

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.424/02

Cavalier, this the 13th day of October, 2004.

CORAM

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

M.C.Mathai
S/o Varghese Cherian
R/o Mhow(MP)
Dist.Indore

Applicant

(By advocate Shri B.L.Verma)

Versus

1. Union of India through
Secretary, Ministry of
Defence
New Delhi.
2. Chief of Army Staff
New Delhi.
3. Commandant, Infantry School
Mhow

Respondents.

(By advocate Smt.S.R.Waghmare)

O R D E R

By Madan Mohan, Judicial Member

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

- (i) The respondents be ordered to promote the applicant on the post of O.S. w.e.f. 1.5.2001 and on the post of CGO(Production) w.e.f.1st Oct.2001.
- (ii) Petitioner's promotion on the post of Assistant be declared w.e.f. 1st March 97 when it was vacant and was illegally not filled.
- (iii) All the arrears with all allowances of the post referred to above be directed to be awarded to the petitioner and be regularly paid thereafter.

2. The brief facts of the case are that the applicant who was appointed as LDC on 12th Sept.1966 was promoted as UDC in 1978. He was again promoted to the post of Assistant w.e.f.4th Feb.98 whereas this post was vacant w.e.f. March 1997. The applicant was eligible to be promoted on the said post even on 1st March 1997 but was promoted on 4th Feb. 1998. Practically the applicant was



working on the post of Assistant on that day. The post of Office Superintendent is natural, next promotion post which requires only seniority. The said post is not selection post and promotion on that post is in natural chain. This post was lying vacant from 1st May 2001 and the post of CGO (Production) from 1.10.01. It was apparent that the applicant was required to be promoted on the posts respectively as a matter of right but his rightful claim was being persistently denied although the applicant was discharging all the duties and obligations of the said post. The right of the applicant to be promoted on the post of O.S. and CGO(Production) and his case was recommended by department vide note dated 21st Nov.2001 and 6.10.2001. Present post of the applicant falls in Grade 5500-9000 and he has been serving on the post of Assistant for 3 years. As is evident from a perusal of Annexure A3, memorandum and entry No.14 of the table, it was obvious that the applicant had right to be promoted on the post of OS and CGO (Production). There was no hurdle, but despite this, the applicant's promotion was illegally withheld. Despite legal position, the applicant's rightful claim was not granted. Various representations of the applicant were forwarded to the higher authorities. Copy of one such representation is annexed as A-4 dated 28.12.2001 but it found no response. The applicant sent a legal notice dated 25.2.02 (Annexure A5) to the respondents but no action has been taken so far. Hence this OA is filed.

3. Heard learned counsel for both parties. It is




argued on behalf of the applicant that the applicant was eligible to be promoted on the post of Assistant w.e.f. March 1997 because this post was vacant from that date but he was promoted on that post on 4th Feb. 98. Practically the applicant was working on the post of Assistant on that day i.e. 1st March 1997. The next promotional post was Office Superintendent which required only seniority and this post was lying vacant w.e.f. 1st May 2001 and another next promotional post was CGO (Production). This was also lying vacant from 1.10.01. The applicant was legally entitled to be promoted as Office Supdt. w.e.f. 1.5.2001 and as CGO (Production) w.e.f. 1.10.01. He also made several representations in this regard and sent legal notice to the respondents through his counsel but his rightful claim was not considered by the respondents.

4. In reply, the learned counsel for the respondents argued that the applicant along with other UDCs (Feeder Category) was in the approved list of promotion to the post of Office Supdt. Gr.II (redesignated as Assistant) during 1997-98. Considering their fitness, seniority in the feeder category/merit (being selection post), one Mohan Lal, the senior most UDC in the approved list was offered the promotion. On his refusal to accept the promotion, the next senior in the merit was one Mrs S.S. Natu who was offered the promotion and she also refused to accept the promotion and finally applicant who was No.3 in seniority/merit and who had accepted the promotion had been promoted to the said post with effect from 4th February 1998 that is the date of assumption of charge.



The applicant again claim this promotion with retrospective effect as alleged by him. The applicant has been promoted to the post of Office Superintendent w.e.f. 4.2.2003 on his fulfillment of QR i.e. 5 years of service as Assistant. Hence the applicant is rightly promoted to the post Office Superintendent. The learned counsel further argued that though the vacancy of Assistant occurred on 1.3.1997 the applicant could not be given promotion with retrospective effect. The post of Office Supdt. was lying vacant w.e.f. 1st October 2001 (till 3.2.2003) and the post of CGO (Production) was lying vacant w.e.f. 1.1.2001. The post of Office Superintendent and CGO (Production) Grade II are promotional posts. For promotion to the post of Office Superintendent, 5 years service as Assistant is required whereas for CGO (Production) 3 years service as Office Supdt. Gr.I or total 8 years service as Assistant and Office Supdt. is required as per the recruitment rules in vogue for these posts (Annexure R1 & R2 are enclosed with the return). The applicant was not eligible for the post of Office Supdt. till 4.2.2003 since he had not completed 5 years of service required for the post by that time. However, the day on which he completed required length of service, he was promoted as Office Superintendent i.e. w.e.f. 4.2.2003. As the applicant has neither completed 3 years of service as office supdt. nor completed total 8 years of service as Assistant and Office Supdt, required for the post of CGO (Production) as per the recruitment rules, he cannot be promoted to the said post.



5. After hearing the learned counsel for the parties and careful perusal of the records, we find that the applicant is claiming his promotion as Assistant from 1.3.1997 as the post was lying vacant from that date but the respondents had promoted him to that post on 4.2.98. In this regard, the respondents have submitted that two senior UDCs namely, Shri Mohan Lal and Mrs. S.S.Natu were offered promotion. They refused to accept the same and finally the applicant who was at Sl.No.3 in the seniority list/merit list accepted the promotion and hence he was promoted on the said post w.e.f. 4.2.98, i.e. the date of assumption of charge. The applicant is claiming his promotion from a retrospective date i.e. 1st March 1997. The applicant was rightly promoted on 4.2.98 on the post of Assistant while this fact is not mentioned in the OA by the applicant. For the next promotion post of Office Superintendent Gr.I it requires 5 years of service as Assistant. The applicant was promoted on the post of Office Superintendent on 4.2.03 after completion of 5 years of service as Assistant, according to the rules. Merely on the ground that if any post is vacant, it cannot legally entitle the applicant to be promoted on that post unless he fulfills the condition prescribed in the rules. For the next promotional post of CGO (Production), 3 years service as Office Superintendent Gr.I or 8 years of service as Assistant and Office Supdt. is required. As the applicant was promoted on the post of Office Superintendent on 4.2.2003, hence his next promotion to the post of CGO (Production) becomes due on 13.2.2006.



He shall be promoted on the post of CGO (Production) w.e.f. 3.2.2006. Hence the applicant is not entitled for this promotion of CGO (Production) before the aforesaid date.

6. After considering all the facts and circumstances, we are of the opinion that the OA has no merit. Hence the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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पृष्ठान्त से ओ/न्या.....जबलपुर, दि.....

सचिव/सचिव आचार्य/सचिव—

(1) श्री जलपुर

(2) श्री के कार्डसल

(3) श्री के कार्डसल

(4) श्री जलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Bh Verma

Ravi Waghmare

Issued
On 20.10.04
BS