

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 13th August, 2008

ORIGINATION APPLICATION NO. 401/2005
With
MISC. APPLICATION NO. 113/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

S.N. Sethi son of Shri Srinarain Sethi aged about 45 years, resident of S-6 Awadhpu, Jaipur. Presently working as Inspector, Central Excise Department, Jaipur.

....APPLICANT

(By Advocate: Mr. Amit Mathur)

VERSUS

1. Union of India through the Secretary, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. The Commissioner, office of the Commissioner, Central Excise, Statue Circle, NCR Building, Jaipur.

.....RESPONDENTS

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

The applicant has filed this OA against his non promotion vide order dated 08.06.2005 (Annexure A/1) and has prayed for the following relief:-

"(i) The Original Application preferred by the applicant may kindly be allowed and the impugned order dated 08.06.2005 and clause 7 of

the OM dated 14.09.1992 may kindly be set aside.

(ii) The respondents may be directed to open the seal cover envelop and if the applicant is found fit than he may be promoted on the post of Supt. Group B w.e.f. 23.09.2002 with all consequential benefit.

2. Briefly stated, facts of the case of that the applicant while working as Inspector, Central Excise Department was eligible for promotion to the grade of Superintendent Group -B. For that purpose, a DPC meeting was held on 18/19.7.2002. The case of the applicant was also considered for promotion to the grade of Superintendent Group -B by the DPC alongwith other candidates. However, the findings in respect of the applicant were kept in the sealed cover treating his case as pending prosecution. Subsequently, vide order dated 23.9.2002 certain persons including the persons junior to the applicant were promoted to the grade of Superintendent Group -B in which the name of the applicant did not find mention. Feeling aggrieved by the action of the respondents, the applicant filed OA No. 393/2004. The grievance of the applicant in the said OA was that when DPC meeting for the purpose for consideration of promotion to the post of Superintendent Group -B was held, the applicant was neither under suspension nor any departmental proceedings were pending against him, as such his findings should not be kept in sealed cover. This Tribunal while agreeing with the contention so raised by the applicant that department should not have adopted sealed cover procedure, however, held that since the applicant was facing Criminal charges when the promotion order was issued

it was open for the respondents to invoke Para No. 7 of OM dated 14.09.1992. The OA was disposed of accordingly.

3. Subsequently, vide impugned order dated 08.06.2005 (Annexure A/1), the respondents have held that the applicant is not entitled for promotion till he is completely exonerated of the charges against him. It has been further recorded that a challan was filed against the applicant by the CBI before Court on 19.08.2002 i.e. before 23.09.2002 when actual promotions orders of selected officials were issued to the grade of Superintendent Grade B. On the basis of the findings of the DPC held on 18/19.07.2002, therefore, in terms of Para 7 of the DOPT's OM dated 14.09.1992, the case of the applicant is treated as 'pending prosecution'.

4. The grievance of the applicant in this case is that provisions of Para No. 7 of the DOPT's OM dated 14.09.1992 could have been resorted to in case sealed cover was opened by the respondents and he was found fit for promotion. According to the learned counsel for the applicant, department has not opened the sealed cover and has passed the impugned order mechanically. In order to cut short the matter in controversy, we directed the respondents to produce the sealed cover. The respondents have produced the sealed cover qua the applicant. From perusal of the findings recorded by the DPC, the applicant has been found unfit for promotion.

5. In view of this development, whether the sealed cover could have been adopted or not is not relevant. Fact

remains that the applicant was found unfit for promotion by the DPC.

6. In view of what has been stated above, the applicant is not entitled for any relief. It may be relevant to submit here that the respondents have filed an MA No. 113/2008 thereby annexing copy of the Establishment order No. 23/2007 dated 22.03.2007 whereby the applicant has been promoted in the grade of Superintendent B on ad hoc basis. This document is taken on record. MA shall stands disposed of.

7. With these observations, OA as well as MA both are disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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