

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1371/94

DATE OF DECISION:
The 29th Day of June 2000

1. Mr. Ajit Balkrishna Rudre ...Applicant.

Shri D.V. Gangal Advocate for
Applicant.

Versus

Union of India thru Secretary, Mini. of .. Respondents
Defence & Others.

Shri. V.S.Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri L. Hmingliana, Member (A)
And
Hon'ble shri Raffiquddin, Member (J)

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

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(3) Library. Yes

Rafiquddin

(Rafiquddin)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1371/94
Dated this 22 Day of June 2000.

Coram: Hon'ble Shri L. Hmingliana, Member (A)
And
Hon'ble Shri Rafiquddin, Member (J)

Mr. Ajit Balkrishna Rudre,
Assistant Naval Store Officer,
Working under Material Supdt.
Naval Store Depo, Ghatkopar (W),
Mumbai 400 036.
residing at: Applicant
Quarter No.445, Bldg. 39
Sector III, Central Govt.
Staff Colony, Antop Hill
Mumbai, 400 037.
(Applicant represented by Shri D.V.Gangal, Advocate)

vs.

Union of India through

1. The Secretary
Ministry of Defence
South Block, New Delhi.
2. The Chief of Naval Staff
Naval Headquarters,
New Delhi 110 011.
3. The Flag Officer Commanding-in-Chief, Western Naval Command, Shahid Bhagat Singh Road, Bombay 400 001.
4. Mr. L.S. Bora Bisht,
working as NSO
Officer-in-Charge
Naval Store Depot, Sewri
Mumbai 400 033.
5. Mr. S.R. Venkatramana
Asst. NSO
Director of Logistics Support
Naval Headquarters, 'C' Wing
Sena Bhavan, New Delhi 110 011.
6. Mr. S.K. Malhotra,
Asst. NSO, Director Air Acquisition
NHQ, A Block
New Delhi 110 011.

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7. Mr. A.B. Passi,
ANSO, Material Orgn.\
Kandharapalam,
Vishakhapatnam 530 008.
8. Mr. R.P. Kalra,
Assistant Naval Store Officer,
Material Organisation,
Kancharapalem
Vishakhapatnam-530008.
9. Mr. P.K. Das,
ANSO, Material Orgn.
Kancharapalem
Vishakhapatnam-530008.
10. Mr. K. Reghunathan,
ANSO, Mtr. Orgn.
Kancharapalem
Vishakhapatnam-530008.
11. Mr. Kuldipchand Sharma,
ANSO, DLS,
NHQ, C Wing,
Sena Bhavan,
New Delhi. Respondents
12. Mr. Venkata Rao,
Assistant Naval Store Officer,
DLS, NHQ, C Wing
Sena Bhavan, New Delhi 110 011.
13. Mr. A.K. Shrivastava,
ANSO, Mtr. Orgn.
Naval Store Depot.
Ghatkopar (W)
Bombay 400 086.
14. Mr. K.T. Madhavan,
Assistant Naval Store Officer
Naval Aircraft Yard,
Naval Base, Cochin 682004.

(Respondents represented by Shri V.S. Masurkar, Advocate)

O R D E R

(Per Rafiqquddin, Member (J):

The applicant seeks quashing of Memorandum dated 13.10.1992 and punishment order dated 16.2.1992 and declaration to the effect that his supercession by his juniors is illegal. The application further seeks a declaration that the proceedings of the DPC not recommending his name for the post of Naval Store

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Officer (NSO) are illegal and orders dated 1.7.1994 and 8.12.1994 are illegal.

2. The Applicant also seeks a direction at a Review DPC should be held to reconsider his promotion matter to promote the Applicant, as NSO, above Respondent No.4. The Applicant also seeks a declaration to be issued to the Respondents to refund of Rs.400/- with interest which were recovered from his salary and the proper pay of the above period be fixed and arrears paid with all consequential benefits if he was promoted as NSO in the year 1991-92.

3. The case of the Applicant as set out in the D.A. is that he was appointed through Union Public Service Commission as Assistant Naval Store Officer,(ANSO) in the Indian Navy in the pay scale of Rs.650/- - 1200/- on 1.3.1984. The Applicant joined the post of ANSO on 5th April, 1984. The Applicant is entitled to get further promotion to the post of Naval Store Officer (NSO), a General Central Services Group A Post.. The Applicant claims that he became eligible for consideration for promotion to the post of NSO on 5.4.1991 after having completed 7 years service as ANSO.

4. The first grievance of the Applicant is that he was not considered for promotion in the year 1992 and was superseded by Mr. L.S. Bora, (Respondent No.4 who is his immediate junior and was promoted as NSO. The Applicant has been further superseded by the Officers from the next batch, as intimated by the Respondents vide their letter dated 1.7.1994 (A.12) and telex

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message dated 8.12.1994 (Annexure A7). The Applicant sent a representation dated 11.10.1994, against his supersession by his junior (Annexure A.8) but no reply was received to his representation.

5. The Applicant has also stated that in a Departmental Enquiry he has been punished vide order dated 16.2.1993 on the basis of the charge sheet dated 13.7.1992 and recovery of Rs.400/- was ordered from his salary on account of alleged loss of Govt. property, and improper supervision by the Applicant. The punishment order was passed by the Flag Officer Commanding in Chief, Western Naval Command, Mumbai (Respondent No.3). The Applicant submits that he cannot be punished by the Respondent No.3 inasmuch as his appointing authority is the President of India. The Applicant also denies any responsibility in alleged loss of Govt. Stores or lack of supervision on his part, while he was posted as ANSO of Store House No.17 in the process of its shifting from Ghatkopar to Sewri.

6. The Applicant also challenges his supersession by his Juniors on the ground that his performance during the last 10 years has been Excellent and Outstanding because he was neither orally nor in writing ever informed about shortcomings in his day to day working. The Applicant also states that he was entitled to be considered for 1991 vacancies as per Rules but it was not done. Similarly his name was also not considered for promotion for 1992 year vacancies. The Applicant alleges he had secured Very good, ^{annual remarks} and Above, and is senior to Respondent No.4. As such it is clear that Applicant's performance has reflected in the ACR has not been properly assessed by the DPC. Therefore, supersession of the applicant is contrary to law and against the record.

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6. The Applicant also contends that for the selection in question, the Respondents have resorted to bunching of the vacancies, of different years against Rules. The Applicant also alleges that appellate authority has not disposed of his appeal by a speaking order.

7. In counter reply respondents have raised preliminary objection that the Applicant has clubbed two causes of action in the same O.A. in violation of Rule 10 of the CAT (Procedural Rules 1987). Because in the present ^{case} the Applicant has challenged the penalty order, of recovery of Rs.400/- from his pay and salary as well as also a number of orders passed by the DPC relating to vacancies for the years 1991-92 and 1992-93, 1993-94.

8. As regards the merits of the case it has been stated on behalf of Respondents that FOC In-C is competent to impose minor penalty on the Applicant in terms of Rule 11 (i) (2) (ii) (iv) of CCS (CCA) Rules 1965, as per Schedule in the aforesaid Rules. It is further denied that the Applicant has been superseded due to the penalty of his Rs. 400/- awarded to him. The name of the Applicant was duly considered by the DPC for promotion to higher post. But, his name could not be recommended for promotion in view of his low performance in comparison with his Juniors. The promotion post of NSO being selection post, such supersession is permissible under promotion Rules. It has also been specifically denied that name of the Applicant was not considered by the DPC held for promotion to the post of NSO for the years 1991-92, 92-93 and 93-94. It is also denied that there has been any bunching of vacancies. The vacancies for different Recruitment Years viz. 1991-92, 1992-93 and 1993-94 have been taken into consideration separately not collectively as alleged by Applicant.

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9. We have heard counsel for both the parties and also perused the records. The Learned counsel for the Respondents has sought dismissal of the O.A because the Applicant has clubbed two different causes of action in the present O.A. It has been urged by the Learned Counsel for the Respondents that the Applicant in the present O.A. has sought quashing of the minor penalty order imposed on him as well as his supersession for the selection for the post of NSO, hence it is a case of *misjoinder of causes of action*. We find that the O.A. has already been admitted by this Tribunal. It is no doubt correct that the Applicant has clubbed two different causes of action having no nexus with each other and as such the O.A. is bad for *misjoinder of causes of action*. But we do not find any justification or sufficient ^{reason} to dismiss the O.A. on this ground only.

10. The Learned Counsel for the Applicant has challenged the legality and correctness of the minor penalty order on 4 grounds. viz. (i), the Appointing Authority of the Applicant being President of India, the FOC-IN-C is not competent to impose the penalty. (ii) The charge levelled against the applicant do not constitute misconduct and therefore, he cannot be punished for the same. (iii) The Applicant did not remain continuously posted on the post of Assistant Controller III during the period in question viz. of Assistant Controller III during the period in question viz. 5.4.1984 to 21.2.1988 Hence he cannot be fastened with the responsibility of supervision etc and lastly (iv) The punishment order as well as the appellate ^{order} are not speaking

11. It is needless to state that jurisdiction of this Tribunal for judicial review of an order passed by the Disciplinary Authority is very limited. It does not act as an appellate authority. It is only to be ascertained whether the enquiry was properly conducted and there was some evidence available against the delinquent official to hold him liable for the charges framed against him. In the present case we find that

Applicant has not alleged any irregularity or infirmity in the procedure adopted by the Disciplinary authority in conducting the enquiry while imposing the punishment in question. Thus, we find that the enquiry was properly conducted.

12. As regards the competency of FOC-INC to impose penalty, it is not in dispute that the relevant disciplinary Rules were amended w.e.f 25.4.1984 authorising the FOC-IN-C to impose penalty on Group B Officers. There is no force in the contention that aforesaid officer viz. FOC-INC is not competent to impose the penalty on the Applicant. It has however, been pointed out by the Learned Counsel for the Applicant that since charge sheet was issued on 1.3.1984, by the said Officer, and by that date he had no jurisdiction to issue the chargesheet and impose punishment for misconduct, the punishment order is liable to be quashed. We, however, are ~~not~~ in agreement with this contention because the impugned order was passed when the FOC-in-C was competent to impose the penalty. It has been vehemently argued by the Learned counsel for the applicant that the nature of charge framed against the applicant does not prove misconduct on his part,

because the allegations are of general lack of supervision and negligence which do not constitute misconduct and delinquent official cannot be punished unless it is proved that he committed any misconduct. In support of his contention he has placed reliance on "UDI vs. J. Ahmed AIR 1979 SC 1022. The Apex Court in this case has held that

"It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgement in evaluating the developing situation may be negligence in discharge of duties but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence."

It has been urged that in the present case the Applicant was charged, while he was carrying out his duties as Assistant Controller-III, during the period from 5.4.1984, to 20.1.1981 at Store House-17, for his failure in proper functioning of Store No.III because he failed to carry out random muster/stock verification and also to ensure updating of bin cards. This mismanagement lead towards discrepancies in various specific items of store house which was a Govt. property. Even if this charge is proved against the Applicant it does not amount to misconduct and he cannot be punished for the same.

13. It is however, worth noting that the Applicant has not disputed the fact that for the proper functioning of the Store house 17, it was necessary to carry out random muster/store verification and updating of bin cards. Besides, in the

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memorandum of charge levelled against the Applicant the details including of value of items which were found missing have been duly mentioned. In other words, the charge levelled against the Applicant was not of general nature but it was specific charge of loss of Govt. Property due to failure on the part of the Applicant and other officials to carry out random muster/stock verification and updating bin cards. It has been mainly contended before us that the responsibility for the loss of Govt. Property was not solely of applicant because his other junior Officers were also liable for the same. On this point it is relevant to extract a portion of the memorandum of charge which clearly shows that the Applicant was found partly responsible for the loss of Govt. property along with other officers. The relevant part of the Memorandum of Charge is extracted as under:

"Shri AB Rudre, ANSO being a responsible officer under which Store House 17 falls, is also partially responsible for the said loss of Government property amounting to Rs.1,90,670/- Token recovery of the loss from the officials involved in loss is proposed to be recovered. The share of loss in respect of Shri A.B. Rudre, ANSO works out to Rs.400/-. It is therefore, proposed to recover a sum of Rs.400/- towards token recovery of loss of Govt. property from Shri A.B. Rudre, ANSO for violating Rule 3(2) (i) of Central Civil Services (Conduct) Rules, 1964."

14. The perusal of this part clearly indicates that only loss in respect of the Applicant has been clearly worked out

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towards total recovery and that other officials were also found involved in the loss besides the Applicant.

15. The Applicant has also not disputed the fact that he remained posted on the aforesaid post, for some time and it is not his case that he never held the post of Asstt. Controller III during the period in question. On the other hand in the case relied upon by the Applicant the charges against the delinquent Officer were of general nature of negligence, and lack of efficiency, failure to attend higher standard of administrative ability while holding the high post. But in the present case we do not find such allegation of general nature, but there are specific allegations of loss of Govt. Property as a result of not carrying out random muster/verification and failure to ensuring updating of bin cards. Thus in our considered opinion, the allegations mentioned in the Memorandum of Charge clearly prove the misconduct on the part of the Applicant. It is not a case of mere negligency or poor performance. We also find that in the present disciplinary inquiry there was some evidence before the Inquiry Officer/Disciplinary Authority to prove the charge levelled against the applicant and it is not the case of 'no evidence'. Therefore, we do not find grounds, for quashing the penalty order.

16. The applicant has also contended that the order passed by the President of India on the appeal preferred by him against the punishment order is non speaking order and hence liable to be quashed.

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17. However, we find that in the appellate order the legal point raised on behalf of the Applicant regarding authority of the FOCINC to impose penalty has been duly considered and replied. As regards the plea that the appellate authority is silent about his short duration of posting as ANSO, Store House No.17, it is sufficient to state that this point was not raised by him in his Memorandum of Appeal (AV), hence the question of discussing this aspect by the appellate authority does not arise. Therefore, we do not find any ground for interfering with the order of the appellate authority.

18. There is no dispute that the Applicant was eligible for consideration for promotion to the post of NSO for the vacancies for the year 1991-92, 1992-93, 1993-94. But his grievance is that his name was not considered and as a result his juniors were promoted by the DPC. The Respondent has denied this allegation. We have, therefore, perused the file of the proceedings of DPC for all the 3 aforesaid years. We find that there is no truth whatsoever in the allegations of the Applicant.

19. The records of the proceedings reveal that review Departmental Promotion Committee for promotion Committee for promotion to the Grade of Naval Store Officer in the Naval Headquarter MOD was held under the Chairmanship of the Chairman UPSC on 31st May 1994 in which the name of the Applicant was duly considered. It is also noticed that the recruitment Rules for the aforesaid posts were amended in September 1991, which interalia provided that the eligibility service for persons holding the feeder grade post of Assistant Naval Officer on a

regular basis on the date of commencement of the Rules i.e. on 1.12.1991 would be 7 years regular service in that grade. A DPC was also held on 23.1.1992 for consideration of promotion against the vacancies for the year 1991-92 since one general vacancy was left unfilled the proceedings of the original DPC was required to be reviewed to consider all Officers of two vacancies of the year 1992 including one carried over from the year 1991 as per the amended Recruitment Rules. The Applicant became eligible for consideration on 1.12.1991 as per amended Rules and not on 5.4.1991 as claimed by him. The DPC on the basis of the assessment of the Character Rolls of the eligible officers including the Applicant recommended revised panel for the year 1991-92 for promotion. But the name of the Applicant was not recommended on the basis of the assessment of his Character Roll. The DPC consists of the Chairman of UPSC and other Senior Officials of Ministry of Defence as Members. The DPC is obviously impartial and expert body to assess the fitness and suitability of the candidates. We do not find any reason to doubt about their assessment regarding suitability of the candidates. We also find that the applicant has been superseded by better candidates whose annual remarks in the ACR are definitely better than those of the Applicant. We also find that there is no mention regarding penalty order of the Applicant in the minutes of the meeting of the Review DPC. The DPC has based its conclusion only on the assessment of Character Rolls of the eligible Officers.

10. We have also perused the minutes of the meeting of the DPC held on 8.11.1994, which considered the question of

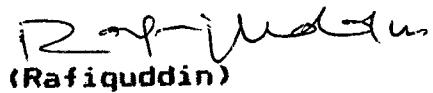
Selection of Officers, to the grade of Naval Store Officer in the Naval Headquarters. The yearwise breakup of the vacancy position, for the year 1992-93 is 3 including 1 for ST whereas for the year 1993-94 number of vacancies available was 8 including 2 vacancies for SC candidates. The DPC has also prepared the yearwise panel on the basis of assessment of Character Rolls of the eligible Officers found suitable for promotion. We also find that name of the Applicant has been duly considered for both the years 1992-93 and 1993-94. We also find that the only entries recorded in the Character Rolls of the candidates of who were found suitable were definitely better than those of the Applicant. We also find that the DPC has not considered or mentioned the penalty order imposed on the Applicant while assessing the suitability for promotion to the post of NSO. We have also noticed that in all 3 years, the Applicant has never been awarded any adverse entry so as to justify communication of the same to the Applicant. We also find a note given by the office on the eligibility lists of ANSO, for the year 1991-92, 1992-93 and 1993-94 to the effect that no disciplinary/vigilance inquiries were pending/contemplated against the individual except one Shri E.S. Ahuja. Therefore, we do not find any truth in the apprehension of the Applicant that his name was not considered by the DPC selection for the aforesaid years or his penalty order influenced the D.P.C. while assessing his suitability.

20. In this context the learned counsel for the applicant has drawn our attention to Full Bench case decided by Hyderabad Bench of the Tribunal viz., "S.S. Sambhos and Ors vs. UOI reported in A.T. Full Bench Judgments 1991-93 page 178. The Full

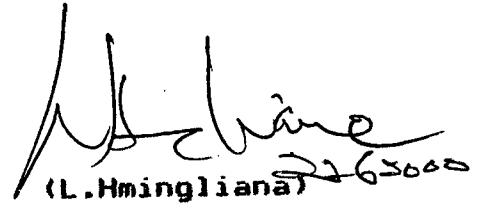
Bench held that where the Applicants were already working in promotion posts on ad hoc basis and continued as such for a number of years, with technical breaks, in such facts and circumstances of the case, Applicant were held to be treated as at one level higher than grading awarded to them for the period. And if the ACR reflects Good, it should be taken as Very Good and if it is Very Good, it should be taken as Outstanding. The Id.Counsel urges that the Applicant was posted at Calcutta, as Naval Stores Liaison Officer, from January, 1981, to May, 1992. Thus for a period of about 3 years and 4 months he worked at a Superior Posts of NSO. He also handed over charge in May 1992 to the Officers to the rank of NSO. He was also entrusted to the duty of Local Purchase Officer. Therefore, his Grade should be upgraded accordingly. We do not find any force in this Argument firstly because in the Full Bench case, the appellants were already working on ad hoc promotion posts, And it was their regular selection when the question arose. Admittedly the Applicant was not posted as NSO at Calcutta on adhoc promotion. Therefore, the view taken by the Hyderabad Full Bench is not applicable on the present case. Secondly, the assessment of the eligible candidates were made by the DPC on the basis of ACRs. available at the time of selection. This fact was not within the knowledge of DPC. The applicant should have approached his administrative authorities for availing the benefit, if any of his posting as NSO at Calcutta. However, at this belated stage we do not find any justification to issue any direction to the Respondent for upgrading of his annual entries.

21. The Applicant has also alleged bunching of the vacancies. As we have stated above, the DPC has prepared a separate list yearwise of vacancies as well as the list of suitable candidates. Therefore, the allegation of bunching is also not proved.

22. From what has been discussed above, we are convinced that ... the name of the Applicant was duly considered for promotion in the years 1991-92, 1992-93 and 1993-94 there is no infringement of his fundamental rights. It is also not proved that Respondents have resorted to bunching of vacancies so as to adversely affect the interests of applicant as alleged by the Applicant. Hence we find the O.A. is devoid of any merits and the same is dismissed. However, there will be no orders as to costs.


(Rafiquddin)

Member (J)


(L. Hmingliana) 2165000

Member (A)

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