

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

12.05.2009

OA No. 352/2008

Mr. Amit Mathur, Counsel for applicant.  
Mr. Hemant Mathur, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the  
OA is disposed of.

(B.D. KHATRI)

MEMBER (A)

(M.L. CHAUHAN)

MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 12<sup>th</sup> May, 2009

**ORIGINAL APPLICATION NO. 352/2008**

**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 49 years, resident of 184, Durgapura, Jaipur. Presently working as Supt. Group B (Ad hoc), Central Excise Department, Jaipur (Rajasthan).

.....APPLICANT

(By Advocate: Mr. Amit Mathur)

VERSUS

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.
3. The Chief Commissioner, Central Excise and Customs, Statue Circle, NCR Building, Jaipur (Rajasthan).
4. The Commissioner, Office of the Commissioner, Central Excise Ist, Statue Circle, NCR Building, Jaipur (Rajasthan).

.....RESPONDENTS

(By Advocate : Mr. Hemant Mathur)

**ORDER (ORAL)**

This is the third round of litigation. Earlier the applicant has filed OA regarding his non promotion to the post of Superintendent Group 'B' whereby the finding of the DPC was kept in sealed cover. Aggrieved by the action of the respondents, the applicant has filed OA thereby contending that the respondents could not have resorted to the sealed cover procedure in as much as when the DPC was held, no prosecution/criminal case was pending against the applicant. This Tribunal while affirming the contention of the applicant, however, had observed that the respondents could have resorted to the procedure as contemplated in Para 7 of DOPT's OM No. 22011/4/91-Estt.(A) dated 14.09.1992 (Annexure A/3) which stipulates that a Government

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servant who is recommended for promotion by the DPC but in whose case any of the circumstances mentioned in Para 2 of the aforesaid OM arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charge sheet against him and the provisions contained in this OM will be applicable in his case also. The respondents were directed to reconsider the matter in the light of the aforesaid provisions.

2. The respondents have again passed the impugned order dated 08.06.2005 in compliance of the order dated 09.05.2005 passed in earlier OA whereby it has been recorded that case of the applicant comes within the purview of Para 7 of DOPTs OM dated 14.09.1992. As such he shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also. It is this order which is challenged in this OA. The applicant has prayed that this order may kindly be set aside and the applicant may be declared fit for promotion to the post of Superintendent Group 'B'

3. Notice of this application was given to the respondents. The respondents have filed reply thereby justifying their action in the light of the reasons contained in impugned order at Annexure A/2.

4. When the matter was listed on 05.01.2009, this Tribunal passed the following order:-

"Pleadings are complete. Let the matter be listed for final hearing on 5.3.2009.

From perusal of the reply it is evident that the respondents have not given any specific reply to the contentions raised by the applicant in Para 5(ii) of the grounds in the OA.

Let the respondents file supplementary affidavit thereby giving specific reply to the averments made by the applicant in Para 5(ii) of the grounds in the OA."

5. In Para 5.2 of the OA, the applicant has specifically pleaded that the applicant has been found unfit by the DPC on the ground of

pendency of criminal proceedings against him, which facts could not have been taken into consideration in the light of instructions dated 14.09.1992.

6. The respondents have filed additional reply. At this stage, it will be useful to quote Para No. 1 of the additional reply, which thus reads as under:-

1. That as per the minutes of the DPC held on 18/19.7.2002 for promotion to the grade of Superintendent, the DPC had assessed the 5 ACRs upto 2000-2001 in respect of candidates and adopted the following criteria for determining benchmark 'Good', -

"As per the criterion adopted for making selection the candidates who grading in 4 ACR's out of 5 ACR's are atleast 'Good' without any adverse remarks have been graded as 'Good'. The candidates who have less than 4 'Good' grading out of 5 ACR's or with any adverse remarks in any ACR's out of 5 ACR's have been graded as 'Unfit' for promotion."

As per available 5 ACR's upto 2000-2001 of applicant his grading is 'Good' as per the said criteria adopted by the DPC held on 18/19-7/2002' for regular promotion to the grade of Superintendent but the said DPC graded him as 'Unfit' in the sealed cover without recording any reason. The said sealed cover of the applicant was opened by Hon'ble Tribunal on 13.08.2008 in OA No. 401/2005 earlier filed by the applicant.

As per the said sealed cover prepared by the said DPC held on 18/19/7/2002 applicant (Inspector) against whom the Commissioner had accorded sanction for his prosecution for a criminal charge, was considered for regular promotion to the grade of Superintendent Group 'B' post by the DPC held on 18/19.7.2002. The grading of the DPC in respect of the applicant was 'Unfit'."

7. From the perusal of the additional reply, it is evident that for promotion on the post of Superintendent, the DPC has fixed the Benchmark determination and for that purpose, 5 ACRs upto 2000-2001 was to be taken into consideration. As per the criteria adopted by the DPC for declaring a person unfit, the candidate who have less than 4 'Good' gradings out of 5 ACRs or with any adverse remarks in any ACRs out of 5 ACRs have been graded as 'unfit' for promotion. From the perusal of Para No. 1 of the additional reply, as quoted above, it is evident that

5 ACRs of the applicant upto 2000-2001 were 'Good'. As per the said criteria adopted by the DPC, as such he could not have been declared unfit. Thus the contention raised by the applicant that the applicant has been declared unfit solely on the ground that some prosecution proceedings against him are pending and Challan has been presented in a Criminal Court have been taken into consideration has considerable force, which fact could not have been taken into consideration. At this stage, it will be useful to quote Para 2.1 of the OM dated 14.09.1992, which lays down the procedure and guidelines to be followed by the DPC for promotion of government servant against whom disciplinary/criminal proceedings are pending, which thus reads as under:-

"2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Finding regarding suitability for promotion to the grade/post of ..... in respect of Sh.....(name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Sh..... The proceedings of the DPC need only contain the note. The finding are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the finding of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover." (emphasis supplied)

8. In view of the provisions contained in Para 2.1, as extracted above, it was incumbent upon the DPC to assess the suitability of a applicant without taking into consideration the criminal prosecution pending against him. In the instant case, the DPC has taken into consideration the criminal prosecution against the applicant and as such, he was declared unfit. Accordingly, we are of the view that the applicant could not have been graded unit by the DPC especially when the applicant was grade as 'Good' on the basis of 5 ACRs upto 2000-2001. Accordingly, the impugned order dated 08.06.2005 (Annexure A/2) is quashed and set aside. The case is remitted back to the respondents to hold the Review DPC and assess the suitability of the

applicant for the post of Superintendent Group 'B' keeping in view the instructions of the DOPT OM dated 14.09.1992 and to proceed further in accordance with law/instructions and pass appropriate order. Such an exercise will be taken within a period of three months from the date of receipt of a copy of this order.

9. With these observations, the OA is disposed of with no order as to costs.

  
(B.L. KHATRI)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

AHQ