

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.219/1999

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Jabalpur, this the 21st day of January, 2004

Shri K.S.Joseph
s/o Shri K.K.Scaria
aged about 57 years
r/o Sheja Villa, House No.126/ A
Chandan Colony
Opp. St. Thomas Church
Ranjhi, JABALPUR. ... Applicant

(By Advocate: Ku. P.L.Shrivastava, proxy of
Smt. S.Menon)

Versus

1. Union of India
through The Secretary
Ministry of Defence
NEW DELHI.
2. The Director of Ordnance
Services (MG/OS-8C)
MGO's Branch
Army Headquarters, DHQ
PO New Delhi - 110 011.
3. Officer In-Charge
Army Ordnance Corps (Records)
Trimulgherry, PO, Secunderabad
Pin Code 500 013 (AP).
4. Commandant
Central Ordnance Depot
PB No.20
JABALPUR - 482 001. ... Respondents

(By Advocate: Sh. B. da. Silva)

O R D E R

By G. Shanthappa, Judicial Member:

The said OA is filed seeking the
following reliefs:

- 1) Declare the impugned action of the respondents in misconstruing and misinterpreting the order of penalty dated 4.12.79 as a glaring instance of misinterpretation and misconstruction of Clause (v) Rule 11 of CCS (CCA) Rules, resulting in loss of seniority and declare it as wholly malafide and vindictive and, be further pleased to direct the respondents to restore the original seniority of the applicant in the post of UDC w.e.f. 1.2.81 and direct the respondents to consider the applicant for promotion to the post of Office Superintendent Gr.II

(Assistant) w.e.f. 18.1.1998 with all ancillary and consequential benefits and in particular, grant of Special Pay for the year 1997-98 at the rate of Rs.75/-.

AND/oR

Declare the correspondence of 13.5.99 (Annexure A- 7) of the respondents as violative of the constitutional provisions and principles of natural justice.

ii) ~~granted~~ to impose a compensatory cost upon the respondent, in particular respondent No.3 to a tune of Rs.25,000/- for the mental agony and financial loss sustained by the applicant.

2. The brief facts of the case are that the applicant was initially appointed as Lower Division Clerk on 19.8.1963 in the Army Ordnance Corps. Subsequently, he ^{ought to have been} ~~was~~ promoted as Upper Division Clerk(UDC) w.e.f. 1.1.1981. It is stated that applicant's immediate junior, Shri M.S.Sharma was promoted to the post of UDC w.e.f. 1.2.1981, ~~while~~ ^{as} the applicant was not promoted as UDC w.e.f. 1.2.1981 because of the departmental proceedings were initiated and memorandum of charges dated 15.2.1978 was issued on him and the applicant was imposed a penalty vide order dated 4.12.1979 whereby a penalty was imposed that "penalty of reduction of pay by two stages from Rs.366/- to Rs.350/- per month in the time scale of Rs.260-400 be imposed on him for a period of two years and the disciplinary authority has further directed that he will earn increment of pay during the period of such reduction and that, this reduction will not have the effect of postponing the future increments of his pay on expiry of the period for which the penalty is awarded.

3. The applicant preferred an appeal which was rejected on 10.9.1980. Thereafter the applicant has filed repeated requests. The main contention of the applicant is that through the penalty was imposed under Rule 11(v) of the CCA (CCA) Rules, the

respondents have violated FR 29(1), CPRO-72-55/2, Appendix-A under the said FR. According to the applicant, the respondents should have promoted him as UDC w.e.f. 1.2.1981 instead they have promoted him w.e.f. 1.1.1982. The punishment order impugned is a non-cumulative effect, the said order will not come in the way of promotion of the applicant as UDC at par with the said Shri Sharma.

4. It is further contended that the applicant was considered for promotion by holding a DPC in the month of March, 1982. Earlier to this a DPC was held but his name has been considered and kept in a sealed cover. In view of the provision of FR 29(1), the case of the applicant has not been considered for promotion as UDC w.e.f. 1.2.1981, he has been deprived for promotion as Office Superintendent Gr.II (Assistant) from the year 1998. Hence, the applicant has stated that the respondents' action is illegal, arbitrary and unjust, he filed the present OA seeking the aforementioned reliefs.

5. Per contra, the respondents have filed the reply denying the averments of the applicant taken in his OA.

6. The respondents have taken a preliminary objection of limitation and stated that the cause of action had arisen in the year 1981 when the immediate junior was promoted or at least in the month of March, 1982 and the OA has been filed on 14.6.1999. Hence, there is a delay in approaching this Tribunal, the OA is not maintainable under Section 21 of the Administrative Tribunals Act, 1985.

7. On merits, they have stated that since the disciplinary proceedings were pending when Mr. Sharma

was promoted as UDC, who is a junior to the applicant, the case of the applicant was kept under sealed cover and after completion of the disciplinary proceedings and punishment imposed upon the applicant, the applicant was considered for promotion as UDC in the month of March, 1982 and was given promotion w.e.f. 4.12.1981.

8. The respondents have taken a specific contention that the applicant is claiming seniority in the post of UDC w.e.f 1.2.1981. The respondents have further submitted that the applicant is not entitled to this relief on merits as well as on limitation. In terms of para-10 CPRO 123/77, Ministry of Home Affairs DBA&R letter dated 16.2.1979 17.6.2 of CPRO 26/90 and rule 19(3) of CCS (CCA) Rules, 1965, the applicant is not entitled for relief of seniority sought by him and his case for promotion to the post of Assistant will be considered in his own turn. Further, the applicant was given promotion w.e.f. 4.12. 1981 and the cause of action arose in March, 1982 i.e. more than three years from the date of establishment of this Hon'ble Tribunal and therefore it does not come within the jurisdiction and his application is not maintainable. However, without prejudice to herein mentioned submissions it is further submitted that the applicant was conveyed vide letter dated 17.5.1998 and 4.12.1998 that his seniority in the post of UDC is with effect from 4.12.1981 and the same cannot be changed. It is further stated that the DPC was met and based on the recommendations of the DPC he was promoted ~~xx~~ w.e.f. 4.12.1981. According to the respondents, the action of the respondents is in accordance with rules on the subject. The relief for grant of 75/- rupees as Special Pay, this benefit has already been withdrawn by the Ministry of Defence

hence, no error has been committed by the respondents in not promoting the applicant to the post of Office Superintendent during the year 1997-98.

In view of the above reasons, they have stated that the OA is liable to be dismissed not only on the ground of limitation but also on the ground of non-violation of any rules on the subject.

9. We have heard the learned counsel on either side and perused the records available on the file.

10. The admitted facts of the case are that the applicant was suffered with departmental proceedings at the relevant time when his immediate junior, Mr. Sharma was promoted. When Mr. Sharma's case was considered ^{gr} ~~gr~~ for promotion to the post of UDC, the name of the applicant was also considered and kept in the sealed cover. After completion of the punishment period, his name has been considered for promotion to the post of UDC and accordingly, he has been promoted as UDC w.e.f. 4.12.1981.

11. The provision of FR 29(1) which has been relied by the applicant, is extracted below:

"If a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent."

12. The respondents have taken a perliminary objection of limitation and stated that the OA is barred by limitation. We have considered the case of the applicant and ~~find that~~ ^{gr} the cause of action arose in the month of March, 1982 and the OA is filed on 14.6.1999. Hence, there is an inordinate delay in filing the present OA. The applicant has

not filed an MA for condonation of delay in filing the OA. Hence, in our considered view, the OA is liable to be dismissed on this ground itself.

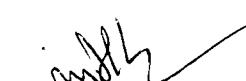
13. We also find that there is no mis-interpretation of the provisions of rules on the subject while considering the case of the applicant for promotion to the post of Office Superintendent in the year 1997-98 in view of the aforesaid reasons.

14. In view of the specific contention taken by the respondents in their reply that the applicant has been insisting for his promotion with effect from 1.2.81 and his case has been rejected vide order dated 6.4.99, for the record it is submitted that no junior UDC has been promoted to the post of O.S. Gr.II and the applicant claim is baseless; and all the representations of the applicant dated 28.2.1998, 6.10.1998 and Feb. 1999 have been duly replied vide order dated 4.3.1998, the action of the respondents, in our considered view, in not promoting the applicant as Office Superintendent Gr.II is in accordance with rules on the subject.

15. ~~xxx~~ It is also stated by the respondents that the benefit cannot be given prior to three years after to the Administrative Tribunals Act, 1985 came into force, by this Tribunal.

16. In the result, for the foregoing reasons, the OA is devoid of merit. Accordingly, the OA is dismissed not only on the ground of limitation but also on merits. No order as to costs.


(G. SHANTHAPPA)
Judicial Member


(M.P. SINGH)
Vice Chairman

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