

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

Original Application No: 988/98.

Transfer Application No:

DATE OF DECISION: 27/9/99.

Vakayar Kunjupillai Sadanandan Petitioner

Shri S.P.Saxena Advocate for the Petitioners

Versus

Union of India & two Ors. Respondent

Shri R.K.Shetty Advocate for the Respondent(s)

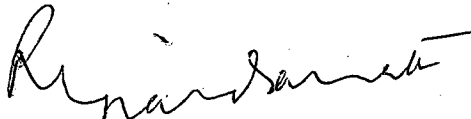
CORAM :

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

The Hon'ble Shri B.N.Bahadur, Member(A).

1. To be referred to the Reporter or not ? NO
2. Whether it needs to be circulated to other Benches of the Tribunal ? NO
3. Library - YES

abp.


(R.G.VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO:988/98.

DATED THE 27TH DAY OF SEPT,99.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Vakayar Kunjupillai Sadanandan,
Storekeeper Grade-I,
Office of the Chief Engineer (S.C.),
PUNE-411 001. (Residing at
L-39/631 Maharashtra Housing Board,
Yerwada, PUNE-411 006).

... Applicant.

By Advocate Shri S.P.Saxena.

v/s.

1. Union of India,
Through The Secretary,
Ministry of Defence,
DHQ PO, NEW DELHI-110 011.

2. The Engineer-in-Chief
Army Headquarters,
Kashmir House,
NEW DELHI-110 011.

3. The Chief Engineer,
Southern Command,
Pune-411 001.

... Respondents.

By Advocate Shri R.K.Shetty.

◊ ORDER ◊ ◊ ORAL ◊

◊ Per Shri R.G.Vaidyanatha, Vice Chairman ◊

This is an application filed by applicant seeking a direction to respondents to promote him to the post of Supervisor B/S Grade-II on the basis of promotion order dated 21/2/98. Respondents have filed reply opposing the application. We have heard both Counsels and perused the original record produced by respondent's counsel and since the point involved is short, the matter is being disposed of at Admission Stage.

2. The applicant's grievance is that though a DPC considered him and also his name cleared by DPC and was empanelled by DPC and further order of promotion dated 21/2/98 was issued showing the name of applicant but still the actual benefit of promotion is not given to applicant.

He has therefore approached this Tribunal to promote him in pursuance of DPC panel and the order of promotion dated 21/2/98.

The stand of the respondents is that since applicant was involved in a disciplinary case, he cannot be promoted. The materials on record show that the DPC prepared a panel on 15/12/97 and order of promotion is dated 21/2/98 which no doubt shows the name of applicant but the charge sheet was issued only on 2/4/98. Therefore, the case of the applicant is that since on the date of DPC and the date of order of promotion, there was no charge sheet, he should not be deprived of the promotion. In order to satisfy ourselves, the Tribunal directed the respondents to produce the necessary relevant records.

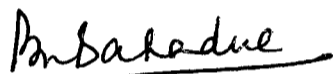
3. It is true that if on the ~~date~~ of DPC, no case is pending, the official is entitled to be promoted as laid down by ~~law~~ of Supreme Court in the case reported in ¶ 1991 (5) SLR SC 602 ¶ (Jankiraman). Though, in this case the charge sheet was issued in 2/4/98, respondents have placed before us ^{the which shows} a file ^{that} a conscious decision was taken by Disciplinary Authority on 25/4/97 for taking a disciplinary action under Rule-14 ~~and~~ therefore it is a case where DPC met after a conscious decision was taken to initiate Disciplinary action against the applicant. The perusal of the Notesheet now shows to us by respondent's counsel indicate that a preliminary enquiry ^{indicated} ~~showing~~ irregularities on the part of certain Officers including the applicant. Then, the Office note says that Chief Engineer may indicate as to what action should be taken against the concerned officers which includes the name of the applicant. At the end of the office note, against the name Chief Engineer (CE) which means 'Chief Engineer' there is an order "Take disciplinary action under rule-14" and the date is shown as 24/12/97. Now respondent's counsel, on instructions from the concerned official, submits that the Signatory was Chief Engineer who was a Major General

for

and who was then Chief Engineer of Southern Command.

4. Therefore, we are satisfied from the record that the Disciplinary Authority has taken a conscious decision to initiate a major penalty ^{unit} against the applicant prior to DPC being held, in December, 97. Therefore, in the circumstances, the stand of the respondents that the applicant cannot be given promotion is justified as held by Supreme Court in the case of Kewal Kumar reported in 1993(2)SLR SC 554 and therefore we find no merit in the OA.

5. In the result, the application is rejected at Admission Stage. No costs.



(B.N. BAHADUR)
MEMBER(A)



(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.