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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

ORIGINAL APPLICATION NO. 135/2007

Dated this the 9th day of May, 2011

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Suresh Chand Sen
S/o Shri Mahadev Prasad
By caste Sen, aged 52 years
At present working as Barrack Store Officer
At Garrison Engineer 970 Engineering Works Section
C/o 56 APO, resident of Saharan Nagar
Banar Road, Jodhpur.Applicant

(By Advocate Mr. Nitin Trivedi)

Vs.

1. Union of India, through Secretary
to the Government, Ministry of Defence,
Raksha Bhawan, New Delhi.
2. The Engineer-in-Chief,
E-in-C Branch, Army Headquarters,
Kashmir House, New Delhi.
3. The Chief Engineer, Southern Command,
Headquarter Building, Pune.Respondents

(By Advocate Mr. Kuldeep Mathur)

ORDER

Hon'ble Mr. Justice S.M.M. Alam, Judicial Member

Applicant Suresh Chand Sen presently working as Barrack
Store Officer at Garrison Engineer, 970, Engineering Works

Section C/o 56 APO has preferred this Original Application for grant of following reliefs:

“(a) That by an order or direction in the appropriate nature, the order dated 19th Feb. 2005 (Annexure.A.1) may kindly be quashed and set-aside and accordingly, the respondents may kindly be directed to assign the correct seniority to the applicant at his proper place just below to Shri K.C.Sharma, ie., at Serial No.86-A instead of at Serial No.102 in the select panel of March, 1983 and thereafter, his candidature may kindly be considered for the purpose of promotion to the post of Barrack Store Officer against the vacancies of the year 2001-2002 by way of making review/revision of the DPC with all consequential benefits.

(b) That respondents may kindly further be directed to make the pay fixation of the applicant to the promotional post and due arrears may kindly be paid along with simple interest.

(c) That any other order or direction which this Hon'ble Tribunal deem fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(d) That the cost of the original application may kindly be awarded in favour of the applicant.”

2. The brief facts of the case are as follows.

The applicant was initially selected in the panel of March, 1983 to the post of Barrack Supervisor Grade II along with Shri K.C.Sharma and Shri Ramswaroop Meena (both reserved candidates). However the applicant was not given appointment and both the reserved candidates were given appointment. Thereafter applicant preferred OA. No.260/1986 before this

Tribunal which was disposed of on 12.5.1989 whereby a direction was issued to the respondents to issue appointment letter to the applicant appointing him on the post of Barrack Supervisor Grade-II. However the applicant was neither given seniority nor any consequential benefits at par with Shri K.C.Sharma and Shri Ramswaroop Meena, both appointees of the panel of March, 1983. Then again the applicant preferred OA.No.392/94 before this Tribunal which was disposed of on 7.10.1996 whereby the respondents were directed to consider the representation of the applicant and to pass a speaking order. In compliance of the said order the Respondent No.3 on 24.4.1997 passed an order by which the applicant was granted seniority with effect from 1.4.1985, but before passing of this order and granting seniority to the applicant with effect from 1.4.1985 a panel for promotion to the post of Barrack Supervisor Grade-I had already been approved in the month of July, 1985 whereby Shri K.C.Sharma was considered and promoted as Barrack Supervisor Grade-I with effect from July, 1995. Thereafter the applicant filed representation and on representation the applicant was promoted to the post of Barrack Supervisor Grade-I with effect from July, 1995. However, he was not assigned proper seniority as he was not placed just below Shri K.C.Sharma in the panel.

Further case of the applicant is that panel of promotion to the post of Barrack Store Officer against the vacancy of the year

2001-02 was approved and in the said panel only Shri K.C.Sharma and some other juniors of the applicant were considered. So the applicant again filed OA. No.96/2001 before this Tribunal but vide order dated 14.11.2002 the said OA was dismissed. It is stated that the seniority of the applicant was not properly placed in the selection panel of March, 1983 just below the name of Shri K.C.Sharma, that is to say the name of the applicant should have been shown at Sl.No.86A but his name was shown at Sl.No.102, as a result of which the applicant was considered for vacancy in the year 2002-03 for promotion to the post of Barrack Store Officer. On 19.2.2005 the respondents passed an order stating therein that the name of the applicant was rightly considered for promotion to the post of Barrack Store Officer against the vacancy of the year 2002-03 and no further review/revision of the DPC is required. Against the said order the applicant filed representation but the applicant's request was not met and then the applicant gave legal notice to the respondents and thereafter he preferred this O.A.

3. On filing of the O.A. notices were issued to the respondents and in compliance of the notices respondents appeared in this case through lawyer and filed their reply. As per the reply of the respondents, the respondents have raised preliminary objection to the effect that in this O.A. the applicant has prayed for issuing direction to the respondents to consider his case for the purpose

of promotion to the post of Barrack Store Officer against the vacancies of the year 2001-02 by making review/revision of the DPC but the applicant has failed to implead any individual(employee) already promoted against the vacancies of the year 2001-02 as party to the present OA. It has been contended that if the prayer made by the applicant in this OA is allowed, then in that case, the employees who had already been promoted to the post of Barrack Store Officer against the vacancies of the year 2001-02 will be affected. It is further contended that the principle of natural justice demands that no adverse order can be passed behind the back of any person who is not party in the Suit/OA and so the contention of the respondents is that this OA suffers from non-joinder of necessary parties and therefore on this score alone the O.A. should be dismissed. With regard to the merit it has been stated that there is no infirmity in the impugned order and so it cannot be interfered with.

4. Shri Nitin Trivedi, Advocate appeared on behalf of the applicant whereas on behalf of the respondents Shri Kuldeep Mathur, Advocate appeared and argued the case.

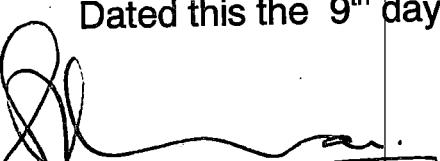
5. During the course of hearing Shri Kuldip Mathur, learned counsel for the respondents prayed to decide the preliminary objection first as in his view the Tribunal cannot proceed against a person/persons who had not been made party in the OA and

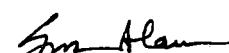
who will be adversely affected by the order of the Tribunal, if the O.A. is allowed. In support of his argument that at least 15-16 persons will be adversely affected by the order if the case is allowed, he has referred the statement of the applicant made at page 6 of his OA in which the applicant has stated that "The applicant was also considered and promoted in the DPC accordingly as such no review DPC is required to be conducted in the case of the applicant. Whereas Mr.K.C.Sharma who has been considered against the vacancies of the year 2001-02 and thereafter about 15-16 persons were also promoted against the same vacancies who are much juniors to the applicant". He submitted that as per the pleadings of the applicant although K.C.Sharma may not be affected by the order but atleast 15-16 persons who were promoted along with K.C.Sharma and who are said to be juniors to the applicant will be adversely affected by the order of this Tribunal if the O.A. is allowed. He submitted that since those 15-16 persons were not made party in this OA, as such no adverse order can be passed behind their back against their interest. On the above ground the learned advocate prayed to dismiss this O.A due to non-joinder of necessary parties. Learned advocate appearing for the applicant refuted the argument of the respondents' lawyer and submitted that those 15-16 persons are not necessary parties to this OA.

6. We have perused the pleadings of both the parties and we are satisfied that if this O.A. is allowed, then those 15-16 persons who are said to be juniors to the applicant and who had been promoted to the post of Barrack Store Officer against the vacancies of the year 2001-02 along with K.C.Sharma will be adversely affected by the order. Justice demands that the Courts/Tribunals should not pass any order which adversely affect an individual without giving him an opportunity of being heard. Since all those 15-16 persons have not been impleaded in this OA as parties as such we are of the view that this OA suffers from the defect of non-joinder of necessary parties and as such on this score alone the OA should be dismissed.

7. In such a view of the matter without going into the merits of this Original Application we dismiss the Original Application. No order as to costs.

Dated this the 9th day of May, 2011


SUDHIR KUMAR
ADMINISTRATIVE MEMBER


JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

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