

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.570 OF 1996

THIS THE 26th DAY OF JUNE, 2001

CORAM

HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI. MEMBER (A)

Laxman Devji More,
employed as Store Keeper,
Naval Armament Depot,
Trombay, Mumbai-400 088. Applicant

By Advocate Shri Ramesh

Versus

1. Union of India, through
the Secretary,
Ministry of Defence,
Government of India,
Noroth Block,
New Delhi-110 001.
2. General Manager,
Naval Armament Depot,
Trombay,
Mumbai-400 088.
3. The Director General of Armament,
Naval Headquarters,
New Delhi. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

HON'BLE SHRI GOVINDAN S. TAMPI. MEMBER (A)

Shri Laxman Devji More had challenged orders dated 20.11.1995 holding in abeyance his Efficiency Bar and dated 23.2.1996 denying him promotion to the post of Senior Store Keeper.

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2. Heard Shri R. Ramesh, learned counsel for applicant and Shri V.S. Masurkakr, learned counsel for the respondents.

3. Facts in this case are that the applicant, who was promoted as Senior Store Keeper and transferred to Naval Armament Depot, Balasore, challenged the same in OA No.666/1991 and desired to continue as Store Keeper in Bombay itself. The Tribunal, by its order dated 18.6.1992 directed that the petitioner be permitted to rejoin duty as Store Keeper, but without prejudice to authority of the respondents to take any administrative action, felt needed. It was also directed that his period of absence be regularised as Extraordinary Leave without pay. Accordingly on 26.6.1992, he was permitted to resume duty as Store Keeper but his period of absence from 28.1.91 to 28.2.92 was treated as unauthorised absence amounting to break in service. On his filing a Contempt Petition, the Tribunal directed on 12.7.93, that there shall not be any break in service. On 3.9.93 the order for that purpose was passed followed by another order dated 21.2.94 was issued cancelling the his promotion/ transfer order. On his making a request on 18.4.94 for grant of increment, which had been denied from December, 1991 a memorandum was issued stating that he was wilfully absent till 25.2.92 for which an enquiry was ordered, which culminated in imposition ^{of} the penalty of censure on 3.1.95. On 20.11.95, he was informed that grant of annual increment after the basic pay of Rs.

1560 was kept in abeyance. His representation against the same was not responded to. In between, on 8.12.95 he was directed to carry out the duties and responsibilities of Section Incharge for Explosives. This post entailed higher responsibilities, but he was not granted the promotion as Senior Store Keeper. Subsequently, he represented on 17.2.96, requesting the disclosure of reasons for staying his increment, he was advised on 23.2.96, that he was not found fit to cross EB on the basis of his performance as recorded in his ACR for the relevant period. His representation of 18.12.95 desiring to know as to how he was not promoted as Senior Store Keeper, immediately after his refusal period came to an end and upto 1995, he was replied that the DPC has not found him fit for promotion. Hence, this OA. According to the applicant, the action taken by the respondents was improper and incorrect as he had an unblemished record, with no adverse entry ever having been communicated to him. The disciplinary proceedings initiated against him having culminated in imposition of censure, there was no reason, why his crossing of EB or promotion could have been denied or delayed. The fact that he had refused transfer on promotion once shall not come in the way of his getting promotion or his being permitted to cross the EB once the said period was over, especially, he had obtained an order from the Tribunal, to treat the relevant period as leave without pay with permission to continue in Bombay. This could only have resulted in

postponing his promotion and crossing of EB by a specific period and not for ever, as the respondents appeared to be doing. The manner in which the applicant has been victimised by multiple penalties of censure, denial of promotion, denial of crossing of EB, was a hostile and discriminatory method for dealing with him and same immediately called for interference from the Tribunal, to do the applicant justice, pleads Shri Ramesh, the learned counsel.

4. Refuting the allegations made in the OA, the respondents point out that the application is liable to be dismissed on account of multiple reliefs being sought, each one of which constituted an independent cause of action for which separate OAs should have been filed. In its present form the application ~~deserves to~~ to be dismissed. Though the applicant became due for crossing the EB on 1.12.91 it was postponed on account of his being absent for about of 319 days, which was subsequently regularised by granting extraordinary leave without pay, only on 15.10.92. The applicant having declined his promotion/ transfer to NAD Balasore, proceedings were initiated against him on 2.7.94, which ended in imposition of censure on him on 3.1.95. His case was considered by duly ~~constituted~~ ^{constituted} DPCs during October, 95, who after going through ACR for 3 years preceding 1992 found the applicant 'not fit' to cross the same. He was also accordingly informed. It is true that by a Material Memo dated 2.6.96, he was asked to

look after as Section in Charge, but the same was cancelled on 25.6.96 itself. The applicant, therefore, cannot say that he should have been made Senior Store Keeper. His promotion for the post of Senior Store Keeper from 1993 onwards had also been considered, but DPC, which sat for the purpose, did not consider him fit for promotion on the basis of his performance as reflected in the ACR. As neither promotion, nor crossing of the EB is matter of right, but dependent on the performance of the officer as brought out in the ACR, duly perused by the DPC, he cannot have any grievance in this matter. The applicant's claim that there was nothing adverse against him, does not automatically entitle him either to cross EB or to get promotion. Unless and until the applicant is efficient he cannot be declared as fit for promotion or for crossing the EB. The respondents reiterate that the denial of his crossing EB and promotion were not related to his refusal to go on transfer on promotion, but only on account of the fact that his performance was graded as "average". ACR. With regard to the promotion, it is stated that while he was promoted earlier on the basis of his reports for the preceding 5 years for the period 1985 to 1990, during 1990-93, 3 ACRs had been written and these have been taken into consideration along with the 2 ACRs written prior to 1990. Based on the perusal of the same (1988-1993) he was not found fit for promotion. His claim that having been recommended for promotion once in 90 he is bound to be automatically

promoted in the subsequent years was incorrect. All the above pleas were forcibly argued on behalf of the respondents Shri V.S. Masurkar, learned counsel who stated that the department did not impose any multiple penalty on the applicant as alleged, but had only denied him the crossing of the EB and promotion as his performance was only average and not sufficient enough to earn for himself for promotion. There was, no warrant of this Tribunal's interference in such a situation and the application, therefore, deserves to be dismissed as without any merit, argued Shri Masurkar.

5. We have carefully considered the rival contentions and also perused the relevant records including the DPC's minutes for the crossing of the EB and the promotion as well as the ACR folder of the individual. Undisputed facts are that he was found suitable for promotion and was accordingly promoted and transferred as Senior Store Keeper at NAD Balasore, but he had not availed himself for the same but chosen to remain in Bombay as Store Keeper on the strength of the order of the Tribunal, who had also directed that his period of absence of 319 days from 12.8.91 to 25.6.92 be treated as EOL without pay, but without any break in service. Naturally, therefore, one year thereafter his promotion and/ or his crossing EB would have become due. It is seen that the respondents have not considered his case for either till 1995, primarily because of the disciplinary proceedings initiated against him, which

ended in his being censured. Thereafter, his case was taken up for consideration for crossing of the EB. It is seen from the minutes of the DPC, which considered his case for crossing of the EB, which had fallen due on 15.10.1992 that his over all assessment for the relevant period of 3 preceding years was only "average" and the DPC felt that he made the grade only for crossing the EB from 15.10.1996. The perusal of the ACRs for the relevant period convinces us that on the basis of his performance appraisal as reflected in the ACR could not have led to any different conclusion. Similarly, though on the basis of the analysis of his performance as reflected in his ACRs for the period of 5 years preceding 1990, he was promoted as Senior Store Keeper a promotion which he declined on account of his transfer to Balasore, he is found to have suffered in the gradation in the years that followed and therefore, for the period from 1993 onwards, the DPC did not assess him as fit for promotion. From the perusal of the ACRs for the relevant period, we do not see any reason to find fault with the findings of the DPC. They have acted in accordance with the instructions governing the holding of the DPC and have also graded the applicant on the basis of his reports and gradation for the relevant period. The respondents, accordingly, did not either grant him promotion or permit him to cross the EB at the stage of Rs.1560/-. These two actions cannot be considered as multiple penalties emerging from his ^{refusal to} action of ~~refusal to~~ to proceed to Balasore on transfer,

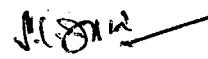
but have arisen on his ordinary performance over the subsequent years. The fact that he did not receive any adverse remarks in his ACRs does not automatically entitle him for promotion or for crossing the EB as only the performance above average, as correctly pointed out by the respondents would enable a Government servant for enhancement in his career. These also are the policy directives of the Government. The respondents have only followed the above scrupulously and the said decision cannot be called in question.

6. In the above view of the matter, we are convinced that the applicant has not made out any case for our interference. The application, therefore, fails and is accordingly dismissed. No costs.



(GOVINDAN S. TAMPI)

MEMBER (A)



(S.L. JAIN)

MEMBER (J)

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