

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 139 / 2000

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

I agree.
30/04/2003
30/4/03

J.K. KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER
30/04/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. No. 139 / 2000

DATE OF DECISION _____

B.M. L. Sharma APPLICANT (s)

Shri S.C. Sharma Advocate for the Applicant (s)

V E R S U S


UOI & Ors. RESPONDENTS

M.Rao for Official Res. Advocate for the Respondents

CORAM :

Hon'ble Shri R.K. Upadhyaya -- Administrative Member
Hon'ble Shri J.K. Kaushik -- Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgments ? - YES / ~~NO~~
2. To be referred to the Reporter or not ? YES / ~~NO~~
3. Whether it needs to be circulated to the Principal Bench of the Tribunal ? YES / ~~NO~~


(J.K. Kaushik)
Judicial Member
05/05/2003

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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 139 of 2000

Jabalpur, this the 5th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.
Hon'ble Shri J.K. Kaushik - Judicial Member.

B.M.L. Sharma, S/o. Shri C.L. Sharma,
Aged about 57 years, Occupation
Divisional Accounts Officer Grade II,
Bhander Canal Division Datia, M.P.
R/o. Chandra Shekhar's House, Gwalior
Road, Datia (M.P.).

... Applicant

(By Advocate - Shri S.C. Sharma)

V E R S U S

1. The Union of India,
Through The Comptroller & Auditor
General of India, Bahadurshah Zafar
Marg, New Delhi.
2. The Principal Accountant General
(A&E) I Madhya Pradesh, Gwalior,
New Building, Jhansi Road, Gwalior.
3. Sr. Dy. Accountant General (A/cs.)
of Madhya Pradesh (A&E) I, 53,
Arera Hills Hosangabad Road,
Bhopal (M.P.).
4. B.S. Saxena, Div. Accounts Officer I
P.H.E. Mechanical Division Office :-
Executive Engineer P.H.E. Jabahar Chowk,
Bhopal (M.P.).
5. Girish Chandra Dubey, Divisional
Accounts Office-I, D/o. Executive
Engineer, P.H.E. Division, Dhar
(M.P.).

... Respondents

(By Advocate - Shri M. Rao for official respondents)

O R D E R

By J.K. Kaushik, Judicial Member :-

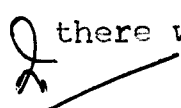
Shri B.M.L. Sharma has filed this original
application under Section 19 of the Administrative Tribunals
Act and has sought the following reliefs :



- "(A) That, the order rejecting representation Annexure A/8 be quashed.
- (B) That, Respondents Nos. 1 to 3 be directed to consider the case of applicant for promotion on the post of Divisional Accounts Officer Grade-I (Gazetted Group 'B') and he be given promotion w.e.f. 1.10.97 alongwith seniority over and above the Respondents Nos. 4 and 5 with monitory benefits of arrears of higher Pay Scale.
- (C) Suitable Cost Rs. 2,000/- be awarded."

2. The indubitable facts of this case are that the applicant was initially appointed as Divisional Accountant on 26/05/1979. He was promoted to the post of Divisional Accounts Officer Grade-II with effect from 14/12/1990. One Shri B.S. Saxena, respondent No. 4 was also promoted to the post of Divisional Accounts Officer Grade-II and the name of the applicant is at serial No. 4 while the name of the private respondent No. 4 and 5 are located at serial No. 5 and 6 of the promotion order, from which it is evident that the applicant is senior to them. He was subjected to number of transfers.

3. Further facts of the case of the applicant are that the applicant was issued with a charge sheet under Rule 14 of CCS(CCA) Rules, 1965 vide memorandum dated 19/11/1998 (Annexure A/2). The same was cancelled on 04/10/1999 and another charge sheet was issued on the same date. During the pendency of the disciplinary proceedings his juniors i.e. respondent No. 4 and 5 and several others about 50 persons have been further promoted to the post of Divisional Account Officer Grade-I (Group 'B') vide order dated 25/01/1999. The promotion order has been issued with effective from 1/10/97 and for that purpose the service records and personal files alongwith the ACR must have been considered upto 01/10/1997 by the D.P.C. on the date of consideration i.e. 01/10/1997

 there was nothing adverse against the applicant. There was

no show cause notice issued to him nor any departmental enquiry was pending or under contemplation. The applicant was also not under suspension. Thus he is entitled to be considered for promotion with effect from 01/10/1997. He submitted representation on 10/02/1999 but the same came to be rejected vide impugned order dated 16/07/1999 (Annexure A/8). The reason indicated therein is that his case will be considered only after the conclusion of the departmental enquiry. It has been further submitted that even on the date of promotion i.e. on 25/01/1999 there was no charge sheet which can be said to be pending. Since the very charge sheet was cancelled and fresh charge sheet was issued on 04/10/1999. The applicant has been subjected to a discrimination. The salient ground on which this application has been filed are that promotion order of the junior has been issued during the pendency of futile charge sheet on 25/01/1999, the proceedings were not done within the stipulated period, the respondents wanted to deprive the applicant of the promotion, as number of juniors were given the benefit of promotion from retrospective date despite that there was nothing adverse on the effective date of promotion which ought to have been taken into consideration by the D.P.C. His representation has been rejected without any cogent reason.

4. A detailed counter reply has been filed on behalf of the respondents. The respondents have taken certain preliminary objection-s regarding the maintainability of this original application. It has been submitted that the original application is not maintainable in view of the verdict of the Supreme Court in the case of Union of India Versus Upendra Singh (JT 1994(1) SC 658) and the application^{is} not maintainable at this interlocutory stage. The applicant has filed original application No. 539/2000 seeking therein relief to quash the charge sheet wherein in para 7 it has been mentio-

ned that the applicant previously filed an original application No. 139/2000 but in that he has prayed for quashing the rejection of the representation preferred for his promotion for a direction and also to the respondents to consider his case for promotion.

5. Certain paras have been introduced in the name of brief history of the case. It has been submitted that the second charge sheet can be issued when the penalty order is quashed on technical grounds. In the instant case the respondents acted in accordance with the rules and the applicant cannot be promoted during the pendency of the disciplinary proceedings.

6. A rejoinder has been filed on behalf of the applicant wherein it has been clarified that original application No. 539/2000 has been filed for quashing the charge sheet. In para 7 of the OA No. 539/2000 whatever the applicant had written was under some confusion. Hence he filed amendment application to delete some adverse remarks. The respondents cannot take advantage of any technical defect and should ^{contest the OA on merits.} and should

7. We have heard the learned counsel for the parties and have bestowed our consideration to the pleadings and records of this case.

8. Both the learned counsel have reiterated the facts and grounds raised in their respective pleadings. The learned counsel of the applicant has firstly made submissions regarding the preliminary objection. He has submitted that this is not a case that the legality or otherwise of the charge sheet is under challenge. It was infact a case of issue of the second charge sheet and this matter is covered up by another case. As regard the second objection it is no objection in the eye of law, because this contains only the statement of facts and nothing else. We have considered the matter of preliminary

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objection and concur the contentions of learned counsel for the applicant. It seems that the preliminary objection has been raised just for the sake of objection without any substance. The same stands over ruled. Now coming to the crux of the main issue involved in the present case. Before examining the merits of the case it would be expedient to know the statement of law which would govern the controversy involved in this case. At the very outset the relevant provision issued by OM dated 14th September 1992 regulate the procedure of the promotions. As per the said memorandum only in the following cases the sealed cover procedure is required to be adopted :

- "(i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending."

9. Secondly the celebrated statement of law has been laid down by the Hon'ble Supreme Court in the case of Bank of India and another Versus Degala Suryanarayana (1999)5SCC762. Para 14 is relevant which is extracted as under :

"However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India V. K.V. Jankiraman SCC at pp. 114-115 : AIR at p. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been



resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."

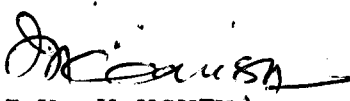
Conjoint reading of the aforesaid statement of law the touchstone of keeping the case of promotion of an individual in the sealed cover would be that one should be under suspension or one must have been issued a charge sheet or a criminal case is pending on the date when the DPC considers the case. In normal course the DPC is required to consider the cases sometimes earlier to the effective date of promotion and the DPC is required to take into account only the material for the promotion as on the effective date of promotion and the subsequent events or incidents cannot affect the promotion which are made from the date earlier to the aforesaid three conditions.

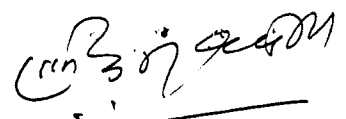
10. Now applying the aforesaid proposition in the present case, ~~XXXXXX~~ in the present case the promotion has been effective from 01/10/1997. The applicant was issued charge sheet only on 19/11/1998 and the same was cancelled on 04/10/1999. Thus it could be safely concluded that up to 04/10/1999 there was no charge sheet against the applicant. Admittedly the other two conditions i.e. regarding the suspension and the criminal case pendency were not against the applicant. Thus in the present case neither on the ^{effective} date of promotion nor on the date when the promotion order was issued or DPC met, there was ^{any} charge sheet against the applicant. Thus if that be so on all counts there is force in the contention of the applicant. In our considered opinion the applicant is fully entitled for consideration of his promotion with effect from the date his next juniors have

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been so considered and adopting sealed cover in his case was illegal and inoperative. Incidentally the charge sheet which is said to be pending against the applicant dated 04/10/1999 has also been quashed today in OA No. 539/2000 in which it was separately challenged. In such circumstances the applicant would otherwise also be entitled for consideration of his promotion from the due date, i.e. 01/10/1997.

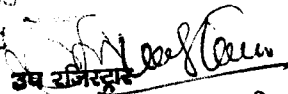
11. In view of the aforesaid discussion, the law position laid down by the Hon'ble Supreme Court and the instructions on the subject, the in-escapeable conclusion is that original application merits acceptance. The impugned order Annexure A/8, dated 16/07/1999 is hereby quashed. The respondents are directed to consider the case of the applicant for promotion to the post of Divisional Accounts Officer Grade-I (Gazetted Group 'B') with effect from 01/10/1997 and the applicant shall be entitled to all consequential benefits including seniority, pay fixation, actual salary etc. at par with his next juniors. This order shall be complied within a period of three months from the date of receipt of copy of this order. Costs made easy.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

प्रमाणित की ओर/का दि.....
गिरि
(1)
(2)
(3)
(4)
सूचना एवं आचार्य का कार्यालय

S C Sharma, Adv. GNL
M Rao, Adv. GNL


4.5.03

Issued
On 12-5-03
BS