

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR, this the 1st day of February, 2005

ORIGINAL APPLICATION No. 358/2002

CORAM:

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

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

Ram Swaroop Natani
s/o Shri H.S.Natani,
Aged about 54 years,
r/o 74, Govind Nagar (East),
Amber Road, Jaipur,
presently holding the post of
AAO in the A.G. Office, Jaipur

.. Applicant

(By Advocate: Shri Vinod Goyal)

Versus

1. The Comptroller and Auditor General of India,
10, Bahadur Shah Jafar Marg,
Indraprastha Estate,
New Delhi.

2. The Acccountant General (Audit-I)
A.G.Office, Near Statue Circle,
Jaipur

.. Respondents

(By Advocate: Shri Hem Chand, proxy counsel for Mr.
Bhanwar Bagri

ORDER (ORAL)

The applicant has filed this Original
Application, praying for the following reliefs:

by

"(i) By an appropriate order or direction the whole record pertains to this case may kindly be summoned and after perusing the same the impugned order dated 21.6.2002 (Annexure-A/1) may be quashed and set-aside.

(ii) By appropriate order or direction the respondents may be directed to promote the applicant on the post of Audit Officer w.e.f. April 2002 after promoting him on the post of A.A.O. w.e.f. the year 1991 when his juniors were promoted and as such all consequential benefits like arrears of salary and seniority be given to him.


(iii) By an appropriate order or direction the seniority of the applicant on the post of A.A.O. and thereafter on the post of A.O. may kindly be refixed.

(iv) Any other appropriate order which may be found just and proper in the facts and circumstances of the case may be awarded in favour of the applicant."


2. Briefly stated, the applicant was initially appointed on the post of UDC on 28.5.1970. Thereafter he was promoted to the post of Section Officer in the year 1986 and on the post of Assistant Audit Officer in the year 1997. It is further stated that the applicant was denied promotion on the post of Assistant Audit Officer w.e.f. 1.1.1991 on the ground that a charge sheet was pending against the applicant when the DPC was convened and person junior to him has been promoted. It is further stated that the charge sheet was issued on 3.4.1991 and the D.P.C. for holding the promotion on the post of Assistant Audit Officer was convened much prior to April 1991 when the charge sheet was issued. As such, according to the applicant, his case for promotion to the post of Assistant Audit Officer was not rightly considered by

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the DPC. It is further alleged that the applicant has earlier preferred OA No.190/1991 praying his promotion w.e.f. 1.1.1991 which was dismissed by the this Tribunal on 27.6.1994 and while dismissing the said OA upheld the action of the answering respondents in keeping the findings of the DPC in the sealed cover. The applicant again challenged the entire disciplinary proceedings vide OA No.438/1996 before this Bench of the Tribunal and the said OA was also dismissed vide order dated 1.1.2002. It is further stated that against the order of this Tribunal Writ Petition is pending before the Hon'ble High Court. It is further stated that another OA No.173/2002 was also filed by the applicant for re-determination of his seniority and also for promotion to the post of Assistant Audit Officer w.e.f. 1.1.1991 which OA was disposed of on 18.4.2002 with the direction to the respondents to decide representation dated 18.3.2002 by reasoned and speaking order considering the grievance of the applicant as per rules. In pursuance of the direction issued by this Tribunal, the respondents vide order dated 21.6.2002 (Ann.A1) rejected the representation of the applicant. It is this order which is also under challenge in this OA and on the basis of the above facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.



3. The respondents have filed reply. In the reply, the respondents have taken objection of limitation as also the principle of res-judicata. On merits, the respondents have justified their action. The respondents have placed on record the OM dated 12th January, 1988 which lays down the criteria to be adopted for promotion of a Govt. servant against whom disciplinary proceedings or any investigation is pending. As per Para 2 (ii) the fact regarding the Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings should be brought to the notice of the DPC and as per para 2.1 of the said OM, the DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them. The assessment of the DPC including 'Unfit for promotion' and the grading awarded should be kept in sealed cover. The respondents have also annexed copy of the judgment rendered by this Tribunal in OA No.190/91 decided on 27.6.1994 whereby the OA of the applicant was dismissed and it was categorically held that a decision for initiating disciplinary proceedings was taken before the meeting of the DPC was held and as such sealed cover procedure was rightly resorted to.



The respondents have also placed on record copy of the decision rendered by this Tribunal in OA No.438/96 decided on 1.1.2002 whereby the penalty awarded by the Disciplinary Authority and as confirmed by the Appellate Authority pursuant to the charge sheet issued to the applicant was upheld and the OA was dismissed. Further, the respondents have also placed on record instructions dated 21.10.92 (Ann.R4) whereby the earlier instructions dated 12th January, 1988 were reviewed and the Government issued fresh instructions based on the judgment rendered by the Hon'ble Supreme Court in the case of Union of India etc. vs. K.V.Jankiraman (AIR 1991 SC 2010) to contend that in case the penalty is imposed on the Govt. servant as a result of the disciplinary proceedings, his case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

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

5.1 At the outset, it may be stated that the present application is misconceived and deserved outright rejection. It is admitted case between the parties that the applicant was senior to certain persons in



the cadre of Section Officer who were promoted as Assistant Audit Officer on the basis of penal dated 1.1.1991. Since the respondents have already taken decision to initiate disciplinary proceedings against the applicant for claiming false TA before the DPC proceedings for promotion to the post of Assistant Audit Officer was held in the year 1991 and the DPC was informed regarding the factum that decision has been taken to initiate disciplinary proceedings against the applicant, the DPC resorted to the sealed cover procedure which they were legally bound to do so in the light of the OM dated 12th January, 1988 (Ann.R1) which held the field at the relevant time, as the law laid down by the Hon'ble Apex Court in K.V.Jankiraman (supra) ^{was} admittedly ^{rendered} after the date when the DPC proceedings for the post of Assistant Audit Officer was held and further the instructions dated 12th January, 1988 was reviewed in the year 1992 when the OM dated 14.9.92 came to be issued and the same was circulated vide letter dated 21.10.92 (Ann.R4). Thus, on the basis of the instructions issued by the Govt. of India vide OM dated 12th January, 1988 (Ann.R1) which held the field at the relevant time, the DPC was justified in resorting to the sealed cover procedure qua the applicant against whom the decision to take disciplinary proceedings had already been taken by the Department though the charge sheet was issued subsequently in April, 1991. In any case, the

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action of the respondents in resorting to the sealed cover procedure which was subject matter of challenge in OA No. 190/91 was affirmed by this Tribunal when the said OA was dismissed vide order dated 27.6.94 and this Tribunal in para 7 of the said judgment has categorically held that "a decision for initiating disciplinary action was taken before the meeting of the DPC and as such, we are of the view that the sealed cover procedure was rightly resorted to." This decision was rendered by this Tribunal after noticing the decision of the Apex Court in the case of State of Madhya Pradesh and Anr. Vs. Syed Naseem Zahir and ors. (1993) 24 ATC 249 wherein the Hon'ble Supreme Court has held that where the decision to initiate disciplinary proceedings has already been taken on the date of DPC but the charge sheet had not been issued, the sealed cover procedure would still be adopted. Thus, in view of the judgment rendered by this Tribunal in earlier OA No.190/91 dated 27.6.94 whereby it has been categorically held that the respondents have rightly resorted to the sealed cover procedure in the case of the applicant, it is not open for us to go into this question again. Thus, we agree with the contention of the respondents that the findings qua this point constitute res-judicate and the same is not open to challenge. Thus, once it has been held that the respondents have rightly resorted to the sealed cover procedure and he has not been exonerated in the

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departmental proceedings where penalty has been imposed upon the applicant, it is not legally permissible for him to claim his promotion on the basis of panel prepared in 1991. We agree with the submissions made by the learned counsel for the respondents that the case of the applicant for promotion can be considered by the next DPC in the normal course having regard to the penalty imposed on him where the Govt. servant as a result of disciplinary proceedings have imposed penalty and in that eventuality findings of sealed cover shall not be acted upon.

5.2 Law on this point is also well settled. The Apex court in the case of State of Madhya Pradesh vs. I.A.Qureshi, 1998 SCC (L&S) 1121 has categorically held that sealed cover containing the recommendations of the DPC has to be opened only in those cases where the delinquent official has been fully exonerated by the departmental enquiry, and such recommendations cannot be given effect to where the employee concerned has not been fully exonerated. The respondents in the reply has categorically stated that disciplinary proceedings against the applicant were concluded vide order dated 13.12.94 and he was imposed upon a major penalty of reduction of pay by 3 stages from 2300/- to 2120/- in the time scale of pay of Rs. 1640-2900 for a period from 1.12.94 to 31.12.95 with cumulative effect. It is further stated that during the currency

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of penalty, a Govt. servant cannot be promoted. Non-promotion during currency of penalty does not amount to double punished as held in the case reported in (1992) 21 ATC 842. Therefore, the DPC which met in Dec. 1994 for preparing panel for the year 1995 did not recommend the applicant for promotion. During the panel year 1996, the DPC was not convened due to non-availability of vacancy in the cadre. The DPC which prepared the panel of 1997 recommended him fit for promotion and the applicant was promoted to the higher post of Assistant Audit Officer on 15.1.97. Thus, according to us, the applicant is not entitled to relief of his promotion to the post of Assistant Audit Officer w.e.f. 1.1.1991 when his juniors were promoted.

5.3 Similarly, we find no infirmity in the order dated 21.6.2002 whereby the claim of the applicant for promotion to the post of Assistant Audit Officer on the basis of penal of 1991 was denied as at that time the respondents have taken decision to initiate major penalty against the applicant and ultimately he has not been exonerated in the departmental proceedings and order of punishment imposed upon the applicant was also upheld by this Tribunal.

5.4 We may now consider the second submission of the applicant that he be promoted to the higher post of Audit Officer w.e.f. April, 2002 on the basis of his

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seniority in the cadre of Section Officer. We are of the view that the applicant is not entitled to this relief. No doubt, the applicant was senior to one Shri O.P.Khanna in the cadre of Section Officer. However, Shri O.P.Khanna was promoted on the higher post of Assistant Audit Officer on the basis of the panel prepared in the year 1991 whereas the applicant could not be promoted against the said higher post because of the fact that decision to initiate major penalty proceedings was taken against the applicant and ultimately he was also imposed a major penalty. Subsequently, he was promoted on the said post of Assistant Audit Officer on 15.1.1997. As such, it cannot be said that the applicant is senior to Shri O.P.Khanna in the cadre of Assistant Audit Officer as Shri O.P.Khanna was promoted in the cadre of Assistant Audit Officer in the year 1991 whereas the applicant was promoted almost after 6 years on the said post on 15.1.1997. The respondents have categorically stated that according to the Recruitment Rules for the post of Audit Officer in IA&AD, it is only the Assistant Audit Officer with 5 years (now 6 years as per latest revised rules) of combined regular service and Assistant Audit Officer and Section Officer are eligible for consideration for the post of Audit Officer. The eligibility list is prepared taking into account the senior most candidate looking into size of the panel. Since the applicant was promoted as



Assistant Audit Officer in the year 1997, he stood lower in seniority list for the post of Assistant Audit Officer and was therefore not empanelled. We see no reason to differ with the reasoning given by the respondents while passing the impugned order dated 21.6.2002 whereby the representation of the applicant was rejected. Admittedly, the so called junior to the applicant was promoted as Assistant Audit Officer in the year 1991. It is not the case of the applicant that such promotion of the so called junior to the applicant is erroneous. His case is that he should also have been promoted to the post of Assistant Audit Officer when his junior is promoted in the year 1991. We have categorically held that the applicant was not entitled to promotion w.e.f. 1991 as the respondents have already taken decision to initiate major penalty proceedings against the applicant and the DPC was informed accordingly which resorted to the sealed cover procedure. The applicant was ultimately held guilty of the charges leveled against him and major punishment was awarded to him. He has not been fully exonerated, as such he could not have been promoted in the year 1991. Once the so called junior person has been promoted in the cadre of Assistant Audit Officer almost 6 years prior to the promotion of the applicant on the said post on 15.1.97, it cannot be said that the applicant is senior to Shri O.P.Khanna simply because at one time he was senior to the applicant in


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the lower cadre of Section Officer. Admittedly, promotion to the post of Audit Officer has to be made from amongst the Assistant Audit Officers and for that purpose seniority in the cadre of Assistant Audit Officer plays an important role. It is not the case of the applicant that seniority in the cadre of Assistant Audit Officer has to be prepared on the basis of entire continuous length of service rendered under the respondents. It is also undisputed that the post of Assistant Audit Officer is a promotional post from the post of Section Officer and Audit Officer is still further promotional post from the post of Assistant Audit Officer. In this view of the matter, until and unless it is established that the applicant was promoted to the post of Assistant Audit Officer earlier than the so called person Shri O.P.Khanna or that Shri O.P.Khanna was erroneously promoted to the post of AAO, the question of applicant gaining seniority over Shri O.P.Khanna does not arise in the absence of any specific holding that continuous length of service would be the basis of seniority into a particular grade. Entry into the grade is a normal rule of promotion. Applying this rule, Shri O.P.Khanna having come to the grade of Assistant Audit Officer in the year 1991 and the applicant having come to that grade only on 15.1.1997 cannot be held senior to Shri O.P.Khanna. It is also the view which has been held by the Apex Court in the case of Union of India vs.

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C.Jayaprakasan, 2002 (4) SC SLJ 66 whereby it has been held that though the respondent No.1. therein was senior to respondent No.2 in the cadre of Chargeman-B but the respondent No.2 was promoted earlier to respondent No.1 in the cadre of Chargeman-A. Thus, it was held that respondent No.2 is senior to respondent No.1 so long as it is not held that the promotion of respondent No.2 to the post of Chargeman-A was erroneous. Accordingly, the decision of the Tribunal whereby the seniority list prepared by the railway administration to the post of Boiler Supervisor which was a promotional post from feeder cadre of Chargeman-A was set-aside and it was held that the Tribunal was not right in setting aside the seniority list of Boiler Supervisor prepared by the railway administration.

6. For the foregoing reasons, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)