

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 389/2002  
T.A. No.

200

DATE OF DECISION

4.6.03

P. C. Verma

Petitioner

P. P. Mathur

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Tej Prakash Sharma

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. G. C. Srivastava, Administrative Member.

(G. C. SRIVASTAVA)  
MEMBER (A)

(G. L. GUPTA)  
VICE CHAIRMAN

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR.

Date Of Order : 04-06-03

O.A. No. 389/2002.

P. C. Verma son of Late Shri R.C. Verma aged about 55 years, resident of Quarter No.16, Type-IV, C.P.W.D. Colony, Vidhyadhar Nagar, Jaipur. (presently working on the post of Assistant Engineer (Civil) under Jaipur Centre Division-I, Jaipur).

... APPLICANT.

V E R S U S

1. The Union of India through Secretary, Ministry of Urban Development and Poverty Alleviation, Nirman Bhawan, New Delhi.
2. The Director General of Works, C.P.W.D., Nirman Bhawan, New Delhi.
3. The Chief Engineer (North Zone-III) C.P.W.D., Nirman Bhawan, Vidhyadhar Nagar, Sector-10, Jaipur.

... RESPONDENTS.

Mr. P. P. Mathur counsel for the applicant.  
Mr. T.P. Sharma counsel for the respondents.

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Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. G. C. Srivastava, Member (A).

: O R D E R :

(per Hon'ble Mr. G.C. Srivastava)

The applicant who was working as Assistant Engineer Civil (AEN, for short) under the respondents is aggrieved on account of his reversion to the post of Junior Engineer Civil (JEN, for short) vide office order dated 8.8.2002 (Annexure A-1) and has prayed that the same be quashed and set aside.

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2. According to the applicant, he was promoted to the post of AEN on 29.11.1996 (Annexure A-2) and on transfer he joined at Dehradun on 1.12.1996. While working as JEN he was issued a chargesheet in 1991 which was dropped though no order was issued. In 1994 another chargesheet was issued for the same charges on 1.9.1994 and the inquiry was furnished in March 1996. Nothing was heard thereafter and he was promoted as AEN on 29.11.1996. Thereafter order dated 27.7.2000 (Annexure A-3) was issued imposing on him a penalty of withholding of increments of pay for three years without cumulative effect. He did not file any appeal or revision against the above order. In pursuance of the above order, he was not allowed the benefit of his due increments in 2001 and 2002 and thereafter suddenly the impugned order dated 8.2.2002 was issued reverting him to the post of JEN on the ground that a vigilance case was pending against him at the time of his promotion. Aggrieved by this, he has approached this Tribunal.

3. The respondents have contested the OA and have filed a detailed reply.

4. We have heard Mr. P. P. Mathur and Mr. T. P. Sharma learned counsel for the applicant and the respondents respectively and with their consent we are disposing of the OA at the admission stage itself.

5. The main contention advanced by Mr. Mathur for the applicant is that since the applicant was promoted

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as AEN vide order dated 29.11.1996 and continued as such for nearly four years he had the impression that the disciplinary case against him had been dropped and he had been promoted after assessing his entire service served as JEN and this is the reason he did not challenge the penalty imposed on him vide order dated 27.7.2000 in appeal/revisio. According to him once the decision to promote him as AEN was taken by the competent authority after due consultation with the U.P.S.C. etc. the respondents are now estopped from taking any punitive action against him to execute the penalty in a different manner. He has contended that if the penalty of withholding of increments is to be executed considering him as JEN, it would amount to double jeopardy and since he was continued as AEN even after the above penalty of 27.7.2000 there is no explanation for the gap between this period and the date of issue of the impugned order and hence they are estopped from reverting him from a retrospective date. He has also contended that nothing is mentioned in the above order when the mistake of pendency of a vigilance case at the time of his promotion was detected and it can not be presumed that the respondents were not aware of the same during the year 1989 to 2000. According to him, there is no explanation for the long delay in concluding the inquiry and issue of final penalty order. He has also submitted that because of the impugned order his right to challenge the penalty order dated 27.7.2000 has been washed off. He has further stated that no show cause has been issued before issuing the impugned order which is in violation of Article 311 (2) of the

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Constitution of India and against the spirit of Article 14 thereof. Mr. Mathur has relied on the judgements in the case of Dinkar Anna Patil reported in 1999 (1) SCC 216 and the case of N.L. Parihar in OA 444/94 before this Tribunal.

6. On the other hand Mr. T. P. Sharma for the respondents has submitted that while the applicant was working as JEN, the disciplinary action was initiated against him by the Superintendent Engineer Delhi, Central Circle-II who was the competent Disciplinary Authority and the vigilance unit of Central office was not made aware of this case at any stage. While the above disciplinary case was pending against him, he was promoted as AEN vide order dated 29.11.1996 as the above fact was not in their knowledge. According to him the promotion order stipulated that the EE/SE should ensure that no vigilance cases are pending or contemplated against the officers before they are relieved on promotion and that no punishment has been awarded to them which may stand in the way of promotion. He has contented that he was promoted by mistake on account of non availability of information about the pendency of disciplinary case against him from the local unit and that after the order of penalty was issued it was found that he had already been promoted as AEN in 1996 itself and accordingly the impugned order has been passed as per rules. According to him if the fact of pendency of vigilance case had come to the knowledge of the DPC, the applicant could not have been promoted. He has submitted that his case for promotion would be considered only after the expiry of the period of

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penalty. He has argued that the applicant has never challenged the penalty and hence he cannot raise issues pertaining to the delay etc. in conducting the same at this stage and since he himself knew about pendency of proceedings against him at the time of promotion the action of the respondents in rectifying the mistake is well within rules and the doctrine of estoppel does not apply. He has also contended that since the impugned order is only for correcting an administrative error there is no question of issuing a show cause notice. Mr. Sharma has relied on the judgement of CAT Jabalpur Bench in OA No. 463/2002.

7. We have carefully considered the rival contentions. It is not in dispute that the applicant had been granted promotion to the post of AEN (Civil) vide Director General of Works (CPWD) order dated 29.11.1996. As per the averment of the applicant himself disciplinary proceedings were initiated against him while he was working as JEN and the inquiry was finished some times in March 1996. His case is that as he was given the above promotion as AEN in November, 1996, he thought that the above proceedings had been dropped and that is why he had been promoted as AEN based on his relevant service record and therefore his reversion after such a long time is bad. The case of the respondents is that the disciplinary proceedings were pending against him when he was promoted as AEN and hence his promotion given in November 1996 was erroneous. We find force in the submission of the respondents that the fact of pendency of disciplinary action initiated against him

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by the local SE was not within the knowledge of the DPC and it is for this reason that the promotion had been given to him in 1996 as AEN vide the above order but he was relieved for joining on higher post without ensuring the conditions stipulated in Para 4 of the aforesaid order. These conditions are as under :-

" The EES/SES should ensure that no vigilance case are either pending/contemplated against the officers being promotee now before they are relieved to take up the post of AEN (civil) on promotion. It may also be ensured that no punishment has been awarded to them which may stand in the way of promotion. In such an event the fact may be brought immediately to the notice of the office."

As far as the case of the applicant is concerned, there is no doubt that a disciplinary case was pending against him when his promotion order was issued and, therefore, as per the above condition the EES/SE should have known that the disciplinary case initiated against him at his level was still pending and no final order had been passed. It was, therefore, obligatory on their part to withhold his relief and bring the above fact to the notice of the Headquarter. This was, however, not done and he was relieved to join at Dehradun as AEN. For this lapse the department has taken a serious view and directed to fix responsibility. The stand of the respondents that his promotion was erroneous is clearly covered by the

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above conditions and as such the respondents were justified in rectifying the same.

8. As regards the argument regarding the doctrine of estoppel and double jeopardy we find that the same is totally misconceived as he never availed the option of filing any appeal/revision against the penalty at that time and it does not lie in his mouth to raise this plea now. The applicant has himself admitted that a charge sheet had been issued to him and the inquiry was over in March 1996. Mere fact that no final order was passed till July 2000 cannot be construed to mean that the said proceedings had been dropped when his promotion was ordered in November 1996. This leaves no room for doubt that he was erroneously promoted as AEN in 1996 and the respondents are not estopped from issuing the penalty order and take action for reversion. The penalty has all along remained unchallenged and since the respondents have issued the impugned order only for correction of the administrative error there is no question of double jeopardy. Had the fact of pendency of disciplinary proceedings been known to the DPC and the condition in Para 4 of the promotion order been observed he would not have been promoted in November 1996. If he had not preferred an appeal against the said penalty at the relevant point of time, he cannot now be permitted to advance this lapse as a ground for estoppel. As regards show cause notice we find ourselves in agreement with Mr. T.P. Sharma, Learned counsel for the respondents, that there is no such requirement as it was only a correction of an administrative error.

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It is difficult to subscribe to the view of Mr. Mathur that in view of the promotion in November 1996 the applicant assumed that the disciplinary proceedings stood dropped as <sup>he</sup> very well knew that no final orders either for dropping them or imposing a penalty had been passed at that time.

9. We have examined the judgement of the Hon'ble Supreme Court in the case of Dinkar Anna Patil and find that the case pertains to fortuitous promotion made dehors recruitment rules and is therefore of no application here. The other case relied upon by Mr. P. P. Mathur is of N. L. Parihar in OA No. 444/94 decided by this Tribunal. We have gone through this case and find that the OA assailed the order of punishment of withholding of increments for five years without cumulative effect while in this case the order of penalty has never been challenged. Hence, this case is not at all applicable here.

10. We have also examined the order passed by CAT Jabalpur, in the case of Sanjay K. Bokade vs. UOI & Others in OA No. 463/2002 relied upon by Mr. Sharma. The above case is almost similar to the present case and seeks to challenge the reversion from the post of AEN (CPWD) to JEN on account of detection of pendency of vigilance case against him at the time of promotion and almost similar grounds had been raised. Relying on judgement of Haryana & Punjab High Court in the case of Bhupinder Singh Sandhu vs. State of Punjab and others and Madhya Pradesh High Court in the case of Vishwanath vs. State of MP and others the Tribunal had

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stated that there was no need for issuing a show cause. It had further observed as under :-

"In the present case the applicant has not been reverted as of punishment. He has been reverted to correct an administrative error as he was promoted pending a disciplinary proceedings by mistake. In this case, he was not fit to be promoted on the date when he was promoted. Therefore, we agree with the respondents view that the promotion being a mistake has rightly been corrected by passing the order.

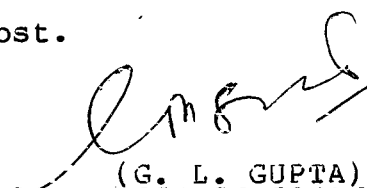
The present case is squarely covered by the above judgement and, therefore, the grounds regarding violation of Article 311 (2) of the Constitution of India and show cause are totally untenable. There is no ground for violation of Article 14 of the Constitution of India.

11. In view of the above discussions, we do not find any merit in this OA and are of the considered view that the same deserves to be dismissed.

12. In the result, we dismiss the OA. However, as the applicant has already worked on the post of AEN, the respondents shall not make any recovery of pay and allowances drawn by him as AEN on the basis of the said erroneous promotion.

13. Parties would bear their own cost.

  
(G. C. SRIVASTAVA)  
MEMBER (A)

  
(G. L. GUPTA)  
VICE CHAIRMAN