

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 1 FEB 1994

APPLICATION NO(s) 626 of 1993.

APPLICANTS: James Gurumurthy

RESPONDENTS: Director, ADE, B'llore and Ors.

TO.

1. Dr.M.S.Nagaraja,
Advocate, No.11,
Second Floor,
First Cross,
Sujatha Complex,
Gandhinagar,
Bangalore-9.
2. The Director,
Aeronautical Development Establishment,
C.V.Raman Nagar Post, Bangalore-93.
3. Sri.M.Vasudeva Rao,
Central Govt.Stng.Counsel,
High Court Bldg, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 13-01-1994.

Issued on
2/2/94

Ole

M. A. S
for
DEPUTY REGISTRAR
JUDICIAL BRANCHES.
1/2/94

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 626/93

THIS THE 13TH DAY OF JANUARY, 1994.

Shri V. Ramakrishnan ... Member (A)
Shri A.N. Vujjanaradhy ... Member (J)

Shri James Gurumurthy,
Aged 45 years,
S/o Shri Gurushanthappa,
Aeronautical Development Establishment,
M.S.D. Section, C.V. Raman Nagar,
Bangalore - 560 093. ... Applicant

(Advocate by Dr. M.S. Nagaraja)

Vs.

1. The Director,
Defence Research & Development
Organisation, Aeronautical Development
Establishment, C.V. Raman Nagar,
Bangalore - 560 093.
2. The Director General,
Defence Research & Development
Organisation, Ministry of Defence,
New Delhi.
3. Union of India,
represented by
Secretary to Government of India,
Ministry of Defence,
New Delhi. ... Respondents

(Advocate by Shri M. Vasudeva Rao)

ORDER

Shri V. Ramakrishnan:

The applicant is holding the post of Tradesman 'C'
in the office of Aeronautical Development Establishment
of Defence Research & Development Organisation. He was
due to be considered for promotion to the next higher
level of Tradesman 'B' in the scale of Rs. 1200 - 1800



from September, 1990. Meanwhile, he suffered a penalty of withholding of one annual increment as per order dated 15.3.90, as at Annexure A-1. The order says that the penalty of withholding of one increment will take effect from the date it falls due next, which in this case is 1st of March, 1991.

2. The applicant had drawn his increment on 1st March, 1992. But, it is further seen that the applicant came for adverse notice once again and a penalty of withholding of increment for one year was imposed upon him for this new offence as per order dated 27.3.92 - Annexure A-2. This order also states that the penalty will take effect from the date his annual increment falls due next i.e. 1.3.93.

3. Meanwhile, the department had held a number of meetings of the Departmental Promotion Committee for consideration of eligible candidates for promotion to the grade of Tradesman 'B'. As per the reply statement, the meetings of the DPC were held on 17.12.90, 17.6.91, 2.12.91, 1.6.92, 1.12.92 and 1.6.93. We are informed that the DPC met on December, 1993 also. The DPC did not consider the case of the applicant on the ground that he had suffered a penalty during the relevant period.

4. We have heard Dr. M.S. Nagaraja for the applicant and Shri M.V. Rao, learned standing counsel for the respondents. Dr. Nagaraja draws our attention to paragraph 13 of the Ministry of Personnel's O.M. No. 22011/5/86-ESTT(D) dated 10.4.89 which is placed in Annexure - R2. This paragraph reads as follows:

"An officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty."

He has also relied on DOP's O.M. No. 21/5/70-Ests. (A) dated 15.5.71, in particular paragraph 3 which states:

"As regards the other two points mentioned in paragraph 1 above, while it is not possible to lay down any hard and fast rules in this regard, and it is for the competent authority to take a decision in each case having regard to its facts and circumstances, it is considered necessary to reiterate the existing instructions on the subject. Recovery from the pay of a Government servant of the whole or part of any pecuniary loss caused by him to Government by negligence or breach of orders, of withholding of increments of pay, are also minor penalties laid down in Rule 11 of the C.C.S. (C.C. A.) Rules. As in the case of promotion of a Government servant, who has been awarded the penalty of recovery from his pay of the loss caused by him to Government or of withholding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty. While, therefore, the fact of the imposition of such a penalty does not by itself debar the Government servant concerned from being considered for promotion, it is also taken into account by the Departmental Promotion Committee, or the competent authority, as the case may be, in the overall assessment of his service record for judging his suitability or otherwise for promotion or his fitness for admission to a Departmental/Promotional examination (where fitness of the candidates is a condition precedent to such admission)."



5. The learned standing counsel contended that the applicant has ~~the~~ ^{no} ~~ever~~ right to be considered by the DPC and referred the Ministry of Personnel's OM dated 10.4.89 (as at Annexure - R1) Paragraph 17.6.2 of the OM reads as follows:

"If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/ covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

Shri M.V. Rao, therefore, contends that even consideration of the applicant for promotion is not necessary during the period. The instructions relied on by Shri Rao is in the context where the recommendation is kept in the sealed cover when disciplinary proceedings have been initiated against the applicant. This is obvious from the words "the findings of sealed cover shall not be acted upon" which presupposes the DPC has considered the official regarding his suitability for promotion and after such consideration ~~by~~ ^{keep in} a recommendation ~~kept~~ in sealed cover and subsequently he has been inflicted with the penalty. In the present case, the position is different as no departmental proceedings ~~were~~ ^{pending} against the applicant when the DPC met as the disciplinary authority had already ^{come} ~~been~~ to a finding and issued order dated 15.3.90 & 27.3.92. We find from Annexure - R1 that in a similar case the DPC had considered the case of Shri S.N. Ramachandra against whom also there were orders imposing the penalty of withholding of one increment.

6. We, therefore, hold that the applicant's case for promotion should have been considered at the relevant time and imposition of the penalty does not debar him from such consideration. The department can take into account the orders of the disciplinary authority imposing the penalty of withholding of increment while adjudging his suitability for promotion, alongwith other relevant records. If on the basis of such consideration, the applicant was found fit for promotion, he however, should not be actually promoted during the currency of the penalty as per the relevant instructions.

7. We accordingly direct the department to hold a review DPC to adjudge the suitability or otherwise of the applicant for promotion from the date when in the normal course he would have been considered. The department should finalise the assessment of the applicant by the Review DPC within three months from the date of receipt of a copy of this order and to inform the applicant as to the action taken. The case is finally disposed off as above with no order as to costs.

111 -

Sd/-

15/11/94
(A. N. Vujjanaradhy)
Member (J)

Sd/-

15/11/94
(V. Ramakrishnan)
Member (A)

TRUE COPY

M. Deo
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
11/2/94

