

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

G.A.125/91.

Dt. of Decision : 8.6.94.

Mr. B.V.N.A.Vedadri

.. Applicant

Vs

Union of India rep. by:

1. Secretary to Government,
Ministry of Defence,
New Delhi.
2. Controller General of Defence
Accounts, R.K.Puram,
New Delhi.
3. Controller of Defence, Accounts,
506, Anna Salai, Madras - 18.
4. Assistant Controller of Defence,
Accounts, Area Accounts office,
No.1, Staff Road, Secunderabad-3. .. Respondents.



C ounsel for the Applicant : Mr. K.S.R. Anjaneyulu

Counsel for the Respondents : Mr. N.R.Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

OA 125/91.

Dt. of Order: 8-6-94.

(ORDERS PASSED BY HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN).

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The applicant was working as Selection Grade Auditor from 23-11-81. In January, 1990 the D.P.C. met for considering all the eligible candidates for promotion to the post of Asst. Accounts Officer. It is stated for the Respondents that as a Disciplinary action was pending against the applicant, sealed cover procedure was adopted in regard to the ^{applicant} ~~same~~ and as it ultimately ended in punishment of 'censure', the sealed cover was not opened.

2. It is stated for the applicant that that as the charge memo under rule 16 of CCS (CCA) Rules was issued to him only on 18-6-90, it cannot be stated that Disciplinary action was pending against him by the date the DPC considered ^{his} ~~the~~ case for promotion in January, 1990.

3. The order of 'Censure' is dt. 8-1-91 and subsequent to that date the case of the applicant was considered for promotion to the post of Asst. Accounts Officer and he was given promotion on 3-5-93 as per proceedings dt. 19-5-93.

It was held in 1991 SC 2010 (Union of India Vs. K.V. Jankiraman) that the Disciplinary Proceedings ^{can be} ~~is~~ stated to have been initiated from the date of issuance of charge-memo. In

1993 SC 1585 (Union of India Vs. Kewal Kumar) it was held that "it could be incongruous to hold that, in a case like the present, where the ^{C.B.I.} / had recorded the F.I.R.; sent the same to the superior authorities of the Respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the F.I.R., to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges."

4. In this case the note dt.10-8-89 (vide Annexure-8) was issued to the applicant and the relevant portion therein is as under :-

"It has been reported by the D.P.D.O. Hyderabad that on 12-5-89, you received a Complaint from one Sri Fakhruddin against Smt.Khaja Bee widow of late pensioner Peer Mohammad. This Complaint has been received by you direct and it was neither diarised nor brought to the notice of your D.P.D.O. You have also visited the residence of Smt.Khaja Bee on 12-5-89 to make some enquiries without the knowledge of your D.P.D.O.

2. You are hereby directed to explain as to why disciplinary action should not be taken against you for this following act of misdemeanour.

(i) For directly receiving a complaint from Shri Fakhruddin and not diarising and bring the same to the notice of the DPDO when you were well aware that the Complaint if proved has a financial effect of over Rs.22,000/-

(ii) For visiting unauthorisedly the residence of the widow Smt. Khaja Bee, without permission and knowledge of the DPDO.

(iii) For taking the brother-in-law of Smt. Khaja Bee outside the office premises, threatening him when he visited the DPDO on 15th May, 1989 to the effect that he will be handed over to the police etc.

3. Your explanation should reach the undersigned within seven days from the date of receipt of this letter by you."

Then the applicant submitted reply dt.21-8-89 and the relevant portion therein is as under :-

" Instead of handing over to the Admn Section/DPDO the complainent handed over the letter to me. Owing to pressure of work the letter was not passed on to Admn Section for diarising. However because of my timely bringing it to the notice of DPDO that the payment was not made to the concerned party and also the letter was eventually disposed under the signature of the DPDO.

" It is only out of sheer curiosity to know the truth, in the interest of the Government, I had made some enquiries and I submit that as a responsible employee I maintained the high standards of our Department."

Ultimately the charge memo under Rule 16 of CCS (CCA) ~~was~~ issued on 18-6-90. Thus by January, 1990, the time by which the DPC considered the case ^{of applicant for promotion} to the post of Asst. Accounts Officer, no decision was taken to initiate Disciplinary Proceedings and much ^{less} a decision to initiate Disciplinary Proceeding for major penalty. In fact that Disciplinary Proceeding was initiated in regard to only minor penalty. Thus this case doesnot come within the purview of the judgment of the Supreme Court reported in 1993 SC 1585 (Union of India Vs. Kewal Kumar). ^{As} no charge memo was issued by the date the DPC met for consideration in regard to promotions, The contention of the applicant that there was no disciplinary case against him by the date of consideration for promotion and thus it is not a case where sealed cover procedure ^{has} ~~have~~ to be ^{followed} ~~adopted~~, have to be ~~ascertained~~ ^{accepted}.

5. Hence it is necessary to issue the following directions :-

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(i) if the sealed cover in regard to the applicant at the time of considering ~~him~~ ^{his case} for promotion to the post of Asst. Accounts Officer in January, 1990, is available, the same should be opened and if he was found selected for promotion, his promotion to the post of AAO should be given with effect from the date on which his immediate junior assumed charge as AAO in pursuance of the proceedings dt.7-3-90.

6. But in case the said sealed cover is destroyed, the case of the applicant as in January, 1990 ~~has~~ to be considered by the Review DPC and if he is selected for promotion by the said D.P.C. then the promotion of the applicant to the post of AAO should be given ^{from} with the date on which his junior assumed charge as A.A.O. in pursuance of the proceedings dt.7-3-90.

7. In the circumstances we feel that it is not a case where the applicant should be given the monetary ^{or} benefits from the date the junior of the applicant assumed charge as A.A.O. in pursuance of the proceedings dt.7-3-90, in case he was promoted as per the sealed cover or by review DPC, and in such a case he has to be given only notional promotion with the consequential benefit of seniority etc.,.

8. The O.A. is ordered accordingly. No costs. \

CERTIFIED TO BE TRUE COPY
Date.....
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad

24/10/1

Copy to:-

1. Secretary to Government, Ministry of Defence, New Delhi.
2. Controller General of Defence, Accounts, R.K. Puram, New Delhi.
3. Controller of Defence Accounts, 506, Anna Salai, Madras-18.
4. Assistant Controller of Defence Accounts, Area Accounts Office, No.1, Staff Road, Secunderabad-3.
5. One copy to Sri K.S.R. Anjaneyulu, Advocate, 1-1-365/A, Jawaharnagar Bakaram, Hyderabad-500 020.
6. One copy to Sri N.V. Raghava Reddy, Standing Counsel, CAT, Hyd.
7. One copy to Library,
8. Spare.

K.K.U.