

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 593 of 2002

*Bilaspur*, this the 8<sup>th</sup> day of July, 2004

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

Surendra Kumar Shrivastava  
S/o Late Shri S.S. Shrivastava,  
Aged about 47 years  
R/o House No.40, Shanker Nagar  
Jabalpur.

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,  
Through its Secretary,  
Ministry of Defence  
DHQ, PO New Delhi.
2. The Director General  
Ordnance Services,  
MGO's Branch  
Army Headquarters  
DHQ, PO, New Delhi.
3. O.I.C. Records  
Sena Ayudh Corps,  
Abhilekh Karyalaya,  
P.O. 3, Trimulgheri,  
Sikundrabad(A.P)
4. The Commandant  
Central Ordnance Depot,  
Jabalpur(MP)
5. Bipul Chatterjee  
Senior Store Keeper  
through Commandant,  
Central Ordnance Depot,  
Jabalpur(MP)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)


O R D E R

By M.P. Singh, Vice Chairman -

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

"(ii) Issue a writ of Mandamus/Direction/Command the respondents to open the seal cover and implement the DPC proceedings and rel-ease promotion order of the applicant w.e.f. 24.8.2000 when his junior/private respondent was promoted .

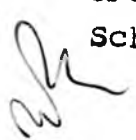
(iii) The respondents be further commanded to provide all consequential benefits including the seniority, difference of arrears of wages of promotional post with interest on delayed payment".



(iv) The respondents be further directed to consider the case of the applicant for granting him ACP Scheme benefit".


2. The brief facts of the case are that the applicant was initially appointed as Store Keeper in C.O.D., Jabalpur. He was issued a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 on 17.12.1995. An enquiry was conducted against the applicant and the enquiry officer submitted its report thereby exonerating the applicant from the charges. However, the disciplinary authority did not agree with the findings of the enquiry officer and passed an order dated 9.4.1997 (Annexure-A-1) appointing another enquiry officer and directed to conduct a de novo enquiry. The applicant feeling aggrieved with this order dated 9.4.1997 filed O.A.No.622/1998 before this Tribunal. The Tribunal issued an interim order that the disciplinary authority may issue show cause notice as to why he disagrees with the findings of the enquiry officer, and record his reasons calling upon the applicant to show cause, but no further enquiry in the nature of de novo enquiry can be held. The interim order remained in operation till final decision of the matter. However, in spite of the interim order the disciplinary authority did not issue a show cause notice to the applicant. The Tribunal vide its order dated 27.2.2001 passed in OA 622/1998 (Annexure-A-2) quashed the order dated 9.4.1997 and held that the disciplinary authority is at liberty to either decide the case on earlier enquiry report or to give a note of disagreement to the applicant along with a copy of the enquiry report and seek representation from the applicant, and decide the appropriate penalty as per rules within two months, from the date of the order, failing which disciplinary proceedings against the applicant shall stand abated.

2.1 In the meantime on the recommendations of the 5th CPC, the Government has introduced Assured Career Progression Scheme under which the Government employees were granted



two financial upgradations on completion of 12 & 24 years of service. The applicant completed 19 years service as Store Keeper on 9.8.1999 and, therefore, he was entitled to get the 1st financial upgradation in the scale of Rs.4000-6000. The applicant was considered for financial upgradation but his case was kept in the sealed cover. A promotion order was issued on 24.8.2000 whereby the private-respondent and other juniors to the applicant have been promoted from the date of assumption of duties.

2.2 The respondents, however, in pursuance of the direction of the Tribunal, delivered a dissenting note to the applicant along with a copy of the report of the enquiry officer, giving 15 days time to the applicant to reply against the same. The respondents had also filed M.A.No.610/2001 seeking extension of time, which was granted to them by the Tribunal till 15.5.2001. It was made clear by the Tribunal that if the proceedings are not completed, the same shall abate and no further time to comply with the order dated 27.2.2001 shall be granted. In the meantime the respondents have filed a W.P.No.2607/2001 before the Hon'ble High Court of MP assailing the order passed by the Tribunal in OA 622/98 and also in MA 610/2001. A prayer was made in the said Writ Petition to permit the department to conduct a de novo enquiry. The respondents have also made a statement before the Hon'ble High Court ~~that~~ <sup>e</sup> ~~that~~ that the order of the Tribunal has been complied with and sought permission to withdraw the W.P. Accordingly, the said W.P. was dismissed. After filing the aforesaid W.P., an MA No.781/2001 was also filed by the respondents for extension of time. The said MA was dismissed by the Tribunal vide order dated 12.10.2001. The respondents again filed a W.P.No.5682/2001 before the Hon'ble High Court, however, the said writ petition was also dismissed vide order dated 21.11.2001 and thus the order passed by the Tribunal attained finality. Thereafter another MA 131/2002 was filed by the



respondents before this Tribunal, which was also dismissed vide order dated 10.5.2002 (Annexure-A-8).


3. During the pendency of this O.A. the respondents have passed an order on 31st July, 2003 (Annexure-A-15 filed along with M.A.1263/03, by which the disciplinary case against the applicant was closed. Thereafter, another order was passed on 8.8.2003 (Annexure-A-16) <sup>whereby</sup> by which the applicant was promoted as Senior Storekeeper with effect from 16.6.1997 in the pay scale of Rs.4000-6000, however, the financial benefits have been granted from the date of assumption of the higher post. By filing the aforesaid MA 1263/03 the applicants <sup>have</sup> prayed that the order dated 8.8.2003 (Annexure-A-16) be set aside to the extent it denies the arrears of salary to the applicant, and direct the respondents to pay arrears of salary w.e.f. 16.6.1997 and other consequential benefits. The respondents were given an opportunity to file a reply to the said MA. ~~The~~ respondents have filed their reply to the said MA on 7.10.2003. The respondents have submitted that as per para 17.6.1 of the Civilian Personal Routine Order, 1990 the applicant has not been granted the arrears of salary. Para 17.6.1 reads as under-

"If the proceedings of a DFC for promotion contain finding in a sealed cover, on the conclusion of the disciplinary case/ criminal prosecution, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior but he will not be allowed any arrears of pay for the period preceding the date of actual promotion".

4. Heard the learned counsel of both the sides. The learned counsel for the applicant has stated that ~~xx~~ the applicant was not responsible for delay in finalising the disciplinary case against him, The respondents are fully responsible for the delay. After the applicant has been exonerated of the charges by the enquiry officer, they have

instituted a de novo enquiry which was not permitted by the Tribunal. Despite the interim direction given by the Tribunal the disciplinary authority has not recorded the note of disagreement and against the interim order, not once but twice Writ Petitions were filed before the Hon'ble High Court and on both these occasions their Writ Petitions were dismissed by the Hon'ble High Court. Thereafter, the respondents have filed MA again approaching the Tribunal seeking extension of time for implementing the interim direction. Therefore, it is clear <sup>from the above facts that I</sup> there was no delay on the part of the applicant. Now the applicant has been promoted from the due date by closing the D.E. pending against him. The learned counsel has contended that aforementioned para 17.6.1 has been further amended by the Govt. of India, Department of Personnel & Training OM No. 22011/4/91.Estt(A) dated 14th September, 1992 which stipulates that "whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or not account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified".

4.1 The learned counsel for the applicant has relied upon the judgment of Hon'ble Punjab & Haryana High Court in the case



of Om Prakash Gupta Vs. State of Haryana, 2003 (2)ATJ 428. In the said case the petitioner was denied promotion on account of pendency of disciplinary proceedings. Later on, notional promotion was given to him from the date of promotion of his junior, however, monetary benefits were denied to him on the ground that petitioner had not worked on such post. The Hon'ble High Court held that the denial was not justified and further held that the petitioner was entitled to all benefits of the promoted post including the salary.

5. In the instant case, in view of the facts mentioned above, it is quite clear that there is no delay on the part of the applicant in finalising the D.E. case pending against him. The delay was entirely attributable to the respondents. Therefore, the applicant is entitled for all the arrears of pay from the date of his notional promotion and all consequential benefits.

6. In the result, the OA & MA 1263/03 are allowed. The respondents are directed to grant all the arrears of pay to the applicant from the date of his notional promotion and also grant him all consequential benefits within a period of three months from the date of communication of this order. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

rkv.

Issued  
On 14.7.04  
BS

वृत्तांकन सं ओ/न्या..... जलपुर, दि.....

- (1) ..... जलपुर  
(2) ..... के काउंसल  
(3) प्रत्यक्ष ..... के काउंसल  
(4) कार्यपाल, कोषागार, .....  
सूचना एवं आवश्यक कार्यवाही हेतु

S. Paul  
SH Dharmadikar  
Reporter

By .....  
उप निदेशक  
14.7.04