

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 338/1993

Date of Decision: 3.6.1998

S.P.Joshi

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

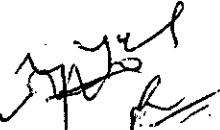
Shri S.S.Karkera.


.. Advocate for
Respondent(s)

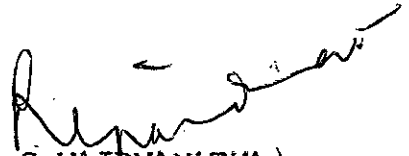
CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

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

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


(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 338/1993.

Wednesday, this the 3rd day of June, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

S.P.Joshi,
1007, Sadashiv Peth,
Near Peru Gate,
Pune - 411 030.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
the Secretary,
Ministry of Defence,
Department of Defence
Production and Supplies,
South Block,
New Delhi - 110 011.
2. The Director of Quality
Assurance (Armaments),
Department of Defence Production
& Supplies, Directorate of
Quality Assurance (DGQA/ARM-I),
Govt. of India, Ministry of Defence,
DHQ, P.O.,
New Delhi - 110 011.
3. The Senior Quality Assurance Officer
(Armaments), Senior Quality
Assurance Establishment(Armaments),
Khadki,
Pune - 411 003.

....Respondents.

(By Advocate Shri S.S.Karkera).

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant challenging the order of the Disciplinary Authority dt. 26.2.1993 and for consequential reliefs like getting promotion etc. The respondents have filed their reply opposing the application. We have heard the learned counsel appearing on both sides.

2. Few facts which are necessary for disposal of

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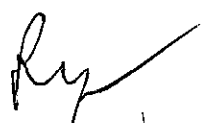
this O.A. are as follows.

At the relevant time, the applicant was working as Chargeman Gr.I. He came to be promoted as Assistant Foreman vide order dt. 20.1.1992 and he was transferred on promotion to a different place. The applicant was not willing to go on transfer on promotion to a different place. He, therefore, gave a declaration that he is not willing to accept transfer on promotion and also gave a representation for being posted in the same place at Pune on promotion vide his representation dt. 31.1.1992. The respondents issued a movement order dt. 6.2.1992. The applicant admittedly did not obey the movement order since he had already given a representation against the order of transfer on promotion.

It appears that subsequently in January, 1993 the Department initiated disciplinary action against the applicant for dis-obeying the Movement Order. The applicant gave his reply to the minor penalty charge sheet, then after considering the representation of the applicant, the disciplinary authority held that the applicant has violated the Movement Order and imposed a penalty of withholding of promotion up to 31.12.1994 vide order dt. 26.2.1993. Being aggrieved with the above order the applicant has approached this Tribunal challenging the same.

At this stage, it may be noted that the applicant had also filed an appeal before the Competent Authority against the order dt. 26.2.1993. It is now on record that during the pendency of this O.A. the Appellate Authority by order dt. 30.9.1993 has reduced

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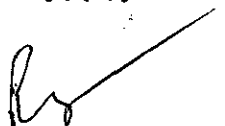
the period of penalty by eleven months viz. up to 31.1.1994. Since this is a subsequent event which has taken place during the pendency of the O.A., the learned counsel for the applicant has challenged the correctness and legality of this order also at the time of arguments.

3. In the reply, the respondents have taken a position that since the applicant had dis-obeyed the order of transfer and the movement order, the action taken by the Disciplinary Authority is fully justified and it does not call for interference by this Tribunal.

4. The learned counsel for the applicant has questioned the legality and validity of the two orders passed by the Disciplinary Authority and the Appellate Authority. He, therefore, submitted that the orders may be quashed and the applicant be given the benefit of promotion from the original order of promotion dt. 20.1.1992. On the other hand, the learned counsel for the respondents supported the impugned orders.

5. The impugned action taken by the department against the applicant as per the Circular dt. 31.12.1985 is produced along with the reply. The circular says that in cases of refusal of promotion a special procedure is provided for taking action. The orders of transfer should be intimated to all the units, then the individual officers who are affected by the order of transfer on promotion should give their representation within 10 days, then the Competent Authority will examine the representation and pass an order. After the order of the Competent Authority, movement order should be issued, then if the official dis-obey the movement order then

...4.



disciplinary action should be taken for dis-obeying the movement order.

Therefore, as per the circular, the condition precedent for initiating disciplinary action is rejection of the representation by the Competent Authority. In the present case there is no dispute that the applicant gave a representation on 31.1.1992 against the order of transfer on promotion due to some personal difficulties. It was up to the Competent Authority either to reject the representation or to grant the request of the applicant to be retained at Pune on promotion. The learned counsel for the respondents has placed before us the concerned file, but we do not find any order passed by the competent authority either by rejecting or granting the representation dt. 31.1.1992 made by the applicant. Therefore, as per the record, there is no order by the Competent Authority rejecting the representation of the applicant. For taking disciplinary action as per the Circular dt. 31.12.1985, the condition precedent is rejection of the representation by the Competent Authority which is lacking in this case. Therefore, we hold that the initiation of disciplinary action against the applicant for violation of the movement order is not sustainable in law and is liable to be quashed. Therefore, the issuance of minor penalty charge sheet and penalty imposed by the Disciplinary Authority and the Appellate Authority are liable to be quashed.

6. The next question for consideration is whether the applicant is entitled to promotion from the original date of order of promotion dt. 20.1.1992. At this

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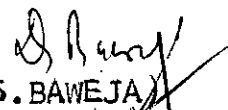
stage we may also mention that the applicant has been subsequently promoted w.e.f. 28.5.1994 during the pendency of this O.A. Now the only question is whether he is entitled to get promotion from an earlier date or not. In this connection, we may make ^{use of} ~~use of~~ a reference to Swamys Complete Manual of Establishment and Administration (1994 edition page 707, para 17.12) where there is a reference to Government Order issued by the Department of Personnel and Administrative Reforms that in case an official refuses promotion, then he will not be considered for promotion for one year or till a next vacancy arises whichever is later. In view of this we hold that the applicant is entitled for promotion one year from the date of his refusal viz. 1.2.1992 (vide page 18 of the written statement of respondents) and subject ^{to} there being a vacancy or subject to a junior to the applicant being promoted.

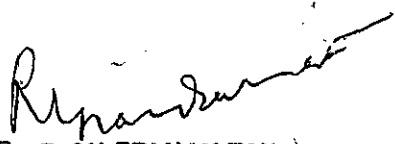
7. In the result, the O.A. is partly allowed as follows:

1. The order of the disciplinary authority dt. 26.2.1993 and the order of the appellate authority dt. 30.9.1993 are hereby quashed.
2. The respondents shall consider the case of the applicant for promotion after the expiry of one year from 1.2.1992 and then he should be considered for promotion when the next vacancy arises or when his next junior is promoted on or after 1.2.1993 and pass appropriate orders according to law. After such an order of promotion is passed, the applicant will be entitled to the usual consequential monetary benefits

as per rules including pension etc.

3. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

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