

Central Administrative Tribunal
Jabalpur Bench

OA No.705/05

Jabalpur, this the 10th day of May 2006.

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

N.Vasudevan
S/o Late B.K.Narayan Swami
Accounts Officer
Gun Carriage Factory, Jabalpur.
R/o Manegaon Khamaria
Distt. Jabalpur. Applicant

(By advocate Shri Vipin Yadav)

Versus

1. Union of India through
Its Secretary
Ministry of Defence (Finance)
New Delhi.
2. Controller General of Defence Accounts
West Block-5, R.K.Puram
New Delhi.
3. Principal Controller of Accounts
(Factory), 10, S.K.Khudiram Bose Road
Kolkata.
4. Controller of Finance & Accounts
(Factory) Accounts Office
Vehicle Factory
Jabalpur.
5. Asstt. Conttoller of Finance &
Accounts,
Accounts Office, GCF Jabalpur
Jabalpur. Respondents.

(By advocate Shri S.K.Mishra)

ORDER

By Ms.Sadhna Srivastava, Judicial Member

Applicant is aggrieved by order-dated 28.7.05 (Annexure A3) whereby his promotion to the post of Senior Accounts Officer has been withheld till finalization of the criminal case pending against him.

2. The admitted facts are that the applicant was working as Accounts Officer in the office of respondent No.5 when his next promotion was due on the post of Senior Accounts Officer (SAO for short). Applicant was considered along with other eligible Accounts Officers by the DPC on 8.6.05. The DPC recommended the applicant for promotion to SAO grade along with other Accounts Officers. A list of Accounts Officers promoted to SAO Grade was published on 10.6.05 (Annexure A1) wherein the applicant's name was shown at S.No.82 but his promotion was withheld due to pendency of the criminal case.

3. According to the applicant, his neighbour i.e. Smt.Jyoti Gupta lodged an FIR to the effect that N.Vasudevan (applicant) threatened and abused her. On the basis of said FIR, the police challaned the applicant. The trial in the court of Judicial Magistrate under Sections 323, 294 and 506-II of I.P.C is pending for more than 5 years. Applicant further stated that respondent No.5 was aware about the pendency of the criminal case. The applicant also submitted the entire details of the criminal proceedings and this fact was also considered in the DPC and, therefore, non-implementation of the order of promotion is bad in law.

4. Respondents have filed reply. They relied on an OM dated 14.9.92 (Annexure R1) and submitted that the fact of pendency of the criminal case had not been brought to the notice of the D.P.C., hence the applicant's case was considered as deemed sealed cover case,



therefore, he was not promoted to the grade of SAO along with other officers.

5. Heard learned counsel for the parties and perused the pleadings. The question in the instant case is whether the action of the respondents in withholding the promotion of the applicant is justified? Admittedly the applicant is facing prosecution on account of some private complaint and for an offence not involving moral turpitude since 2001. The plea of the respondents is that the fact of involvement of the applicant in the criminal case was not available to the DPC does not appear to be convincing. The reason is that on 5.9.02, the applicant was asked by the respondents to explain the reason for not intimating regarding his arrest and about the pendency of the criminal case. After considering the explanation of the applicant, the respondents had issued a warning, which was recorded in his ACR dossier. The DPC while considering the case of the applicant for promotion to the grade of SAO must have gone through the entries recorded in his ACR dossier. It goes without saying that proceedings of any DPC may be reviewed if the DPC has not taken any material facts into consideration or if material facts have not been brought to the notice of the DPC. But the promotion cannot be withheld on the sweet will of the competent authority without such procedure being followed. Once the DPC has recommended the candidate on the basis of material available on record, it would amount to arbitrariness to withhold promotion without discovery of new material facts or holding a review DPC.

6. Respondents have drawn our attention to OM dated 14.9.92. They have placed reliance on Paras 2 & 7 of the aforesaid OM, which are reproduced below:

Para 2. "At the time of consideration of the cases of Government Servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) Government servants under suspension;



- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending”

Para 7. “A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para 2 of above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.”

7. The said OM came up for consideration before the Ahmedabad Bench of the Tribunal in OA No.338/02 S.B.Parmar Vs. UOI (date of judgment is 20.2.2003). The Tribunal has held that OM dated 14.9.92 leaves no room for doubt that what is suggested therein pertains to the criminal charge involving service matter. The first sub clause says that a Government servant under suspension, if he has committed or omitted to do something during the service period, he can be placed under suspension. The second sub clause also refers to the departmental charge sheet and the pending disciplinary proceedings, suggesting thereby that if any misconduct while in service has been alleged against the applicant, his assessment of suitability can be kept in the sealed cover. The third clause, if read in the same sequence, would suggest that the prosecution for a criminal charge should be related to an act of omission or commission while in service. The Bench further held that a Government servant who is facing prosecution on account of some private complaint or for offence not involving moral turpitude, the criminal case pending against him cannot be a ground for keeping his assessment by DPC in sealed cover.

8. Para 7 of the said OM is not applicable in the instant case because the criminal case was already pending at the time the DPC was held. Therefore it forms no ground to treat it as are in sealed cover.



9. In view of above discussion, impugned order dated 28.7.05 (A-3) is quashed and set aside. Respondents are directed to take appropriate steps and act upon the recommendations of D.P.C. The applicant is also entitled to consequential benefit.

10. OA stands allowed. No costs.

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Judicial Member

Judicial Member

General
(Dr. G.C. Srivastava)
Vice Chairman

22.

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....

पत्रिलिखि अवृत्तिः—

(1) सदिक, उच्च व्यापारिय वार एवं विद्यारथी, जबलपुर
 (2) आदेदक श्री/श्रीमती/धू. के वारउंसल
 (3) पत्न्यांशी श्री/श्रीमती/धू. के वारउंसल
 (4) गंगापाल, व्येप्रा. जबलपुर न्यायपीठ
 गंगाला पांव आवश्यक कार्यवही देती

उप रजिस्ट्रार

~~115.04~~

Vijayan Yadarajan
S.K. M.S.D.M.E. 231