

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH, JABALPUR

OA No. 770/02

Indore, this the 20th day of July, 2004.

Coram

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

Chathoth Karlkkan Rameshan
S/o V.C. Narayanan
R/o Qtr.No.24/6, Type III
West Land, Khamaria
Jabalpur (MP)

Applicant

(By advocate Smt.Shobha Menon)

Versus

1. Union of India
Through Secretary
Ministry of Defence (Finance)
New Delhi.
2. Controller General of Defence
Accounts, West Block V
R.K.Puram, New Delhi.
3. Principal Controller of
Accounts (Factories)
Khudiram Bose Road
Kolkata.
4. Controller of Finance and
Accounts (Factories)
Jabalpur Group of Factories
Accounts Block, Vehicle Factory
Jabalpur (MP)
5. Varghese Mathews
Senior Accounts Officer
Presently posted in Research and
Development Establishment (E)
Pune, Office of the Principal
Controller of Accounts,
Southern Command, Pune.

Respondents

(By advocate Sh.Om Namdeo)

O R D E R

By Madan Mohan, Judicial Member

The applicant is presently functioning as Accounts Officer in the office of Joint Controller of Finance and Accounts (Factories). On 11.5.2000, the Branch of A.I.D.A.E.A, without giving any notice or intimation, proceeded on strike on the said date. Respondent No.4 vide letter dated 14.9.2000 alleged that A.I.D.A.E.A (HO) had observed one day strike on 11.5.2000 as a result whereof, the Accounts Office, Ordnance Factory, Khamaria remained closed whereas all other branches of the Accounts Office were open and the gazetted officers had attended their office. It was alleged that the applicant failed to report the matter to the senior

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officials and did not take adequate steps. He was called upon to submit his explanation for the alleged lapses. On receipt of the said confidential memo, the applicant submitted a detailed explanation on 22.9.2000 wherein the applicant showed his ignorance about the said strike. Despite a satisfactory explanation, respondent No.4 issued a warning "Recordable Warning" vide memo dated 11.12.2000. The applicant submitted an appeal to the Controller General of Defence Accounts - Respondent No.2. but was informed by the appellate authority that the recorded warning being not a statutory penalty, no appeal will lie against thereof. One Mr.A.C. Nayyar, functioning as Senior Accounts Officer, under the control of Respondent No.4 was also issued a memo dated 11.12.2000 wherein the charge levelled was more or less similar to that of the applicant but he was warned (not to be recorded). Thus respondent No.4 has discriminated by imposing recorded warning against the applicant. Promotion to the post of Senior Accounts Officer is on the basis of seniority-cum-fitness. It is not a selection post. The seniority list of Accounts Officers of Defence Accounts Department as on 1.3.2001 placed the applicant at Sl.No.846 whereas Sh.Varghese Mathew (Respondent No.5) is at Sl.No.847. Hence respondent No.5 is junior to the applicant. The respondents issued an office order on 16.5.2002 whereby respondent No.5 had come to be promoted as Senior Accounts Officer with effect from 20.5.2002. On issuance of the said order, the applicant submitted his representation but it was not considered. Hence this OA has been filed seeking the following reliefs:

- (i) To set aside memorandum dated 11.12.2000 (A-6) passed by respondent No.4.



- (ii) To issue direction to respondents 1 to 4 to produce the original record/minutes of the departmental promotion committee, in pursuance whereof the order of promotion dated 16.5.02 (A15) was issued.
- (iii) To quash the order dated 16.5.2002 (A15) whereby respondent No.5 has been promoted to the post of Senior Accounts Officer grade and/or direct the respondents to consider the applicant for promotion to the post of Senior Accounts Officer grade and/or to consider for promotion to Senior Accounts Officer retrospectively from the same date as that of respondent No.5 and to pay all the consequential and ancillary service benefits and to assign him appropriate seniority in the grade of Senior Accounts Officer.

2. Heard the learned counsel for both parties. It is argued on the behalf of the applicant that the respondents have discriminated while passing the order of awarding recorded warning to the applicant and not recordable warning against Nayyar. The applicant made a representation against this warning but it was not considered and apparently respondent No.5 Mr.Varghese Mathew was junior to the applicant as is seen from the seniority list but ignoring the applicant's due claim, the respondents have promoted respondent No.5 illegally.

3. In reply, learned counsel for the respondents argued that the applicant failed to discharge his duty properly and carefully. As such the office could not be opened on the strike day. His explanation was not found satisfactory and convincing and indicated senior administrative lapses and thus the recorded warning was issued. Recorded warning was not a formal form of punishment and as such no enquiry was required and OA cannot be filed against a warning. He further argued that the DPC considered the applicant along with other persons for promotion but did not find him fit for promotion and accordingly he was not promoted as Accounts Officer. The DPC followed the guidelines uniformly in respect of all Accounts Officers for consideration to the grade of Senior Accounts Officers but the applicant was not recommended as his annual confidential reports did not meet the requirement as per the guidelines/instructions.



4. After hearing the learned counsel for the parties and perusing the records, we find that warning is not a punishment according to CCS(CCA) Rules, 1965. Hence the OA is not legally maintainable. So far as promotion of respondent No.5 is concerned, it is made clear by the respondents that the IFC had considered the applicant along with other eligible Accounts Officers and followed the guidelines contained in the OM of 10th April 1989 uniformly in respect of Accounts Officers to the grade of Senior Accounts Officers but the applicant was not promoted to that grade. Hence the contention of the applicant that the applicant was not considered for promotion and respondent No.5 was wrongly promoted by the respondents seems to be not tenable.

5. Considering all the facts and circumstances of the case, we are of the opinion that the OA deserves to be dismissed. Hence the OA is dismissed.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

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दृढ़ांकन से ओ/न्या..... जल्लपुर. दि.....
प्रतिलिपि अवृत्ति गिरतः- 1
(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जल्लपुर
(2) आवेदक श्री/श्रीमती/बहू..... के वारांसन Smt S. Meena
(3) प्रत्यक्षी श्री/श्रीमती/बहू..... के वारांसन Om Meena
(4) कांचपाल, एवं आवश्यक वार्यवाही हेतु 3-8-04
सूचना एवं आवश्यक वार्यवाही हेतु 3-8-04
प्रतिलिपि संजित्तर

Issued
On 3-8-04
By BB