

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.250/2014

Jodhpur this the 09th day of April, 2015

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Birbal Singh Raiwar S/o Shri B R Raiwar, aged 61 years, retired office superintendent in the office of Commander Works Engineer, MES AIR Force, Jodhpur; R/o 69, Abhay Nagar Scheme, Opposite KV No.1, Air Force Area, Jodhpur.

.....Applicant

By Advocate: Shri Vijay Mehta.

Versus

1. Union of India through the Secretary to the Government, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Chief Engineer, Southern Command, Pune.
3. Commander Works Engineer, Air Force, MES, Jodhpur.
4. Garrison Engineer, Army (Central), Jodhpur.
5. Engineer-in-Chief's Branch, Integrated HQ of Ministry of Defence, Kashmir House, New Delhi-110011.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-14.

.....Respondents

By Advocate : Smt. K. Parveen.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

"The applicant prays that ANN A1 dated 28/5/2014 may kindly be quashed. The respondents may kindly be directed to forthwith grant seniority below John G whose name appears at S No. 52 in ANN A2 and at S No.34 in ANN A3 and ANN A4 and grant him salary and all consequential benefits including increment of Rs. 150/- from 26/9/2005 as has been granted to similarly situated employees named in ANN A2, ANN A3 and ANN A4. The respondents may kindly be directed to amend order ANN A2 by inserting name of the applicant at S No.53 below the name of John G. The respondents may kindly be further directed to amend the PPO dated 16/10/2012 by granting pension and gratuity according to the salary granted to the applicant after granting him increment of Rs. 150/ from 26/9/2005 and due seniority from 28/8/2002. The respondents may also be directed to make payment of gratuity and other retiral benefits according to the increment and seniority granted to the applicant. Interest at the rate of 8% on due amount may also be granted to the applicant. Costs may also be awarded to the applicant."

2. Brief facts of the case, as stated by the applicant are that the applicant was initially appointed on the post of LDC and thereafter promoted to the post of UDC. While the applicant was posted in the office

promoted the applicant and many others to the posts of Assistant. His name appears at Sl.No.35. Thereafter the respondent No.2 published SRO on 10.10.2003 (Ann.A/4) mentioning separate dates for pay and allowances and dates for the purpose of seniority in the higher grade. The name of the applicant appear at Sl.No.35 and it has been mentioned against his name that the dates will be notified later on. Dates of John G. whose name appears immediately above the applicant at Sl.No.34 as 2.7.2003 for pay and salary and 28.2.2002 for seniority in higher grades. Dates of all employees name in this order for the purpose of seniority have been mentioned as 28.2.2002. The respondent No.2 issued amendment dated 11.12.2003 to SRO Ann.A/4 whereby date of 28.2.2002 has been substituted by 28.8.2002. Since the applicant was very much interested in joining the promoted post but he was not relieved by respondent No.4 despite request, therefore, the applicant submitted a representation on 8.10.2003. Respondent No.4 vide letter dated 10.10.2003 informed respondent No.2 that the applicant is doing duties of cashier as well as E5 (Budget) and E5 (Audit) and due to acute shortage of staff, the applicant could not be relieved for posting to promotional post. Thereafter the Chief Engineer, Jaipur Zone informed the CWE, Army vide letter dated 15.11.2002 that respondent No.2 has taken a serious view and has desired that the applicant be relieved by 20.11.2003 failing which

many efforts was relieved on 11.3.2005 and he joined his duties of the promoted post under respondent No.3 on 11.3.2005. After joining the promoted post, the respondent No.2 issued promotion cum posting order dated 26.9.2005 (Ann.A/2) whereby Assistants were promoted to the post of Office Superintendent but name of the applicant does not appears in this order. The applicant submitted a number of representations to include his name in the seniority list and grant him promotion. The respondent No.2 vide his letter dated 29.8.2008 addressed to respondent No.5 observed that due to lapse of the GE the applicant was not relieved in time. It was therefore, requested to grant promotion to the applicant in the panel. The applicant was given a counseling letter dated 12.2.2010 by respondent No.3 and the applicant sent reply to this letter on 16.2.2010 mentioning therein that he was not relieved by the respondent No.4 despite his best efforts. The respondent No.3 vide his order dated 4.6.2010 turned down the request of the applicant to withdraw the counseling letter and informed the applicant that his seniority will be counted from 11.3.2005, the date on which he assumed charge of the promoted post. When the grievance of the applicant did not redress by the respondents, he filed OA no.222/2010 and vide order dated 3.12.2013, the Tribunal disposed of the OA with direction to the applicant to file a detailed representation. The applicant submitted a detailed

28.5.2014 rejected the representation of the applicant and refused to consider the case of the applicant for promotion from the post of Assistant to Office Superintendent. The applicant has stated that respondent No.2 did not consider any of the reasons and grounds raised by the applicant in his representation. The applicant has since retired on 31.3.2013 and he is entitled to get his seniority and benefits from 28.8.2002 which has been given to all similarly situated employees vide ANN A/4 and A/5. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

3. In reply to the OA, the respondents have submitted that as per HQ CE SC Pune, the promotion-cum-posting order dated 28.5.2003, move had to be completed by 7.7.2003. However, the individual was not interested in assuming promoted post as he was performing duties of Cashier, thus he never made any request prior to 8.10.2003 to relieve him. The respondents have further submitted that due to acute shortage of staff and critical appointment as Cashier, The Garrison Engineer (Army), Central, Jodhpur projected the case with HQ CE SC Pune and requested to place the individual in position on promotion as Assistant in situ till 31.3.2004 for smooth functioning of the office. The movement was cancelled after expiry of move date, that too, the applicant has not

joined his new Unit only on 11.3.2005, hence his name was not considered along with other individuals for promotion from Assistant to Office Superintendent as he had not completed the mandatory length of service i.e. 3 years as per Recruitment Rules and the E-in-C's Branch issued promotion order as per the seniority. It was clearly mentioned in the promotion-cum-posting order that the applicant will be promoted on the new assignment at CWE (AF), Jodhpur, hence the applicant is entitled to higher scale of pay of Rs. 5500-9000 after considering his seniority as Assistant on 11.3.2005 and not at par with others, who had assumed appointment of Assistant by due date. The HQ CE SC Pune and E-inC's Branch had considered the case of the applicant at appropriate level and found no merit in the applicants application dated 19.12.2013, hence a reasoned speaking order as passed by HQ CE SC Pune dated 28.5.2014.

3. Therefore, the respondents submit that the applicant is not entitled to any relief.

4. The applicant has filed rejoinder to the reply filed by the respondents and reiterated the averments made in the OA.

5. Heard both the parties. Counsel for the applicant contended that the applicant was promoted to the post of Assistant from the post of UDC and was posted in the office of respondent No.3, Commander Works

the office of respondent No.4 Garrison Engineer, Army (Central), Jodhpur, who did not relieve the applicant to join his new assignment and after lapse of certain period, the applicant was relieved and he was joined the next promoted post on 11th March, 2005. Counsel for the applicant contended that the vide Annexure-A/7 dated 10 October, 2003, the Major Garrison Engineer informed the HQ SC Engineers Branch, Pune that due to acute shortage of clerical staff no other UDC/ LDC is available or capable to carry out the duties of cashier and ES Sections therefore the applicant could be relieved of his duties for posting to CWE (AF) Jodhpur on promotion at this stage i.e. Mid of financial year. Counsel for the applicant further contended that vide Annexure-A/8 it has been informed to the CE (A) Barmer with CE (A) (C) Jodhpur that Chief Engineer has taken a serious view of not relieving the applicant, Birbal Singh Raiwar and directed that he should be relieved forthwith and completion report by 20 November, 2003 failing which disciplinary action will be initiated against OC unit. Vide Annexure-A/9 dated 06 December, 2003, the SE Dir (P&L) for Chief Engineer directed the CWE (A) Jodhpur that MES 310992 Shri BS Raiwar UDC shall be relieved immediately and completion report forwarded by 20 December, 2013 with fail. Vide Annexure-A/11, the SC Cdr. Wks Engrst (A) informed the Commander Works Engineer (Army) Multan Line, Jodhpur that the applicant present working as cashier should be relieved after

May, 2004 the movement order was cancelled by the Major Garrison Engineer. Counsel for the applicant further contended that vide Annexure-A/18, the SE Dir (DPC) for Chief Engineer while informing the Directorate General (Pers) and some other officers observed that there was no fault on the part of the applicant which appears to be on record and hence it is suggested that he shall be given seniority in the panel of Office Superintendent as per seniority given in the panel of Assistant by the Headquarter vide letter dated 25.04.2005. He further contended that vide Annexure-A19 dated 29.08.2008 the Major General, Ashok Sinha also found that the applicant was at no fault in not joining on the post of Assistant he further wrote that "*in view of the above it is felt that further reinvestigation in this case is not likely to yield any new conclusion and I recommend that case for regularization of irregular promotion of the individual as Assistant may be processed and accordingly the individual's name may be considered in the panel for promotion as office Superintendent.*"

Counsel for the applicant contended that in view of these letters/communications, the respondent may be directed to consider the case of the applicant for promotion to the post of Office Superintendent from the date the other similarly situated persons were accorded.

6. Per contra, counsel for the respondents contended that the applicant willfully avoided to join as an Assistant, therefore he is not entitled to get any promotion on the post of Office Superintendent from the post of Assistant. She further contended that three years experience on the post of Assistant is essential for the post promotion post of Office Superintendent.

7. We have considered the rival contentions and also perused the record. From Annexures-A/8 to A/19 it is very clear that the officers of the applicant from time and again wrote the senior officers about their inability to relieve the applicant because he was working on the post of cashier and there was no other capable person and therefore he could not be relieved. The averments made in the reply that the individual himself was interested to remain the same post, cannot be accepted and the averments and contentions made by the counsel for the applicant carry weight. Looking to the Annexures-A/8 to A/19, we are of the considered view that there was no fault on the part of the applicant to join as an Assistant when he was promoted from the post of UDC to Assistant, therefore in our considered view the respondents are under legal obligations to consider the name of the applicant for promotion to the post of Office Superintendent while ignoring the essential qualification of

8. In view of the discussions made hereinabove, the impugned order Annexure-A/1 dated 28.05.2014 is quashed and the respondents are directed to consider the name of the applicant for promotion to the post of Office Superintendent from the date when his immediate junior has been promoted to the post of Office Superintendent in view of the letters/communications at Annexures-A/8 to A/19. The respondents shall consider the candidature of the applicant within a period of four months from the date of receipt of a copy of this order.

Accordingly, the OA is disposed of with no order as to costs.



[Meenakshi Hooja]
Administrative Member



[Justice K.C.Joshi]
Judicial Member



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