

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.552/1999

Mumbai, this the 06<sup>th</sup> day of ~~April~~ <sup>May</sup>, 2003

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri K.V.Sachidanandan, Member(A)

N.S. Kamble  
UDC, Sub-Regional Office  
ESIC, Survey No.689/690  
Panchdeep Bhavan, Bibewadi, Pune .. Applicant

(Shri S.P. Saxena, Advocate)

versus

Union of India, through

1. Secretary  
Ministry of Labour, New Delhi
2. Administrative Officer  
ESIC Building  
Kotla Road, New Delhi
3. Regional Director  
ESIC Regional Office  
108, NM Joshi Marg, Bombay
4. Director  
Sub Regional Office  
ESIC, Panchdeep Bhawan  
Bibewadi, Pune .. Respondents

(Shri V.A. Vadhavkar, Advocate)

ORDER

Shri Govindan S. Tampi

Reliefs sought for by the applicant Shri N.S. Kamble  
in this OA are as follows:

- a) to declare that the order of punishment dt. 10.4.1997 imposed by the disciplinary authority by way of substitution to its original order dt. 29.6.1989, as illegal;
- b) to declare that the penalty imposed by order dt. 10.4.1997 and upheld by appellate authority by rejecting the appeal dt. 22.4.1997 would be applicable from 29.6.1989 or 3.7.1989 in view of the peculiar facts and circumstances of the present case;
- c) to declare that the applicant has already undergone the punishment imposed by the disciplinary authority from 3.7.1989 to 2.7.1992;

- d) to declare that the applicant was eligible for consideration for promotion to the post of UDC after 3.7.1992 when he completed the term of punishment of three years as imposed vide order dt. 10.4.1997;
- e) to direct the respondents to hold a review DPC and consider the applicant for promotion to the post of UDC from the date his juniors are promoted after 3.7.1992 and consequently antedate his date of promotion to UDC accordingly;
- f) to direct the respondents to further consider the applicant for promotion to the higher posts of Assistant/Inspector from the date any of his juniors in UDC cadre are promoted; and
- g) to grant all consequential benefits including monetary benefits if the present date of promotion of the applicant to UDC post is antedated to 3.7.92 when his juniors were promoted as UDC.

2. Heard S/Shri S.P.Saxena and V.A.Vadhavkar, learned counsel for the applicant and the respondents on 13.3.03. At the conclusion of the oral submissions Shri Saxena <sup>also</sup> who undertook to place before the copy of some judgement which he felt had a bearing in his case. The same, however, had not been produced by him as yet.

3. The applicant who joined as an ad hoc LDC on 14.6.77- in which post he was regularised on 8.1.80- was charge-sheeted on 4.2.88 on the alleged lapse involving the loss of Rs.633/-. In the common proceedings/enquiry the IO recorded a finding that the charges stood proved. The disciplinary authority on 29.6.89 imposed on him the penalty of reduction of pay to the minimum of scale, made effective from 3.7.89. The penalty was modified by the appellate and <sup>divisional</sup> ~~reversionary~~ authorities. OA No.487/92 filed by the applicant was disposed of on 13.1.97 setting aside the order but granting liberty to the respondents to pass fresh orders. In the meanwhile, the applicant was

promoted as UDC on 4.10.94 showing that applicant's penalty period was over. The fresh order was passed on 10.4.97 by reducing his pay from Rs.1320/- to Rs.1200/- for three years with cumulative effect. This order in fact was only the replacement of the order dated 3.7.89 and should accordingly have been related back to '89 but the same was not agreed to by the respondents. This order was upheld in appeal. As the fresh orders were only replacements for the earlier order, the theory of 'relate back' came into play and should be deemed to have started from 3.7.89 when the earlier punishment was made effective from. Denial of this caused grave injustice to the applicant leading him to file this OA.

4. Grounds of relief raised in this OA are as below:

- i) the order of the disciplinary authority in this case should be treated as having into force w.e.f. 3.7.89;
- ii) treating the earlier order as having come into effect from 3.7.89 the applicant was promoted on 4.10.94;
- iii) the disciplinary authority also indicated that the new penalty was only a replacement of the earlier order and has therefore to date from 3.7.89 but the same has not been done as yet;
- iv) applicant's being granted promotion as UDC on 4.10.94 showed that he had lived out his period of penalty and nothing further was to be done by them;
- v) a few of his juniors promoted as UDCs w.e.f. 4.10.94 had gone on to become Assistant/Inspectors but the applicant continue as UDC on account of the penalty continuing wrongly.

In view of the above, the OA should be allowed granting full relief and consequential benefits to the applicant, urges Shri Saxena.

5. In their detailed reply the respondents rebut the contentions of the applicant. According to them, the OA filed on 31.5.99 challenging the appellate order dated 17.2.98, was hit by limitation. After narrating the facts of the case which run similar to those furnished by the applicant, the respondents point out that on receipt of Tribunal's order dated 13.1.97 setting aside earlier penalty orders both by the disciplinary authority and the appellate authority, they had cancelled the effect of the earlier orders and directed that the applicant was entitled to get all the monetary benefits he had lost which was granted by respondents order dated 28.2.97. The fresh order issued on 10.4.97 by the disciplinary authority was legal and proper and was in tune with the decision of the Tribunal dated 13.1.97. They held that the fresh order was in replacement of the earlier order. It could not be treated as having retrospective effect as the applicant desires. Even otherwise there cannot be any retrospective punishment which would be the case if the applicant's plea is accepted. The Tribunal had neither cancelled the charge sheet nor directed the dropping of the proceedings but had only set aside the penalty with liberty to issue a fresh order. The same has been done strictly in accordance with law. The applicant was involved in diversion of amounts meant for poor persons and therefore he had to be penalised and the same was done strictly in accordance with law. The penalty imposed on the applicant was correct and the same does not call for any interference as it was issued strictly in accordance with instructions of the Tribunal. Keeping in mind the cancellation of the earlier punishment order the applicant had become eligible to have all the benefits which was denied to him earlier.

An amount of Rs.9174/- which he had lost due to reduction during 3.7.89 to 4.10.97 has also been paid to the applicant. Therefore, the fresh penalty has correctly become operative prospectively. Respondents also aver that the applicant's case was considered by the DPC held on 1.12.97 for promotion as Assistant/Head Clerk but he was found not fit. The applicant has therefore not been prejudiced in any manner and his request that the impugned order dated 10.4.97 be treated as having come into effect from 3.7.89 did not at all merit any consideration. Shri Vadhavkar appearing for the respondents strongly reiterate, the above and <sup>prays</sup> ~~prayed~~ that the OA be dismissed as having no merits.

6. We have carefully considered the matter under dispute and perused the documents brought on record. The request made in the OA is somewhat different from the normal cases. Here the applicant seeks that the second punishment imposed on him on 10.4.97 be treated as dating from the earlier punishment of 3.7.89. The applicant who was penalised at the culmination of disciplinary proceedings on 3.7.89, moved the Tribunal in OA No.487/92 which was allowed on 13.1.97 setting aside the same with liberty to pass a fresh order which was done on 10.4.97. In between the applicant had served out the penalty period in the first case and was promoted to the higher post of UDC. The second punishment he had to face in this grade. The applicant's plea is that as the second order dated 10.4.97 being only the replacement order issued in the denovo proceedings should be treated as the order effective 3.7.89, with results flowing therefrom. This would give him some advantage as the earlier punishment was reduction by six stages with cumulative effect and

withholding of promotion by six stages with cumulative effect and withholding of promotion by five years, the second order dated 10.4.97 directed reduction in pay by four stages for three years with cumulative effect. The applicant was promoted as UDC on 4.10.94 only after the completion of the penalty period of five years. If as <sup>as</sup> ~~correctly~~ required, <sup>by him</sup> the punishment order of 10.4.97 was shown as effective from 3.7.89, he would have got his promotion immediately after three years with further benefits in the years to follow. The same not having been done the applicant has been penalised twice by denial of promotion for five years by the order effective 3.7.89 and thereafter by denial/delay in promotion presently on account of the second order of 30.4.97 for a single alleged offence which was illegal and improper. On the other hand, the respondents point out that following the Tribunal's order dated 13.1.97, they had cancelled the earlier orders and have even refunded the amount which the applicant was denied on account of the earlier order. The respondents point out that the applicant's request was turned down on the following grounds:


- a) penalty orders can be given retrospective effect only if such a process is provided in Rules/Regulations which was absent in the present case;
- b) even as per conventions the denovo penalty orders are implemented with prospective effect only;
- c) the Tribunal's order did not suggest retrospective effect to the denovo order.

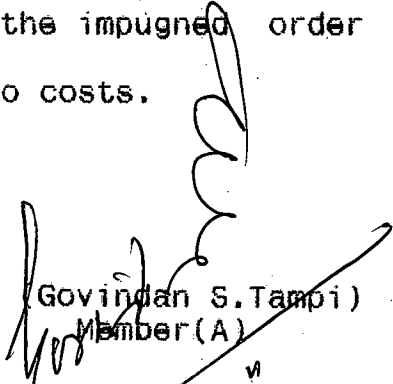
7. It has been brought on record that the applicant had served out the penalty period of five years with reduction in pay and stoppage of promotion by five years in terms of the first order made effective from 3.7.89. He was thereafter promoted on 4.10.94. And presently his

promotion has been delayed/denied on account of the second punishment effective from 10.4.97. It would thus appear that the applicant has been penalised twice for the single act of misconduct which is improper. However, it is seen that the respondents had, following the decision of the Tribunal on 13.1.97, cancelled the orders of the disciplinary authority dated 20.6.97/3.7.89 and the appellate authority's order dated 21.11.90/17.12.90. They have also directed that the applicant was correctly entitled to be granted the monetary benefits which he had lost due to the earlier punishment. It would thus be seen that the effect of the punishment order dated 3.7.89 has been removed by the respondents while making the second order dated 10.4.97. Therefore, the grievance of the applicant that he has been punished twice for the same offence has no basis. The applicant has been punished only once and that is by the second and denovo order. Respondents have further pointed out that the applicant was also considered for promotion as Head Clerk/Assistant by the DPC which met on 1.12.97 but he was found unfit, obviously on account of the punishment order. This position cannot be assailed in law. The only additional measure the respondents can be asked to do is to verify whether the applicant could have been promoted as UDC before 4.10.94 as no penalty was in force during the said period and if so, his case could be considered for advancing his promotion from 4.10.94 to an earlier date.

8. In the above view of the matter, the OA fails substantially but gains on a minor aspect and is accordingly disposed of. The applicant's plea that the denovo order dated 10.4.97 should be treated as the order

dating from 3.7.89 has no merit and is rejected. The respondents are however directed to examine the case of the applicant for the limited purpose to ascertain whether he could have been considered for promotion as UDC <sup>on an earlier date</sup> and if so found fit in such consideration to grant him such promotion. In such a case, the effect of the penalty in terms of the impugned order dated 10.4.97 would have to be reworked and a fresh order issued. With this direction, the validity of the impugned order is endorsed as correct and upheld. No costs.

  
(K.V. Sachidanandan)  
Member(J)

  
Govindan S. Tampi  
Member(A)

/gtv/