

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 315/2007

Date of Order: 28.11.2008

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

Babu Singh s/o Shri Bhan Singh, aged 41 years, r/o village Chuk Kaluwallah, District Sri Ganganagar; Valve Man in the office of Garrison Engineer, MES, Sri Ganganagar.

...Applicant.

Mr. Vijay Mehta, counsel for the applicant.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES (Army), Sri Ganganagar.

...Respondents.

Mr. Kuldeep Mathur, counsel for respondents.

ORDER

[Per Mr. Tarsem Lal, Administrative Member]

The brief facts as relevant to the case are that the applicant was appointed as Valveman in semi skilled category pay scale of Rs. 850-1150 on 01.12.1987 though he was entitled to be paid salary in skilled category pay scale of Rs. 900-1500 / 3050-4590. The applicant filed O.A. No. 395/1996 before this Bench of the Tribunal and the respondents were directed vide order dated 13.09.1999 to grant him skilled category pay scale of Rs.

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950-1500 / 3050-4590 from the date of his initial appointment on the post of Valveman.

2. The applicant filed another O.A. No. 325/2002 for grant of ACP in the pay scale of Rs. 4000-6000 from 01.12.1999.

In the aforesaid O.A., this Tribunal vide order dated 25.02.2004 directed the respondents to grant ACP to the applicant in the pay scale of Rs. 4000-6000 w.e.f. 01.12.1999. The respondents have complied with this order.

3. The applicant was due for promotion on the post of Fitter Pipe and was in consideration zone and he apprehended that his case may not be considered though his junior Dharmveer, Mate posted at Lalgarh Jattan, has been granted promotion to the post of Fitter Pipe vide order dated 26.02.2007. Immediately after issuance of the above said order, the applicant submitted his representation on 28.02.2007 to the respondent No. 2 for which he has received no reply.

4. The applicant apprehended that since a criminal case is pending against him, his case may not be considered. However, criminal case is also pending against Mr. Bajrang Lal and Mr. Sagar Mal before the competent court /

(3) authority but they have been granted promotion vide order dated 26.02.2007 (Annex. A/2 and A/3).

5. The applicant made a representation dated 29.03.2007 (Annex. A/4) to respondent No.2 inviting his attention to the fact that though criminal case is pending against Mr. Bajrang Lal and Mr. Sagar Mal, but sealed cover procedure has not been adopted and they have been granted promotion. He, therefore, requested respondent No. 2 to treat him at par with these two employees. It is, thus, clear that while the case of the applicant has not been considered due to pendency of criminal case but Mr. Bajrang Lal and Mr. Sagar Mal against whom criminal case is pending, have been rewarded by granting promotion which amounts to hostile discrimination. The applicant has explained that under the DOPT orders issued vide OM dated 14.09.1992 and 25.10.2004, sealed cover procedure is required to be followed. Therefore, the sealed cover procedure should have also been followed in the cases of Mr. Bajrang Lal and Mr. Sagar Mal. The respondents did not disclose the reasons as to why the sealed cover procedure was adopted in the case of the applicant despite his repeated representation. In view of the fact of grant of promotion to Mr. Bajrang Lal and Mr. Sagar Mal, the applicant is also entitled for promotion by treating him at par by ignoring the criminal case pending against him.



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6. Since the respondents ignored the representations of the applicant, he approached this Bench of the Tribunal by way of filing O.A. No. 113/2007 which was disposed of by this Bench of the Tribunal vide order dated 05.07.2007 (Annex. A/5) directing the respondents to dispose of the representation(s) filed by the applicant by passing a reasoned and speaking order. The applicant filed a representation dated 02.08.2007 (Annex. A/6). The respondent No. 2 decided his representation and passed an order dated 17.08.2007 (Annex. A/1) but failed to decide the vital points raised by the applicant. The perusal of order Annexure A/1 shows that the respondents has not dealt with the request of the applicant to give him similar treatment that has been given to said Mr. Bajrang Lal and Mr. Sagar Mal.



7. Aggrieved by the above, the applicant has filed this Original Application and prayed that the respondents may be directed to promote him on the post of Fitter Pipe treating his case at par with said Mr. Bajrang Lal and Mr. Sagar Mal. He has also prayed that any other order, as deemed fit, giving relief to him may be passed and costs may also be awarded to him.

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8. The respondents have contested the O.A., inter alia, pleading that on 30.08.2005, Mr. Bajrang Lal had sustained injuries during the manhandling which took place in the office premises of G.E. Sri Ganganagar and as per findings of the court of enquiry, Mr. Babu Singh was found indulged in an indiscipline act and caused injuries to Mr. Bajrang Lal along with Mr. Rakesh Kumar, Mr. Ram Kishan and Mr. Naresh Kumar. A Memorandum under Rule 14 of CCS (CCA) Rules was issued to Mr. Babu Singh along with other three individuals i.e. Mr. Rakesh Kumar, Mr. Ram Kishan and Mr. Naresh Kumar to submit, within 10 days on receipt of memorandum, a written statement of his defence and specifically admit or deny each article of charges. Mr. Babu Singh and other three individuals denied the charges framed against them. As such an oral inquiry was ordered but the same could not be completed in view of the directions of this Bench of the Tribunal vide order dated 02.03.2007 in O.A. No. 149/2006 – Naresh Kumar vs. UOI, against the initiation of departmental proceedings. The sealed cover procedure has been followed by the DPC while considering promotion of the applicant since charge-sheet was issued to him under Rule 14 of CCS (CCA) Rules, 1965 as per court of enquiry, wherein the applicant was found indulged in an indiscipline act to the extent he had beaten up Mr. Bajrang Lal thereby inflicting injuries to him.

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9. The respondents have explained that the sealed cover procedure was not followed in case of Mr. Bajrang Lal and Mr. Sagar Mal on the basis that they were not found guilty as per court of enquiry, but subsequently corrective action has been taken by issuance of order by the Respondent no. 2, to the effect of keeping pending their pay fixation till further orders in view of the fact that charge-sheet has been filed by the Civil Police in the criminal case against them. Mr. Sagar Mal has been found prima facie involved in the criminal case by the Judicial Magistrate, Sri Ganganagar vide order dated 28.09.2005. Notwithstanding the said corrective action, an appropriate action, if required will be taken against Mr. Bajrang Lal and Mr. Sagar Mal on completion of the oral inquiry which is presently held in abeyance as per the direction of this Bench of the Tribunal vide order dated 02.03.2007 in O.A. No. 149/2006 – Naresh Kumar vs. UOI, against the initiation of departmental proceedings.



10. The respondents have further explained that sealed cover procedure has been followed by the DPC while considering the promotion of the applicant as the charge-sheet was issued to him under Rule 14 of CCS (CCA) Rule, 1965 as per court of enquiry, wherein the applicant was found involved in an indiscipline act to the extent he had

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beaten up Mr. Bajrang Lal thereby inflicting injuries to him.

Though the sealed cover procedure had not been followed in respect of Mr. Bajrang Lal and Mr. Sagar Mal on the basis that they were not found guilty as per court of enquiry but subsequently, corrective action has been taken by issuance of order by the respondent No. 2 by keeping their fixation pending till further orders in view of the fact that a charge-sheet has been filed by the Civil Police in a criminal case against them.

11. The respondents have explained that the promotion order in respect of the applicant has been kept in sealed cover and there will be no financial loss till finalization of oral enquiry (preliminary enquiry) and promotion is made by the Board of Officers. In view of the above, the respondents have prayed that the Original Application may be dismissed with exemplary costs.

12. Learned counsel for the parties have been heard. They have generally reiterated their arguments already given in their respective pleadings. They have also made us to go through the various documents placed on record.

13. Learned counsel for the applicant emphatically pleaded that the applicant should be given similar treatment at par with Mr. Bajrang Lal and Mr. Sagar Mal as they have already been promoted and their pay fixation



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has been held up, despite the fact that criminal case is pending against them also. In this regard, he relied upon in the case of **Man Singh vs. State of Haryana and Ors.** [2008(117) FLR 1091].

14. Learned counsel for the respondents made us to go through the facts stated in the O.A. and explained that the sealed cover procedure against Mr. Bajrang Lal and Mr. Sagar Mal was not adopted at the time of holding the DPC as they were not found guilty in the preliminary enquiry held in this regard, whereas in the case of the applicant, a charge-sheet for major penalty under Rule 14 of CCS (CCA) Rule, 1965 had already been issued. He further explained that a charge sheet has been filed by the Civil Police in the criminal case against them, therefore, the pay fixation has been held up in their cases also.

15. This case has been considered carefully and documents placed on record perused. It appears that the applicant is involved in the manhandling of Mr. Bajrang Lal and beaten up him in the office premises of G.E. Sri Ganganagar on 30.08.2005 thereby inflicting injuries to Mr. Bajrang Lal. In the said incident, along with the applicant, other three persons namely Mr. Rakesh Kumar, Mr. Ram Kishan and Mr. Naresh Kumar, were also involved. The respondents held a preliminary enquiry in the matter. As per finding of the court of enquiry, Mr.



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Babu Singh was found indulged in an indiscipline act along with aforesaid three others. The applicant was a prime accused and he was found guilty of beating up Mr. Bajrang Lal. Accordingly, a charge sheet under Rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant. The other individuals involved in the said incident were not found guilty of manhandling Mr. Bajrang Lal. Therefore, no disciplinary action was initiated against them. At the time of holding the DPC, it was seen that against the applicant a charge sheet under Rule 14 of CCS (CCA) Rule, 1965 has been issued, therefore, sealed cover procedure has been followed in his case. It is also fact that subsequently, a charge-sheet has been filed by the Civil Police in the criminal case against Mr. Bajrang Lal and Mr. Sagar Mal and consequently, their pay fixation has not been done.



16. The argument of learned counsel for the applicant that the applicant may also be treated at par with Mr. Bajrang Lal and Mr. Sagar Mal cannot be agreed to as at the time of holding the DPC, a charge-sheet for major penalty under Rule 14 of CCS (CCA) Rules, 1965 was issued to the applicant whereas no such charge-sheet was pending against Mr. Bajrang Lal and Mr. Sagar Mal. The case law quoted by the learned counsel for the applicant is distinguishable on the facts and grounds of this case.

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17. In this regard, orders have been issued by the Government of India, Department of Personnel & Training vide OM No. 22011/5/86-Estt. (D), dated 10th April, 1989 wherein the **procedure to be followed by the D.P.C. in respect of Government servants under cloud**, has been given as under:

"11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings.
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; and
- (iv) Government servants against whom an investigation or serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise.

11.2 Sealed cover procedure - The D.P.C. shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidate without taking into consideration the disciplinary case/criminal prosecution, pending or contemplated, against them or the investigation in progress. The assessment of the D.P.C. including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed cover."

18. In view of the above discussions, it is amply clear that sealed cover procedure has been adopted in the case



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of applicant as a charge sheet for major penalty had been issued/pending at the time of holding the DPC for his promotion as Fitter Pipe. Whereas, no such charge sheet was issued to Mr. Bajrang Lal and Mr. Sagar Mal, therefore, the case of the applicant cannot be equated with other two individuals. The applicant has not made out any case for interference by the Court in the orders passed by the respondents.

19. The Original Application is devoid of any merit and is dismissed, accordingly, with no order as to costs.



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[Tarsem Lal]
ADMINISTRATIVE MEMBER

[GEORGE PARACKEN]
JUDICIAL MEMBER

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Part II and III destroyed
in my presence on 1912/12/1
under the supervision of
Section Officer (J) as per
order dated 1912/12/11

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Section officer (Recorder)

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