

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR

Date of decision: 3rd June, 2004

OA No.160/2002

A.C.Jha s/o Shri C.L.Jha, aged about 61 years, 162, Om Shiv Colony, Jhotwara, Jaipur, retired Supervisor from O/o Chief Eng., MES, Power House Road, Jaipur

.. Applicant

V E R S U S

1. Union of India Ministry thorough the Secretary, Army Headquarters, DHQ Post Office, New Delhi.
2. Sh. Krishan Kumar, Chief Engineer, Jaipur Zone O/o the CE, MES Power House Road, Jaipur.
3. Sh. Jaya Prakash, Garrison Engineer O/o the Garrison Engineer, MES Khatipura, Jaipur.
4. Shri I.K.Jindal, BSO Garrison Engineer Office, MES Khatipura, Jaipur.

.. Respondents

Mr.S.K.Jain, counsel for the applicant

Mr.Sanjay Pareek, counsel for respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That by an appropriate order or direction, the respondents be directed to implement the promotion orders with all consequential benefits Ann.A7, A8 and telex message annexure A/9 as these orders were issued prior to issuance of charge sheets.
- (ii) That by an appropriate order or direction the charge sheets issued subsequent to promotion orders vide

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annexure A/1 to A/6 be quashed and set aside and respondents be restrained from proceeding further in this matter any more and to release the with old amount of retiral benefits with subsequent dues.

(iii) Any other relif which this Tribunal deems fit may also be granted to the humble applicant."

2. The facts of the case are that the applicant while working as Supervisor B/s Grade-I C/o E-3 See. Head Quarters CEJZ, Jaipur was promoted to the grade of Barrack Stores Officer vide order dated 8th May, 2000 (Ann.A7). With this letter, a panel for promotion of Supervisors B/S Grade I to Barrack Stores Officer was also enclosed. The name of the applicant appeaed at serial No.9 of the said panel. It was also mentioned in the said letter that actual appointment of officers included in this panel will be made in the grade shown above, subject to availability of vacancies and issue of orders for appointment by this Headquarters. It was further mentioned that before placing in position on promotion, it should be ensured by the concerned CEs Command that the officers are not involved in any disciplinary/LPE cases. Subsequently, vide letter dated 23rd June, 2000 (Ann.A8) postings of persons so promoted were approved. The name of the applicant find mention at Sl.No.(j) and the applicant was posted from GE, Jaipur to GE (EP), Jodhpur as BSO. Further, in the said letter it was also mentioned that before placing and

assuming the higher appointment, it will be ensured that- (a) the officer is not under suspension, (b) No chargesheet has been issued to the officer and no disciplinary proceedings are pending against him, (c) no prosecution for a original charge is pending against him. It is further case of the applicant that with a view to debar the applicant for promotion, the respondents arranged to issue chargesheet on 29.6.2000. The applicant has retired on superannuation on 30.6.2001 and on account of this chargesheet he has been denied payment in respect of DCRG, finalization of Pension, leave encashment, difference of GPF amount and promotion benefits etc. It is on this basis that the applicant has filed this OA thereby praying for the aforesaid reliefs.

2.1 The main grievance of the applicant is that there was nothing adverse on record against the applicant till a panel for promotion was prepared and issued vide memo dated 8.5.2000. Even promotion-cum-posting orders were issued by the Army Headquarters vide memo dated 23rd June, 2000 and it is only thereafter that the respondents purposely and revengefully did not relieve the applicant and arranged vague charge sheet to be issued on 27.6./29.6.2000 and so on till retirement. According to the applicant, the action on the part of the respondents is highly discriminatory, unjust and unreasonable. At this stage it is relevant to submit that although the applicant has prayed that by an appropriate order

or direction the chargesheet, issued subsequent to promotion order vide Ann.A1 to Ann.A6 be quashed and set aside and respondents be restrained from proceeding further in the matter, but when the matter was heard on 29.4.2004, the learned counsel for the applicant submitted that he is not pressing the prayer No. (ii), as such the applicant was heard regarding prayer No.(i) and the matter was adjourned to 20.5.2004 for the purpose of hearing the learned counsel for the respondents who was not present on that date. Thereafter the matter was adjourned from time to time and finally on 28.5.2004, we have heard the learned counsel for the respondents and also again heard the learned counsel for the respondents.

2.2 Even otherwise also, the prayer No.(ii) does not survive in view of the subsequent development, inasmuch as, during the pendency of this OA, disciplinary proceedings against the applicant were concluded and the applicant has been awarded penalty.

3. The respondents in their reply have raised objections regarding maintainability of the OA on the ground that the present OA is barred by the principles of res-judicata. Besides it, it was also mentioned that the present OA is barred by limitation. It has been stated that the applicant had earlier challenged these orders before the Hon'ble Tribunal vide OA No.330/2000 and 331/2000. It is further stated that the applicant wants implementation of the promotion

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order. This prayer had already been made by the applicant in the earlier OA. Thus, it is clear that this prayer is also barred by the principle of res-judicata. On the point of limitation, it has been stated that the chargesheet and the order seeking implementation of the promotion order issued in the year 2000 whereas this OA has been filed in the year 2003.

3.1 On merits, it has been contended that the applicant was found guilty of gross negligence and lack of devotion to duty. The memorandum of charges issued on 29.6.2000 was cancelled and a fresh charge sheet was issued vide letter dated 6.10.2000 because the former was issued without indicating the actual quantity of stores misappropriation and relevant document. It is further stated that the applicant is not entitled for any relief as per rules and the contents of letter dated 8th May, 2000 and dated 23 June, 2000 issued by E-in-C's Branch, Army Headquarter that before placing in position any individual should not be involved in disciplinary case and no inquiry should be pending against him. Since the applicant was issued with chargesheet under rule 14 of CCS (CCA) Rules, 1965 and disciplinary proceedings were already contemplated against him, he was not eligible for promotion.

4. The applicant has also filed rejoinder. In the rejoinder, it has been stated that the question of res-judicata did not arise as the OA

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No.331/2000 was dismissed by this Hon'ble Tribunal with the direction to complete the enquiry within six months. Copy of the judgment has been placed on record as Ann. All. According to the applicant, the cause of action in the earlier OA was against the chargesheet while in the present case the applicant is ^{whofur} seeking quashing of chargesheet and proceedings against him. There is no question of res-judicata. Regarding limitation, it has been stated that the applicant has assailed the chargesheet and implementation of promotion order issued in the year 2000 because they were linked together and since the chargesheet was not finalised, therefore, the cause survives and the OA is within limitation. At this stage, it will be useful to quote para 4 of the rejoinder, which will clinch the issue and reads as under:-

"That the para no.4 of the reply is wholly and is denied. It is humbly submitted that OA No.81/2000 did not pertain to the charge-sheet and it was only regarding the challenge to the transfer orders and as mentioned above, in OA No.331/2000 this Hon'ble Tribunal was pleased to give direction to complete the enquiry within six months which expired in March, 2002 and, therefore, when the enquiry was not completed the applicant approached this Hon'ble Tribunal vide the present O.A. which is, therefore, within limitation. The applicant has assailed the charge-sheet and the implementation of promotion order issued in 2000 because they were linked together and since the chargesheet was ~~not~~ finalised,

therefore, the cause survives and the OA is within limitation. The contention of the respondents that the OA is barred by limitation is without any basis and foundation."

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 First of all, we want to decide the question of res-judicata and limitation as raised by the learned counsel for the respondents. We have gone through the pleadings made in the earlier OA viz. OA No.331/2000. In that OA, though the main issue raised by the applicant was for quashing of the impugned chargesheet dated 29.6.2000 but the applicant has also made prayer that direction be issued to the respondents to give actual benefit of promotion on the post of BSO to the applicant, which prayer was based on account of quashing of chargesheet. Thus, the applicant in earlier OA has not based his claim for promotion to higher post on the basis of memos dated 8.5.2000 and 23.6.2000, which is the case set-up in the present OA. Thus, we agree with the submissions made by the learned counsel for the applicant that the principle of res-judicata is not attracted in the instant case. However, we are inclined to agree with the contentions raised by the learned counsel for the respondents that no relief can be granted to the applicant, inasmuch as, in this OA (a) the relief sought by the applicant regarding implementation

of the promotion order with all consequential benefits, could have been prayed by the learned counsel for the applicant in the earlier OA and as such he is precluded from raising this plea in this OA in view of the provisions contained in order 2 Rule 2 of the Code of Civil Procedure and (b) that the applicant wants enforcement of the order passed on 8.5.2000 read with order dated 23.6.2000 whereas this OA was filed on 27.3.2000, as such the same is hopelessly time barred and the same cannot be entertained in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985. Admittedly, promotion order dated 8th May, 2000 (Ann.A7) and promotion-cum-posting order dated 23.6.2000 were issued prior to filing of the earlier OA No.331/2000 which was filed on 27.7.2000. From the pleadings made in the earlier OA including the prayer made, it is clear that the applicant could have also sought relief regarding enforcement of these orders and grant of consequential reliefs as has been prayed by the applicant in the instant OA. It is clear that the applicant in earlier OA has based his case on the premise that he will be entitled for promotion only if the chargesheet is quashed. Further, he could have also sought relief regarding enforcement of these orders and grant of consequential reliefs by filing the separate OA as according to Rule 10 of CAT (Procedure) Rules, the OA should be based on a single cause of action. Having not done so, the contention raised

by the learned counsel for the respondents that the applicant has abandoned his prayer regarding enforcement of Ann.A7 and A8 and grant of consequential reliefs, has considerable force. That apart, admittedly, the applicant is seeking enforcement of order dated 8th May, 2000 and 23.6.2000 (Ann.A7 and A8). The applicant has not filed any application for condonation of delay despite the fact that the respondents have also raised objection of limitation. In the rejoinder, the relevant portion of which has been reproduced above, the stand of the applicant is that he has sought quashing of the chargesheet and promotion order issued in 2000 as they are linked together and since the chargesheet was not finalised, therefore, the cause survives and the OA is within limitation. If this version of the applicant is accepted and implementation of the promotion order is linked with finalisation of the chargesheet, then the applicant is not entitled to any relief, as pursuant to the said chargesheet the applicant has been found guilty of the charges and he has also been imposed punishment.

5.2 The learned counsel for the applicant, however, made submissions contrary to the pleadings and argued that since the promotion order has already been passed and he is only asking for the consequential monetary benefits, as such the OA cannot be dismissed on account of limitation, as the payment of salary is a continuous cause and the applicant is sustaining

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loss month by month. According to the learned counsel for the applicant, at the most arrears of back salary can be denied. This contention raised by the learned counsel for the applicant cannot be accepted for more than two reasons. Firstly, the submissions so made is contrary to the stand taken by the applicant in the pleadings made before this Tribunal in this case. That apart, in this case no doubt, the order of promotion and posting were issued but the applicant was not relieved and he was not allowed to function against the promoted post. Thus, he cannot be said to have been promoted against the higher post unless he is allowed to join the said post and allowed to work against that post. Had the applicant been allowed to work against higher post and salary of the higher post was not paid to him, in that eventuality, the applicant may be right that since he stood already promoted against the higher post, the OA can be entertained as it involved only payment of salary thereby causing recurring cause on monthly basis and at the most arrears of back salary can be denied, but this is not the case in the instant OA. Admittedly, the applicant has never worked against the promoted post and for all intents and purposes he has been treated as employee working in the lower post and he has been allowed to retire on the said post. Thus, it is not a case of payment of back salary but a case of denial of promotion. As per provisions contained in Section 21 of the Administrative Tribunals Act, 1985, the

OA has to be filed within one year from the date of cause of action and Section 21 (3) of the Act stipulates that the Tribunal can condone the delay for sufficient reasons, where such cause is shown. In the instant case, the applicant despite objection raised by the respondents has not chosen to file any application for condonation of delay. Therefore, the application is time barred and in view of the law laid down by the Apex Court in Ramesh Chand Sharma vs. Udhamp Singh Kamal, 2000 SCC (L&S) 53, the OA cannot either be admitted or maintained.

5.3 The reasons given by the applicant in the rejoinder that the OA is within limitation as the disciplinary enquiry was pending is self destructive. In case such reasons are accepted then no relief can be granted to the applicant as he has been held guilty in the enquiry proceedings and has been awarded punishment.

5.4 Lastly, the learned counsel for the applicant has contended that since the action of the respondents in not allowing him to join higher post is illegal and wholly invalid, as such there was no necessity for the applicant to have the order set-aside by the court, therefore, the application cannot be rejected as time barred. For that purpose, the applicant has relied on the decision of the Apex Court in the case of State of Madhya Pradesh vs. Syed Qamarali, 1967 SLR 228. We fail to understand how this judgment is applicable in the instant case. That was a case where the order of dismissal was passed contrary

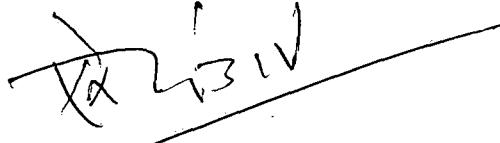
to para 241 of the Police Regulations which stipulates that when a police officer has been tried and acquitted by a Criminal Court, he must as a rule be reinstated. The Regulation further provided that such police officer may not be punished departmentally when the offence for which he was tried constitutes the sole ground of punishment. Despite this provision, the employee was dismissed from service. It was under this context that the Apex Court has held that the order of dismissal is in breach of mandatory provisions of rules and suit cannot be said to be barred by limitation. We fail to understand how the applicant can take assistance from this ruling. The applicant has not shown any mandatory rule which stipulates that persons whose name find mention in the panel for promotion to a higher post and promotion order was conditional and subject to availability of vacancies, has to be given promotion and posting order in all circumstances. Further, as already stated above, the point raised by the learned counsel for the applicant during the course of arguments is contrary to what he has pleaded in this OA and it has not been the case of the applicant that despite mandatory statutory provisions/rules, he is not being allowed to work against the higher post. Thus, this argument is of no avail to the applicant and the same is accordingly rejected.

5.5 Since the application is being dismissed on the basis of the findings given above, we have not gone into the question whether

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the respondents were justified in withholding promotion on the basis of subsequent chargesheet.

6. In view of what has been stated above, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)