

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 1086 of 2004

~~Indore~~, this the 18th day of October 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

M.V. Pote, aged about 54 years,
Son of late Shri V.T. Pote,
Vocational Inspructor (Carpentry)
Presently posted at Vocational
Rehabilitation Centre for
Handicapped, Jabalpur, resident
Of MIG 112, Shiv Nagar, Damoh
Naka, Jabalpur

Applicant


(By Advocate – Shri K.S. Chouhan on behalf of Shri Sanjay Singh)

VERSUS

1. The Union of India, through the
Secretary, Ministry of Labour and
Employment, New Delhi.
2. The Director General Employment
& Training (DGE & T), 2 & 4,
Rafi Marg, Shram Shakti Bhawan,
New Delhi.
3. The Director, Employment
Exchanges, Government of India,
(DFE & T) Rafi Marg, New Delhi.
4. The Assistant Director,
(Rehabilitation), Vocational
Rehabilitation Centre for
Handicapped, Jabalpur.
5. Shri V.K. Mahulikar,
Work Shop Foreman,
Vocation Rehabilitation Centre
For Handicapped, Jabalpur

Respondents

(By Advocate – Shri S.P. Singh)



ORDER

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main reliefs :-

“(i) to quash the promotion order of the respondent No.5 as Work Shop Foreman dated 9.6.1997.

(ii) to direct the Respondent – Department to constitute a fresh DPC/SC for promotion to the post of Work Shop Foreman according to norms & criteria prescribed in existing Recruitment and Promotion Rules.”

2. The brief facts of the case are that the applicant was initially appointed as Vocational Instructor on 2.2.1976 in the establishment of respondents department. He was placed under suspension vide order dated 28.1.1994 and subsequently he was served with charge sheets dated 4/7.2.1994 and 27.6.1994. He filed his reply on 17.2.94 and 27.7.94. Thereafter departmental enquiry proceedings were initiated against the applicant. According to the applicant during the pendency of the departmental enquiry against the applicant, a meeting of Departmental Promotion Committee(for short 'DPC') was convened on 4.6.1997 for promotion from the post of Vocational Instructor to the post of Work Shop Foreman. On the recommendation of the DPC one Shri V.K. Mahulikar,(private respondent No.5) who was junior to the applicant, was promoted as Work Shop Foreman vide order dated 9.6.1997 (Annexure-A-4). The suspension of the applicant has been revoked vide order dated 14.9.1998 and thereafter vide order dated 24.7.2000 the applicant was informed that the competent authority has decided not to proceed the enquiry further against him. Thereafter the applicant has submitted a representation dated 6.9.2000 to the respondent No.4 requesting therein to open the sealed cover and promote him as Work Shop Foreman because his junior has been promoted during the pendency of departmental proceeding against him. In response to the aforesaid representation, vide letter dated



9.11.2000 the respondents have informed the applicant that the DPC/SC held on 4th June 1997 did not find feasible to apply sealed cover procedure due to the communication of adverse entries in his ACRs for the concerned period and consequent suspension thereafter. Thereafter the applicant has served a representation dated 2.1.2001 through proper channel claiming promotion as Work Shop Foreman and vide letter dated 23.1.2001 it was informed to the applicant that his representation has been forwarded for decision and he will be informed accordingly as and when the decision is received. After waiting for some time, the applicant has submitted number of representation to the competent authority. Till now no action has been taken by the respondents. Hence, this OA.

4. Heard the learned counsel for the parties and carefully perused the records.

5. It is argued on behalf of the applicant that he was placed under suspension on 28.1.1994 and was served with charge sheets and he filed replies. During the pendency of the departmental enquiry proceedings a meeting of DPC was convened on 4.6.97 for promotion from the post of Vocation Instructor to the post of Work Shop Foreman. However, the applicant was not considered while his junior was promoted. Aggrieved with this action of the respondents, the applicant has filed a representation dated 6.9.2000 to the respondent No.4 requesting therein to open the sealed cover and promote him as Work Shop Foreman because his junior has been promoted during the pendency of departmental proceeding. In response to the aforesaid representation, vide letter dated 9.11.2000 the respondents have informed the applicant that the DPC/SC held on 4th June, 1997 did not find feasible to apply sealed cover procedure due to communication of adverse entries in his ACRs for the concerned period and consequent suspension thereafter. The learned counsel for the applicant further argued that nothing adverse has been communicated




against him and the respondents have deprived him of his legitimate claim. Hence, the action of the respondents is not sustainable in the eyes of law.

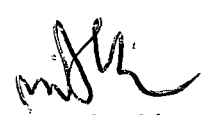
6. In reply the learned counsel for the respondents argued that the meeting of DPC was convened on 4.6.1997 for promotion from the post of Vocational Instructor to the post of Work shop Foreman. As per seniority list, the name of the applicant is placed at S.No.1 and the private respondent No.5 at Sr.No.2. The case of the applicant was considered alongwith other eligible candidates. The DPC examined ACRs and observed that the applicant has been placed under suspension from 1994 till holding the meeting of the DPC and ACRs of the applicants were not written in the said period therefore, the DPC has adopted the criteria of considering the ACRs of the applicant for the past period of 1987 to 1992 instead of 1992 to 1997. The learned counsel for the respondents also argued that the adverse entry entered in the ACR of the applicant during the above said period related to period from 1.1.87 to ^{22.12.87} ~~31.12.87~~ and the same was communicated to the applicant vide letter dated 28.6.1988. He has further argued that communication of adverse entries were sent to the applicant by Registered post and the applicant has not submitted any representation within the stipulated period. Thus, the adverse entries shall stand there. Keeping in view the above, the DPC has taken into consideration, the adverse remarks entered in the ACRs of the applicant for the year from 1987 to 1992 and has not found him suitable for promotion to the post of Workshop Foreman. As the DPC could not recommend the name of the applicant for the aforesaid post, the private respondent No.5 was found fit for the promotion. The learned counsel for the respondents has further argued that as the DPC has not found fit the applicant for promotion for the next higher post, therefore, the DPC has not followed the sealed cover procedure. Hence, the respondents have not committed any illegality or irregularity. Hence, the OA deserves to be dismissed.



7. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant was placed under suspension vide order dated 28.1.1994 and the suspension order was revoked vide order dated 14.9.1998. Vide order dated 24.7.2000 the competent authority has dropped the further enquiry proceedings against the applicant. We also find that the meeting of DPC was convened during the pendency of departmental enquiry. During the suspension period from 1994 to 1998 the ACRs of the applicant have not been written. Therefore, the DPC has considered the ACRs of the applicant from the period of 1987 to 1992 instead of 1992 to 1997. We have perused the original ACRs of the applicant from the period 1987 to 1992, we find from the aforesaid record that the memo dated ^{28.6}~~28.6~~.1988 (Annexure-R-3) was served to the applicant for communicating the adverse entries for the period from 1.1.87 to 31.12.87 to submit his reply within 6 weeks from the receipt of said memo dated 28.6.1988. However the applicant has not filed any representation against the memo dated 28.6.1988. We also find that the adverse remarks were entered in the ACRs of the applicant for the period of 1987 to 1992 were communicated to the applicant and the applicant has not given any reply. We further find that the DPC has considered the case of the applicant but due to the adverse entries, the applicant was not found fit for next promotion. Hence, the decision taken by the DPC cannot to be said illegal or discriminatory.

8. Considering all the facts and circumstances of the case, we do not find any merit in this OA. Accordingly, the same is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman