

CENTRAL ADMINISTRATIVE TRIBUNAL. JABALPUR BENCH, JABALPUR

Original Application No. 239 of 2002

Gwalior, this the 13th day of October, 2004

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

H.R. Sarote
S/o Raghunath Sarote
Aged 59 years
Civilian Staff Officer
Central Ordnance Depot
Post Box No.20,
Jabalpur M.P.-482001

APPLICANT

(By Advocate - Shri V.K.Singh)

VERSUS

1. Union of India
Through Secretary,
Ministry of Defence
New Delhi.
2. Directorate General of
Ordnance Services(OSD)
Master General of Ordnance
Branch, Army Head Quarters,
DHQ P.O. New Delhi 110011
3. Commandant
Central Ordnance Depot
P.B.No.20,
Jabalpur-482001

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

ORDER

By Madan Mohan, Judicial Member -

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

- "(i) To direct the respondents to grant promotion as C50(Admn.) 18.8.1988 with all consequential benefits to the applicant;
- (ii) The respondents be further directed to grant promotion as SCSO(Admn.) w.e.f. 22.3.2001 with all consequential benefits
- (iii) Refixing the pay of the applicant after taking into consideration the above(i)&(ii) promotions
- (iv) To direct the respondents to give the financial benefits for which he is legally for the already granted notional promotion with effect from 23.3.1998 for the period upto 2.8.1999, with all consequential benefits.
- (v) The respondents be further directed to fix the pay of applicant accordingly with all consequential benefits including seniority."



2. The brief facts of the case are that the applicant is working as civilian Staff Officer in the respondent no.2 organisation under the control of the respondent no.3. Vide order dated 20.1.1991 the applicant had been issued a charge sheet for the offence of negligence in performance of his duties as APO/PO(Civilian) as per Rule 14 of the CCS(CCA) Rules, 1965 and he was awarded the penalty of reduction of pay by three stages in the pay scale of Rs. 2000-3500 for a period of three years with cumulative effect vide order dated 20.1.1991. Ultimately the applicant was exonerated from all the charges against him vide order dated 9.2.1999 (Annexure-A-1). The applicant was legally entitled for promotion to the post of CSO and he has no bar to give him such promotion and the same was not given to him. Therefore, the applicant has represented to the respondents but almost 3 years have been lapsed from his exoneration from the alleged charge sheet vide order dated 9.2.99, nothing has been done by the respondents. The applicant vide his representation dated 24.8.1999 to the respondents no.2, brought to its notice that his juniors have been given promotion and requested for financial benefit from the ante-dated promotion w.e.f. 15.3.1998 as on that date his juniors had been granted promotions. He further sent a representation dated 1.12.1999 to the respondents in which he has mentioned that one Shri P.L. Gontia assumed appointed as CSO(Admn) on 23.3.98 ~~8x8x8x8x8x8~~ with all consequential benefits. Therefore, the applicant may also get as ~~8x8x8x8x8x8~~ CSO(Admn.) w.e.f. 23.3.98 with all consequential benefits. Vide order dated 27.9.2000 the respondents has informed the applicant that arrears of pay and allowances for the period from 23.3.1998 to 2.8.1999 cannot be paid to him. Though, the applicant was granted notional promotion from 23.3.1998 the financial benefits accrued from the date of assumption of duties. The respondents have assured and informed to the applicant



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his case is under consideration and he has to be promoted after completion of 2 years probation period. All the vacancies of CSO(Admn) were lying vacant years together and only SC & ST candidates were in the panel, thus deliberately they have not been promoted as CSO(Admn) but the posts were kept unfilled till 1998 i.e. about 8 to 10 years. The applicant vide Annexure-A-16 had requested that he had got promotion as OOC(Admn) on 30.10.1986 on adhoc basis, and as the adhoc posts are abolished, and regular services were taken into account from 1986 itself and no break in service was given thus he is eligible for CSO(Admn) promotion after completion of two years probation period i.e. October 1988. However, the applicant was give promotion to CSO(Admn) w.e.f. 23.3.98 i.e. after rendering of 12 years of OOC(Admn). The applicant must be given and sanctioned promotion as CSO(Admn) after completion of 2 years as OOC(Admn) and CSO(Admn) promotion to be given w.e.f. 18th August, 1990 as well as promotion of SCSO(Admn) from the date on which the other store side officers of ADC have been granted under M of D letter dated 22.3.2001 with all retrospective effects i.e. arrears of pay, increments, etc. and the applicant is therefore, rightly entitled for the CSO(Admn) Promotion from 1990 as well as SCSO(Admn) promotion w.e.f. 22.3.2001 with all consequential benefits. However, the respondents deliberately and arbitrary have withheld his due promotions & due arrears, aggrieved by this, he has filed this OA.

3. Heard the learned counsel for the parties and perused the records.

4. The learned counsel for the applicant has stated that the applicant was entitled for promotion as CSO(Admn) w.e.f. October, 1988 as he had completed 2 years of probation period. But, these posts were kept unfilled till 1998 i.e about 10 years. The applicant requested that he had got appointment



as OOC(Admn) on 30.10.1986 on adhoc basis, and as the adhoc posts were abolished and regular services were taken into account from 1986 itself and there was no break in service. Hence, the applicant is entitled for CSO(Admn) promotion after completion of two years from October, 1998. However, this promotion was given to him w.e.f. 23.3.98 this is not legal and this action of the respondents is not accordance with the rules. The learned counsel for the applicant has also claimed ~~that~~ the seniority of the applicant SCSO(Admn) Store side w.e.f. 22.3.2001 with all consequential benefits. The learned counsel for the applicant has further argued that the applicant was already granted notional promotion w.e.f. 23.3.98. Hence he is legally entitled for the financial benefits w.e.f. 23.3.98 for the period upto 2.8.1999, with all consequential benefits.

5. The learned counsel for the respondents has argued that the applicant himself mentioned in his amended application that vide Annexure-A-7 and Annexure-A-14 his matter of promotion is still under consideration of the respondents and applicant is directed to wait for out come of the same and further argued that it's correct ^{that} the applicant was exonerated from the charges levelled against on 9.2.1999. Hence it was decided to notionally promote the applicant from the date on which his juniors were promoted. Accordingly, the applicant having been approved by the DPC as Offg CSO(0)(Admin) at C.O.D Chheoki against an existing vacancy w.e.f. 2.4.98, the date his juniors are promoted and the actual promotion was made effective from the date of assuming duties of the higher post. The Ministry of Defence examined the promotion of the applicant as CSO(0)(Admn) notionally w.e.f. 23.3.98 actually w.e.f. 3.8.99 is in order. However, whether the pay and allowance for the period 23.3.98 to 2.8.99 was admissible to the applicant or not decided by the Ministry of Defence. Therefore, the matter was referred to the Ministry of Defence/D(0-II) and it



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was opined that as per Rule 19(2) of CCS(CCA) Rule 1965, no arrears should be admissible, the applicant was accordingly informed the same. The DPC for preparing panel of Officers to be promoted are conducted as per Recruitment Rules which are statutory in nature and minimum eligibility service is prescribed for promotion from one grade to another. In the instant case, Recruitment Rules provide for 7 years of regular service in the grade of OOC(Admn) for considering promotion to the grade of CSO(Administrative), hence the contention of the applicant that he should have been promoted from October 1988(after completion of two years of probation period) and instead of 7 years regular service is incorrect. Promotions are also subject to assessment of records, ACRs, availability of vacancies etc. He has further argued that the cadre structure, strength etc in respect of Stores side and Administrative side are different and these two cannot be equated restructuring of stores cadre and creation of 3 new grades of PCSO, SCSO and Ss OOC have been done on the recommendation of the 5th Central Pay Commission. However, till now no post of SCSO(Administrative) exists in the cadre of Administrative side. Hence the applicant's contention that he should be promoted to a fictitious post of SCSO(Administrative) is incorrect as well as misleading. Hence the OA has no merit and deserves to be dismissed.

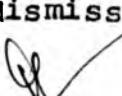
6. After hearing the learned counsel for both parties and careful perusal of the records, we find that the applicant has claimed his promotion as CSO(Admn) from 18.8.88 while he was given this promotion from 23.3.98. In this regard, the argument advanced on behalf of the respondents that Recruitment Rules provide for 7 years of regular service in the grade of OOC (Admn) for considering



promotion to the grade of CSO(Administrative). According to the applicant, he had completed 2 years probation period in the year 1988 not completed 7 years regular service and consequently the applicant was also appointed on adhoc basis in the year 1986. The argument advanced by the applicant that the adhoc posts are abolished and regular service were taken into account from 1986. In support of this argument, the applicant has not filed any documents. According to the Rules, the cadre structure, strength etc. in respect of Stores side and Administrative side are different and these two cannot be equated restructuring of stores cadre and creation of 3 new grades of PCSO, SCSO and SOOC have been done on the recommendation of the 5th Central Pay Commission. As argued on behalf of the respondents that till now no post of SCSO(Admn.) exists in the cadre of administrative side. Hence the applicant could not be promoted to a fictitious post of SCSO(Admn.) is incorrect and so far as all the arrears from 23.3.98 to 2.8.99 as claimed by the applicant this matter was examined by the Ministry of Defence and it was opined that as per Rules 19(2) of CCS (CCA) Rules, 1965 no arrears should be admissible, the applicant was accordingly informed.

6. The Hon'ble Supreme Court in the case of A.K.Soumⁱⁿⁱ Vs. State Bank of Travancore & Ors. 2003 SCC L&S 1041 held that the appellant's claim was not sustainable and the Hon'ble High Court rightly applied the principle of no work no pay to reject the claim of the appellant for arrears of salary. Hence the applicant is not entitled for arrears of pay and allowance.

7. Considering all the facts and circumstances of the case, we find that this OA has no merit. Hence the OA is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman