

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO.1059 OF 1997

CALCUTTA, THIS THE 16TH DAY OF JUNE, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER
HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER

Ashoke Kumar Sarkar, S/o Late Jagadish Chandra Sarkar,
aged about 45 years, working for gain as Officer
Superintendent, on deputation, Vocational Rehabilitation Centre
for Handicapped, 38 Badan Roy Lane, Calcutta - 700 010.
....Applicant.

(By Advocate : Shri B.C. Sinha)

Versus

1. Union of India, service through the Secretary,
Ministry of Labour, Shram Shakti Bhavan, Rafi
Marg, New Delhi - 110 001.
2. The Director General, Directorate General of
Employment Exchange and Training,
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
3. The Superintendent, Vocational Rehabilitation
Centre for Handicapped, Min. of Labour (DGE&T),
38 Badan Roy Lane, Calcutta-700 010.
4. The Joint Secretary (Trg) and Chief Administrative
Officer, Office of the JS(Trg) & CAO,
Ministry of Defence, C-II Hutmants, DHQ P.O.
New Delhi-110 011.

....Respondents.

(By Advocate : Ms. K. Banerjee)

ORDER (ORAL)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :

This Original Application has been filed by Shri Ashoke
Kumar Sarkar under Section 19 of the Administrative Tribunals
Act, 1985 claiming the following reliefs:-

- "I. To direct the respondent No.3 to implement the order of promotion as Assistant conveyed vide letter NO.A/40320/DPC-97/CAO/Pers-I dated 22/1/97 by fixing the pay in the promotional grade and drawing the same with other consequential benefits from 21/2/97.
- II. Cost of the suit.
- III. Any other order as the Hon'ble Tribunal deems fit."



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2. It is stated by the applicant that he was initially appointed as a Lower Division Clerk in Armed Forces Headquarters ('AFHQ' for short), Ministry of Defence, New Delhi on 25.7.1975. In due course, he was appointed as Upper Division Clerk. While working as Upper Division Clerk, he ~~had~~ proceeded on deputation to the Office of Vocational Rehabilitation Centre for Handicapped ('VRC-H' for short) under the Ministry of Defence as Office Superintendent in the scale of pay of Rs.1400-2300 at Calcutta. He joined the deputation post at Calcutta on 15.5.1995. In view of the fact that the applicant holds his lien in his parent organisation in AFHQ, he was considered for promotion to the post of Assistant in the scale of Rs.1640-2900. A letter dated 22.1.1997 was sent to VRC-H intimating the promotion to the applicant. In the said letter dated 22.1.1997, it was stated as follows:-

"2. In case Shri A.K. Sarkar does not report to this office by the stipulated date to take up the appointment of he will forfeit his claim for promotion to the grade. If he is not desirous of reversion, a declaration to that effect as per the enclosed proforma may be got filled up by the individual and forwarded to this office duly countersigned."

3. The stipulated date referred to above was 21.2.1997 as per the above communication dated 22.1.1997.

4. The claim of the applicant is that on receipt of the aforesaid communication, he sent his declaration for consideration of his promotion as per Annexure A-3. It is further stated that the borrowing department approached the ~~lending~~ organisation, i.e., AFHQ, Delhi for extension of time on the ground that if the applicant was relieved immediately, it would create a big gap and cause difficulties. The deputation period of the applicant was ^{earlier} ~~also~~ extended for one year as per letter dated 20.5.1996 (Annexure A-5). The learned counsel of

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the applicant vehemently stated that the applicant was very much willing to join the promoted post at Delhi. However, he was not relieved on account of delay in being relieved. The applicant by letter dated 22.8.1997 (Annexure A-1) even asked for a proforma promotion and financial benefits. The learned counsel of the applicant informed that ultimately the applicant has been able to get relieved and joined at Delhi probably on 11.11.1997. But in the process, he was not allowed to join as Assistant. Therefore, the present Original Application has been filed seeking a direction to the respondents to allow him to be treated as having been promoted w.e.f. 22.2.1997.

5. The learned counsel of the respondents stated that a reply has been filed by the respondents opposing the prayer of the applicant. However, on our record, we do not find any copy of the reply though the learned counsel of the applicant stated that a copy of the reply was handed over to him earlier. In the circumstances, we have proceeded on the basis of the reply made available to us by the learned counsel of the respondents at the time of hearing. In the reply filed, it has been stated that the applicant was on deputation upto 14.5.1997. He was informed about the officiating promotion to the post of Assistant as per letter dated 22.1.1997. The applicant did file a declaration dated 31.1.1997 which reads as under:-

"DECLARATION

I, Shri Ashoke Kr. Sarkar hereby elect :

*(i) to come back immediately to AFHQ _____ Service to take up the post in the grade of Assistant in an officiating capacity.

**(ii) I am, at present, not desirous of reversions to the AFHQ _____ service for Officiating promotion to _____ Grade.

C. M. S. M. A. M.

I understand that I thus forfeit my seniority and claim for promotion to Asstt. grade in AFHQ Service in accordance with my position on the panel on the basis of which the offer has been made to me vide CAO's office, Ministry of Defence letter/note No.A/40320/DPC-97/CAO/Pers-I dated 22/1/97.

I further understand that in case I opt for reversion later I will be considered for promotion to Asstt grade only after my reversion of AFHQ Civil Service for the subsequent Select List to be prepared. I also understand that I will not be considered for promotion to Asstt. grade in subsequent year till such time I revert to AFHQ Service.

I am aware of the fact that this declaration is final and irrevocable.

Signature : Sd/-
Name in Full : Ashoke Kr. Sarkar
Designation : Office Supdt.
Office : VRC-H Calcutta.

Dated 31.01.97

* Strike out which ever is not applicable.

COUNTER SIGNED

Superintendent
Vocational Rehabilitation Centre
for Handicapped
38, Badan Hoy Lane, Bahaaghata,
Cal-10.

SIGNATURE OF THE OFFICER.
DESIGNATION
OFFICE."

According to the respondents, the declaration itself is ambiguous.

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6. The ~~parent~~ department VRC-H has written to Director of Employment Exchange, New Delhi pointing out the problems to be faced in case of premature and immediate relieving of the applicant from that Organisation vide their letter dated 3.2.1997 (Annexure R-I). They have also suggested that a suitable proposal for filling up the post of Office Superintendent on deputation basis will be sent shortly for doing the needful. The

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respondents have further pointed out that the Ministry of Labour had informed the VRC-H that Ministry of Defence has not agreed to retaining of the applicant till the completion of deputation upto 14.5.1997. It was also pointed out that he could not be given a proforma promotion. The applicant had sent an application to Superintendent VRC-H (Annexure R-III) to the effect that if he was being relieved by 31.3.1997, there will be several problems, as he may not be getting TA advance etc. The Ministry of Labour informed the VRC-H as per their letter dated 15.4.1997 (Annexure R-IV) that "Shri A.K. Sarkar, Office Superintendent (on deputation) may be relieved immediately. However, if he is interested to stay at VRC, Calcutta for some time then his request may be forwarded to his parent Department for their consideration." The learned counsel pointed out that the applicant vide his letter dated 8.5.1997 (Annexure R-V) requested as follows:-

"Sir,

It is humbly to state that I have been asked by your good office to repatriate for accepting the promotion to the grade of Asstt. I must convey my gratitude for the offer.

Sir it is to inform that my mother is very much ill and I am the only make member in my family to look after her. At this stage my transfer will call upon her health at her old age.

On this ground I seek your kind permission to allow me stay here and also to allow me accept my promotion after 14th Aug'97.

I will be grateful for your kind act of according permission.

Thanking you,

yours faithfully,
Sd/-
(ASHOK KUMAR SARKAR)"

7. The learned counsel of the official respondents stated that it was at the request of the applicant that he was retained at Calcutta. Therefore, he could not be given the

benefit of promotion w.e.f. 22.2.1997 as claimed for. Since he had also not complied with the order dated 22.1.1997, there was no question of giving my benefit of promotion w.e.f. 21.2.1997 as claimed. It was also stated that the offer of promotion has lapsed on account of non-compliance of the order of promotion by the applicant. The learned counsel stated that the present Original Application lacks merits and should be dismissed.

8. It was also pointed out by the learned counsel of the respondents that the plea that the applicant was not relieved by the borrowing Office on account of administrative interest is totally baseless, as the applicant was retained at VRC-H, Calcutta at his request and appeals.

9. We have heard the learned counsel of both the parties and have perused the material available on record.

10. The applicant was on deputation with VRC-H, Calcutta and the term of his deputation was to expire on 14.5.1997. Before the expiry of that date, the applicant was promoted in the parent organisation. He was asked to join before 21.2.1997 on the promoted post of Assistant. There may be a fact that the applicant was slightly reluctant in moving from the deputation because of his personal problems that does not appear to be the sole reason. He was asked to be retained till 31.3.1997 in the first instance in view of the administrative problems of the borrowing department. The applicant did make a request as per Annexure R-III in view of his proposed relieving by 31.3.1997. But this request does not say anything that he was ^{not at} willing to join the promotion post of Assistant. He merely expressed his anxiety for not being told about the proposed date of his relieving though by letter dated 8.5.1997 the applicant has expressed his personal problems like illness of his mother but he

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was not retained at that ground alone. The borrowing department as well as the lending department have not passed ^{any} clear orders. The applicant has been able to join at Delhi in the month of Nov., 1997. When he joined at Delhi, he was stated to be not given the promoted post of Assistant. However, considering ^{the} peculiar facts of this case, we are of the considered view that the relief ^{for} claimed by the applicant cannot be allowed inasmuch as he cannot be given the benefit of promotion as Assistant w.e.f. 21.2.1997, but he certainly deserves to be given the promotion as Assistant from the date of joining in his parent department in Nov., 1997. We order ^{an} accordingly. The main reason for passing this order for giving him promotion from the date of joining at Delhi is that the respondents have not passed any categorical order withdrawing the order of promotion in favour of the applicant. If that is not so and the applicant has been given extension of deputation from time to time, he cannot be deprived of his promotional post after he joined the parent department. We also find that the applicant was partly responsible for not being relieved as per letter dated 22.1.1997 directing him to join upto 21.2.1997. There is nothing on record to suggest that the applicant ~~was~~ asked for extension of time to join and such extension was allowed to him. Considering ^{an} these facts, we direct that the benefit of promotion as Assistant should be accorded to the applicant with effect from the date of joining in the parent organisation, i.e., from Nov., 1997 with all consequential benefits.

11. In the result, the Original Application is partly allowed without any order as to costs.

Measles
(J.K. Kaushik)

Judicial Member

R.K. Upadhyaya
(R.K. Upadhyaya)
Administrative Member

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