

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR**

**Original Application No. 210 of 2003**

Jabalpur, this the 2nd day of August, 2004

Hon'ble Mr. Sarveshwar Jha, Administrative Member  
Hon'ble Mr. Madan Mohan, Judicial Member

Kamleshwar Kumar Jain S/o late  
Shri Bhaiyalal Jain, aged 60  
years, Sr. Store Supdt., C.O.D.  
Jabalpur(M.P.)

APPLICANT

(By Advocate - Shri S.K. Pathak)

**VERSUS**

1. Union of India, through  
The Secretary, Ministry of  
Defence, South Block, New Delhi.
2. Director General of Services,  
Army Head Quarter, DHQ PO,  
New Delhi.
3. Officer-in-Charge, AOC Records,  
Trimugherry Post, P.B. No.3,  
Secunderabad - 500015.
4. The Commandant, Central Ordnance  
Depot, Jabalpur(M.P.)

RESPONDENTS

(By Advocate - Shri K.N. Pethia)

**O R D E R (ORAL)**

**By Sarveshwar Jha, Administrative Member -**

Heard the learned counsel for the parties.

2. It is observed that the applicant has been considered by the DPC for promotion to the grade of Ordnance Officer (Civilian) in their meeting held on July, 2002 and has been recommended for the said promotion. Accordingly, his name was included in the list of selected candidates issued by the respondents, copy of which is placed at Annexure A-1.
3. However, the respondents have submitted that the fact is that there was a departmental enquiry already instituted against the applicant when his promotion together with others were under consideration with the DPC. Under the rules he could not have been promoted while there was an enquiry already instituted against him, as contended by the respondents. The respondents have also pleaded that there is

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no malafide on their part nor ~~there~~ any illegality in deciding the representation of the applicant which was considered by the respondents in pursuance of the directions given by the Tribunal in OA No. 833/2002 on 16.1.2003, vide their order dated 18th February, 2003 (Annexure A-4) and it was finally not accepted by the respondents for the reasons given in the said order. The present OA, which has been filed against the rejection of the representation of the applicant vide the said order, is, according to the respondents, devoid of any merit and is accordingly liable to be dismissed, as contended by the learned counsel for the respondents. The applicant who has filed a rejoinder to the counter reply ~~has~~ filed by the respondents has submitted that the applicant was not at all responsible for the theft which was committed on 16.4.2001 at the respondents organisation, as he was on leave during that period. He joined the duty on 5.5.2001. He has submitted that his case could have been kept in sealed cover if he ~~was~~ not found fit or involved in any disciplinary case. According to him, no disciplinary case had ~~been~~ contemplated against him as on the date of the meeting of the departmental promotion committee. He has argued that the DPC could not have considered his case if there had ~~been~~ any departmental/ disciplinary proceeding against him or there had ~~been~~ any contemplation in that regard as on that date.

4. The fact of the matter ~~is~~ in this case appears to be that while the applicant has been considered for promotion by the DPC to the post of OO(C) on the basis of the records available with them, they found him fit and the applicant was given promotion to the said post. It is quite possible that the applicant ~~was~~ involved in some disciplinary case and which fact had not been placed before the DPC. However, on perusal of what has been mentioned by the

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respondents in their order dated 18th February, 2003, particularly what they have submitted in paragraph 5 thereof, it is observed that while the name of the applicant had been considered by the supplementary DPC held on 12th July, 2002 and not on February, 2002 as stated by the applicant in his representation *ibid*, the information as conveyed by the COD, Jabalpur that the applicant was involved in a disciplinary case was conveyed vide the letter of the said authority dated 17th July, 2002, i.e., after the DPC had already considered the name of the applicant and recommended him for promotion to the post of OO(C). Obviously, there was no case instituted or contemplated against the applicant as on the date the supplementary DPC met to consider the applicant alongwith others, *in case* ✓. The regulation that the applicant was involved in a disciplinary case was brought to the fore only later and on which basis the applicant has been denied promotion to the post of OO(C), while the same has been given to the others recommended by the DPC. The respondents have taken the position that the applicant will be considered for promotion in due course on the basis of outcome of the disciplinary case and penalty, if any.


5. The respondents have now taken a belated position that the decision of the DPC shall be kept in the sealed cover. This position cannot <sup>be</sup> appreciated particularly when the recommendation of the DPC is already known and, based thereon, the applicant had already been given the benefit of promotion. The respondents in their reply have not referred to any instructions or any rule, whereby the applicant can be denied the promotion after the recommendations of the DPC have already been implemented by the respondents. Now in all fairness, ✓ the outcome of the departmental/ disciplinary proceedings against the applicant could in fact affect his future promotions only and not the one which has

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already taken place before the impugned orders of the respondents were issued on the basis of the disciplinary proceedings <sup>which took place only</sup> later than the meeting of the DPC <sup>had been held</sup>. The knowledge regarding involvement of the applicant in a disciplinary case being not placed before the DPC was due to an act committed by the respondents and the applicant cannot be held responsible for that nor can he be penalised by the respondents who came to know about it only after the name of the applicant had already been considered on the basis of the inter se merit and he had already been given appointment on promotion.

6. Having regard to the facts and circumstances of the case and also considering the fact that the applicant had no hand in concealing the information nor the same had been placed before the DPC on the date on which the applicant was considered for promotion to the post of OO(C), we are of the considered opinion that it would not be appropriate to deny the applicant the benefit of promotion after the same had already been granted to him. Accordingly, the <sup>OA is allowed and the</sup> impugned order of the respondents dated 16th February, 2003 in so far as it relates to denial of promotion to the applicant to the post of OO(C) is quashed and set aside. The applicant shall be entitled for all consequential benefits. There shall be no order as to costs.

  
(Madan Mohan)  
Judicial Member

  
(Sarveshwar Jha)  
Administrative Member

Issued  
On 10-8-04  
BS

"SA"  
पृष्ठंकन सं ओ/न्या. जबलपुर, दि.....  
पत्तिलिपि अद्योषित:-  
(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु.....के काउंसल SK Pathak  
(3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल KN Pathak  
(4) बंधपत्र, के.प्र.अ., जबलपुर न्यायपीठ  
सूचना एवं आवश्यक कार्यवाही हेतु  
रजिस्ट्रार 10-8-04