rendered by the Apex Court in the case of **Union of India and Ors. Vs. K.V. Jankiraman and Ors.** reported in 1993 SCC (L&S) 387, whereby, the Apex Court at page 123 para 29 has made the following observation :-

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"An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalized in praesenti. When an employee is held guilty and penalized and is therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct."

13. Further, at this stage, it will be useful to quote Para 17.6.2 of the instructions which deals with the sealed cover cases and action to be taken after the completion of disciplinary case / criminal prosecution, which thus reads :-

"17.6.2 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover / covers shall not be acted upon. His cases for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

14. Thus, from the reading of the portion as quoted above, it is clear that where the penalty has been imposed on a Government servant any disciplinary proceedings / findings recorded in a sealer cover / covers shall not be acted upon and the case for promotion has to be considered by the next DPC in normal course and having regard to the penalty imposed on him. Thus, according to us, there is no infirmity in the action of the respondents whereby, the case of the applicant was rightly considered by the DPC on 30.9.1999 i.e. after the completion of period of penalty in terms of the aforesaid provision. That apart, matter on this point is also no longer res integra. The similar issue was

under consideration before the Apex Court **State of M.P. and Anr. vs. I.A. Qureshi** reported in 1998 SCC (L&S) 1121 whereby the Apex Court has observed that penalty of 'Censure' is a minor penalty under the Central Civil Services (Classification, Control and Appeal) Rules, 1996, which has been imposed on a Government servant and



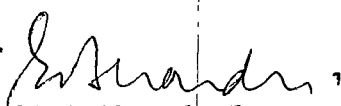
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once, it is held that the minor penalty has been imposed, the sealed cover containing the recommendation of the DPC could not be opened and the recommendation of the DPC should not be given effect to until the respondent has not been fully exonerated of the minor penalty imposed on him. It was further held that the respondent's can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings. At this stage, it will be useful to quote para 8 which thus reads :

"8. We are unable to accept the said contention of Shri Khanduja. "Censure" cannot be equated with a warning since under Rule 10 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, "censure" is one of the minor penalties that can be imposed on a government servant. It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2.5.1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings."

15. Thus, viewing the matter from any angle, we are of the view that applicant is not entitled to any relief. Admittedly the applicant is junior in the grade of Head Clerk / Assistant as he was promoted in the year 1999 whereas, the person who joined the department after the applicant were promoted as Head Clerk / Assistant in the year 1995 thus, became senior to the applicant in the feeder grade of Head Clerk / Assistant. Being senior to the applicant in the feeder grade of Head Clerk / Assistant, They were rightly shown senior to the applicant in the grade of O.S. which promotion was made based upon their seniority in the cadre of Head Clerk / Assistant. Accordingly, the O.A. is without any merit and is accordingly dismissed with no orders as to costs.




(R.R. Bhandari)
Adm. Member


(M.L. Chauhan)
Judl. Member

Part II and III destroyed
in my presence on 18/11/14
under the supervision of
section officer () as per
order dated 19/18/2014
[Signature]
Section officer (Record)

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a/k/a 11/12
22/11/08

R/c
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