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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 46/92 & 221/92
Transfer Application No.

Date of Decision :

28/4/95

Lahu Savalaram Mhatre

Petitioner

Shri.D.V.Gangal

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri.V.S.Masurkar

Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S.Hegde, Member (J)

The Hon'ble Shri M.R.Kolhatkar, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R.Kolhatkar)
Member (A)

J*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 46/92 & O.A. 221/92

Lahu Savalaram Mhatre

.. Applicant

Vs.

1. The Chief of Naval Staff
South Block, New Delhi.

2. The Flag Officer Commanding-
in-Chief
Western Naval Command
Bombay.

.. Respondents

3. The General Manager,
Naval Armament Depot
Karanja, Raigad

CORAM : 1. Hon'ble Shri. B.S.Hegde, Member (J)
2. Hon'ble Shri. M.R.Kolhatkar, Member (A)

Appearances

Shri. D.V. Gangal
Advocate
for the applicant

Shri. V.S. Masurkar
Advocate
for the respondents

JUDGMENT

DATED : 25/4/95

(Per : Shri. M.R. Kolhatkar, Member (A))

In these two cases, the parties are identical.

In one case, the applicant is challenging imposition of penalty consequent on the disciplinary proceedings. In other case, the applicant has challenged withholding of promotion of the applicant and promotion of his juniors.

2. The facts of the case are that the applicant was appointed as L.D.C on 22.3.1969. A select list was prepared for promotion from the post of L.D.C to the grade of U.D.C on seniority-cum-fitness basis on 1.6.89 in which the name of the applicant figured. The above select list was to be operative upto 4.5.90. It was stated that he has been empanelled for promotion

(W)

to the grade of UDC against the vacancy of Scheduled Tribe and promotion orders in respect of the individual can be issued only if the de-reservation of the post is approved by the competent authority. The applicant was however not promoted in terms of this. Subsequently, select lists dated 1.10.90 and 8.8.91 were promulgated but the name of the applicant does not figure in the lists. Between the promulgation of the first list on 1.6.89 and the subsequent select lists, there was an order dated 5.5.90 imposing the penalty of withholding of increment in the time scale of pay for a period of one year without cumulative effect, on the applicant. It is this penalty and ^{which} the circumstances surrounding it/ are the subject of first O.A.

3. It is contended by the applicant that on 25.7.89, he was called by Nava Sheva Police Station and he went with the police to the Court. He was granted bail. He was not put under restraint by the police. There are political parties in the village and they have purposely implicated the applicant in the case to harm his career. However, when he was asked about village dispute and the police report, he immediately informed the authority by letter dated 28th August 1989. He was thereafter charge-sheeted on 27th December 1989. The charge was that the applicant failed to inform his superiors regarding his arrest by police on 26.7.89 and his involvement in a criminal case registered by Nava Sheva Police and thus he violated rules 3(1)(i) & (iii) of CCS (Conduct) Rules, 1964. According to the applicant, the disciplinary

proceeding were for a minor penalty but the same were deliberately delayed in the sense that the date of increment of the applicant is March 1990 but the penalty was imposed on 5.5.1990 so that the operation of penalty started from 5.5.91 and ended only on 4.5.92. The applicant challenged the punishment order but his appeal was dismissed on 16th October 1990. In the meanwhile there were promotion orders on 01st October 1990 and 08th August, 1991. The applicant was denied promotion and his representations against non-promotion were also rejected. In the meanwhile, the applicant was acquitted in the criminal case by the judgment and order dated 28th August 1991 and he brought this fact to the notice of the department but the department did not change its stand.

4. According to the applicant, the conduct on which he has been charge-sheeted is not a misconduct and hence the question of any punishment does not arise. The applicant was falsely implicated in the case and he was not aware of his arrest. He had no intention to conceal the information and ultimately, he was acquitted by the competent court. Earlier, he was found suitable for promotion and therefore he ought to have been promoted as per order. He was to be promoted against the reserved post and the department ought to have taken timely action to de-reserve the post. The reply of the department that he is not fit for promotion is also without any basis. The applicant has, therefore, prayed for quashing of the order of penalty and appellate and review orders rejecting the appeal & review and to grant promotion to the applicant in accordance with the original selection list dated 1.6.89.

5. The respondents have opposed the O.A. According to them, a report was received from Nhava Sheva Police Station by their letter dated 3.8.1989 stating that the applicant was arrested on 25.7.89 and granted bail. As per Ministry of Home Affairs O.M. No.30/59/54 Ests(A) dated 25.2.1965 it shall be the duty of a Government servant who may be arrested for any reason to intimate the fact of his arrest and the circumstances connected thereto, to his superiors promptly even though he might have subsequently been released on bail. According to the respondents, the applicant had, instead of giving correct information, applied for leave from 24.7.89 to 25.7.89 on the grounds of domestic affairs on resumption of duty on 26.7.89, which according to the respondents, indicates that he wilfully suppressed the information regarding his arrest and involvement in criminal case from the department. Hence, departmental proceedings were initiated against the applicant and penalty of withholding of increment, without cumulative effect, was imposed on him. The appeal and review petitions against the penalty were rejected.

6. So far as the promotion of the applicant is concerned, the respondents contend that initially the applicant was considered for empanelment for the post of U.D.C against the post reserved for S.T. However approval for de-reservation of the post was not given. Subsequently, he was considered by ^{the} next DPC and was found not fit. At the next DPC meeting held on 16.7.91 he was considered and his assessment was kept in sealed cover. It is not in dispute that the applicant has since been promoted in 1992.

7. The main issue to be decided by us therefore is whether the penalty imposed on the applicant was in order and if it is not in order, whether the applicant can claim to be promoted as U.D.C with retrospective effect from 1.6.1989.

8. We first of all consider the contention of the applicant that he was not aware of the fact of his arrest. In this connection, we have seen the police report dated 3.8.1989 (in Marathi) which appears at page 43 of the O.A 46/92. It clearly states that the applicant was arrested and he was released on bail by the Court on 25.07.89. When the applicant was asked about this, in his reply dated 5.1.90, he has stated that he was released on anticipatory bail. In the written statement, however, the respondents have clearly brought out that the police had arrested the applicant on 25.7.89 and he was released on bail on the same day. In his rejoinder the applicant has not disputed this fact but has instead taken the stand that there were certain other employees who were arrested alongwith the applicant and these employees had also not informed the government regarding their arrest, and the department has not taken any disciplinary action against them. According to us, therefore the pleadings clearly bring out that the applicant was in fact arrested.

9. The learned counsel for the applicant next contended that even assuming that the applicant was aware that he was arrested, the circular of Ministry of Home Affairs, referred to by the respondents cannot be ^{said to be} attracted in his case. Ignorance of law is not an excuse but the circular instructions of the department are not law. We are unable

to accept this contention of the applicant. We are of the view that the applicant was bound to inform his superiors regarding his arrest in connection with involvement in a criminal case and his failure to do so, cannot be excused.

10. The applicant then states that the respondents ought to have taken into account the fact that the applicant was involved in the criminal case because of village disputes in which it is common to implicate innocent persons and that the fact that the court of competent jurisdiction had acquitted him ought to have been taken into account by the department and ought to have reviewed the penalty imposed on him. According to us, this contention is of no help to the applicant because the action taken against the applicant was not in connection with his involuntary involvement in the village dispute but in connection with his failure to inform the department regarding his arrest and release on bail.

11. The applicant next contends that the department is guilty of exercising gross discrimination in as much as he has given the names of several other employees who were similarly implicated in the same case and who were allowed by the department to go scot-free. The department in its sur-rejoinder has stated that there were several employees including the applicant who were involved in the criminal case and action was taken against them. The applicant has given the name of one Shri. Satish Baburao Patil who had resigned from service w.e.f. 24.12.1990 and the other two Shri. Krishnakumar Dharma Gharat and Shri. Shashikant Jadhav Gharat are stated not to be employed in the depot.

12. The applicant would contend that it is the Government of India which ^{is} the primary respondent and therefore the fact that some persons implicated in the case were employees of another depot is not material. We are unable to accept this contention. The plea of discrimination is to be considered in the context of persons belonging to a similar class. Employees who do not work in the same depot as the applicant cannot be considered as the person of ^{the} same class. It is true that Shri. S. B. Patil was employed at the same depot as of applicant. It was conceded by the respondents that no action was taken against him because he has subsequently resigned from the department. In this connection, the applicant relies on Supreme Court case of Sengara Singh & Ors. v. State of Punjab & Ors. reported at 1983 (3) SLR 685. In this case, the government had dismissed 1100 members of police force from service for participating in an agitation but the government had withdrawn criminal case in respect of another set of 1,000 employees. The Supreme Court held that there was nothing to show that employees dismissed were guilty of more serious misconduct or the degree of indiscipline when compared to those who were reinstated and held that ^{it was} denial of equality as guaranteed by Article 14 and directed reinstatement of the applicants. In our view, this case has no applicability to the present case as that was a case in which the department deliberately adopted a policy of pick and choose. Initially the High Court had dismissed the petition of all the policemen. Subsequently, the State Government of its own ^{accord} constituted a Committee to review the cases of all dismissed agitators and the Committee picked and chose some for its indulgence leaving the rest to fend for themselves. It was this

which was disapproved by the Supreme Court and for which the Supreme Court came down heavily on the government. In the instant case, there is nothing to and systematically show that the department deliberately /followed a pick and choose policy especially when the employee in question had resigned subsequently and therefore the question of taking any action against him does not arise.

13. According to us, therefore, no case has been made for us to interfere with the action of the department in imposing the penalty and confirming the same in appeal and review.

14. We therefore next come to the question as to whether independently of the above, the applicant is entitled to any relief on account of the contentions made by him. These contentions are that the department deliberately delayed taking action in disciplinary proceedings so that although the date of increment was of March 1989, the department imposed penalty in May 89 and thus allowed the penalty to have effect in subsequent March (March 1990), thus delaying promotion of the applicant. Secondly, it is contended that it was the duty of the department to de-reserve the vacancy for which applicant was selected and which was reserved for S.T. In this connection, the applicant has invited our attention to the provisions of Chapter-X of the brochure dealing with de-reservation. He also relies on the Supreme Court decision in K.V.Jankiraman which lays down as to when the sealed cover procedure is to be adopted. We are unable to accept these contentions of the applicant. There is nothing on record to show that the department had deliberately delayed imposition of penalty on the applicant. In any case when memo was issued in

December 89 and the penalty was imposed in May 1990, it cannot be said that the department adopted dilatory tactics. Secondly, when the rule is that of reservation, de-reservation is an exception and the government has laid down an elaborate procedure so as to avoid the contingency of de-reservation. We, therefore, do not accept the contention of the applicant that department was bound to de-reserve the post and to give promotion to him. So far as K.V.Jankiraman case is concerned, it interprets government instructions relating to adoption of sealed cover procedure. The applicant has not pointed-out any government instructions which were violated in the adoption of sealed cover procedure in his case.

15. While we have rejected the argument of the applicant that the department deliberately delayed departmental proceedings, thus delaying imposition of penalty because it is too much to believe that the department had made ^{an} advance decision to impose the penalty, namely that of withholding of increment for ^{that} one year, ^{that} The department had also noted actual date of increment of the applicant and thereafter imposed penalty two months after the actual date of increment, We are bound to observe ^{the} circumstance that the penalty was imposed only one month after the normal date of increment had ^{the} unintended effect of delaying operation of penalty on the applicant. We are, therefore, of the view that the applicant should be given liberty to make a representation to the department to count his penalty from March 1989 upto March 1990. On this ^{the} footing, his penalty would have expired in April 1990 as against April 1991 as at present. If the penalty was not in operation in April 1990 and if this circumstance

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is likely to advance the date of promotion of the applicant, the applicant is entitled to get the benefit thereof. While, therefore, we are not inclined to grant relief asked for by the applicant, we are of the view that while dismissing the application, it would be just and fair to issue direction to the department on the above lines. We, therefore dispose of the O.A by passing the following order :

O R D E R

O.A. 46/92 and O.A. 221/92 are dismissed.

However, the applicant is at liberty to make a representation to the Department to count his penalty of withholding of Increment from March 1989 instead of March 1990. If the department is able to consider his representation ^{on the basis of rule 4} and on the basis of expiry of penalty in March 1990, the ^{M.R.Kolhatkar} ~~and~~ applicant's case could be considered by a review D.P.C on the basis of his C.Rs., the department may do so and give him the benefit of advancing his date of promotion by one year if Records. warranted by ~~2~~ There would be no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde
(B.S. HEGDE)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6,
PREScot ROAD, BOMBAY - 1.

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1. Review Petition No.64/95
in
Original Application No.46/92 and
2. Review Petition No.65/95
Original Application No.221/92

Monday, this the Fifteenth day of January, 1996.

Hon'ble Shri B.S.Hegde, Member(J)
Hon'ble Shri M.R.Kolhatkar, Member(A).

Lahu Savalaram Mhatre. ... Applicant.
(By Advocate Shri D.V.Gangal)
V/s.

Union of India & Another. ... Respondents.
(By Advocate Shri V.S.Masunkar).

ORAL ORDER

(Per Shri M.R.Kolhatkar, Member(A))

In these Review Petitions which are in the nature of speaking to the minutes, the Review Petitioner (original applicant) has prayed that correction in para 15 should be effected so far as the dates to read as March, 1990 to 1991 instead of March, 1989 to March, 1990 so far as withholding of increment for one year is concerned and the order part also may be corrected to read as March, 1991 instead of March, 1990 being the date of expiry of penalty.

2. The matter came up on 18.12.1995 and the learned counsel for the respondents stated that he wish^{es} to file a reply.

Accordingly, the matter stood adjourned to 15.1.1996. In the reply the stand taken is that the Review Petition may be dismissed since it is not filed within 30 days. We are not inclined to accept this contention especially because in para 6 of the reply the respondents have stated that so far as the date of awarding sentence is

concerned the clerical error can be corrected by the Tribunal. Accordingly, we hereby direct as below.

In para 15 of the Judgment in O.A. Nos. 46/92 and 221/92 at line 16 from the top should read as "his penalty from March, 1990 upto March, 1991" instead of what appears. It is further directed that in the operative portion of the order line 9 from the top should read as "of expiry of penalty in March, 1991" instead of what appears.

3. It is further directed that the order should be deemed to have been corrected ab initio viz. from the date of delivery. Since we had given the liberty to the applicant to make a representation to the department, this liberty would, however, count from the date of communication of the corrected order. There would be no order as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

Hegde

(B.S.HEGDE)
MEMBER(J).

B.