

19

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

17.01.2012

OA No. 268/2009

None present for the parties.

It is a DB matter. DB is not available today.

Since the advocates are abstaining from work, the case be listed on 13.02.2012.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

13/02/2012 (OA No. 268/2009)

Mr. Sumit Khandelwal, Proxy Counsel for
Mr. Rameshwar Sharma, Counsel for applicant.
Mr. D. C. Sharma, Counsel for respondents.

Heard.

O.A. is disposed of by a separate
order on the separate sheets for the
reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of February, 2012

ORIGINAL APPLICATION No. 268/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

G.K. Raina son of late Shri J.N. Raina, aged about 58 years, resident of 80/279, Nyay Path, Patel Marg, Mansarovar, Jaipur. Presently posted as UDC, India Tourism, Jaipur.

... Applicant

(By Advocate : Mr. Sumit Khandelwal proxy to
Mr. Rameshwar Sharma)

Versus

1. Union of India through its Secretary to the Government of India, Ministry of Tourism, Government of India, New Delhi.
2. The Additional Director General, Ministry of Tourism, Government of India, 1, Parliamentary Street, New Delhi - 110 001.
3. The Regional Director, Government of India, Tourist Office, 88-Janpath, New Delhi - 110 001.
4. The Assistant Director General, India Tourism, State Hotel, Khasa Kothi, Jaipur.

... Respondents

(By Advocate : Mr. D.C. Sharma)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) By an appropriate order or direction, the respondents be directed to produce all entire record relating to the case and after perusing the same memo dated 07.04.1986 and the order passed by the disciplinary authority imposing the penalty of censure vide order dated 30.04.2007 may kindly be quashed and set aside.
- (ii) By an appropriate order or direction the respondents may be directed to grant the benefits of the ACP Scheme from the date the

Anil Kumar

applicant was eligible for the same w.e.f. 30.09.1999 instead of 16.04.2009 by modifying the order dated 24.04.2009.

- (iii) By an appropriate order or direction the respondents be directed to confirm the applicant on the post of UDC from the year 2000 after two years from the ad hoc promotion. Further the respondents be also directed to fix the applicant in the correct pay scale and also grant the correct pay grade alongwith consequential benefits.
- (iv) Cost the application may also kindly be awarded to the poor applicant; and

Any other order or direction which this Hon'ble Tribunal deems fit and proper may also kindly be passed in the favour of the applicant in the larger interest of the equity justice and law."

2. During the course of arguments, learned counsel for the applicant stated that he is not pressing relief no. 1. Learned counsel for the applicant stated that respondents have not granted the ACP to the applicant under the pretext of pendency of inquiry against him. The photocopy of the order dated 03.11.2008 has been annexed as Annexure A/9. He further submitted that respondents while granting the ACP has also not granted correct pay scale and grade pay to the applicant. There are two channels from the UDC, first for Accountant and second for Tourist Information Officer. The respondents have granted the pay scale of Accountant to the applicant. If the respondents would have granted the ACP/promotion to the applicant on the due dates then the fixation of the applicant would have been made in the higher i.e. Rs.9300/-grade instead of lower grade Rs.5500/-, as such the applicant has been put into great loss by the respondents. Therefore, the pay fixation of the applicant

Anil Kumar

requires to be amended. That the respondents have issued the order dated 24.04.2009 without looking to the fact that the delay in finalization of the disciplinary proceedings was wholly attributable to the respondents and the applicant has been adversely affected by it inspite of the best efforts taken by the applicant and full faith in the action taken by the respondents. The applicant would have got the financial upgradations under the ACP Scheme in case the respondents had finalized the case timely and expeditiously.

3. The applicant was served with a charge sheet dated 07.04.1986 for an incidence pertaining to the period of 1979-1981 i.e. after about 6 years. The competent authority took almost 21 years to finalize the disciplinary proceedings, which cannot be justified in any manner. Thus the action of the respondents in awarding the punishment and thereafter delaying the ACP benefits to the applicant on that very basis is grossly an abuse of process and the laws of natural justice. This has resulted in forfeiting the legitimate benefits that could have been available to him. Due to the pending disciplinary proceedings, the applicant was denied the ACP benefit for almost 10 years because in case the proceedings would have completed in time then the applicant could have got all the benefits in time. Further there was no explanation for the delay caused by the respondents due to which the applicant had to suffer irreparable loss in his career.

Anil Kumar

4. The applicant has further stated that the respondents while granting the ACP has also not granted the correct pay scale and grade pay to him. There are two channels from the UDC first for Accountant and second for Tourist Information Officer. The respondents have granted the pay scale of Accountant to the applicant. If the respondents would have granted the ACP/promotion to the applicant on the due dates then the fixation of the applicant would have been made in the higher i.e. Rs.9300/- grade instead of lower grade Rs.5500/- and as such the applicant has been put into a great loss by the respondents. The pay fixation of the applicant requires to be amended.

5. The respondents have filed their reply. The respondents have stated that the CBI had investigated the case relating to purchase of firewood at an exorbitant rate. The Central Vigilance Commission vide its OM dated 18.03.1986 (Annexure R/2) advised the department to initiate major penalty proceedings against the applicant and two others. Based on this advice, a charge sheet was issued under Rule 14 of the CCS (CCA) Rules, 1965 vide Memorandum dated 07.04.1986 to the applicant. The Inquiry Officer submitted his report on 12.11.1993. On the basis of this report, the CVC vide OM dated 11.02.1994 (Annexure R/3) advised for imposition of major penalty against the applicant. The case of the applicant was

Anil Kumar

examined threadbare by the Disciplinary Authority through departmental proceedings and finally it was decided to impose minor penalty of censure to the applicant vide Ministry Order No. C-14011(2)/86.Vig.I dated 30.04.2007 (Annexure R/4).

6. The respondents have further stated that so far as the case for the delay in granting ACP benefit is concerned, the Scheme of ACP was introduced by the DOPT in the year 1999 vide their OM No. 35034/1/97-Estt (D) 09.08.1999. But for the minor penalty imposed on the applicant, G.K. Raina, he would have got the ACP on 09.08.1999 i.e. the date from which the Scheme of ACP was made effective. In the cases of Government servants where Censure has been imposed, DOPT vide Point No. 48 of its OM No. 35034/1/97-Estt (D) (Vol. IV) dated 18.07.2001 (Annexure R/5) has clarified that the same would be available only from the date of meeting of the Screening Committee which met to consider his case subsequent to imposition of penalty. Hence the applicant was allowed his ACP w.e.f. 16.04.2009 i.e. the date of meeting of Departmental Screening Committee for grant of ACP to the applicant (Annexure R/6).

7. The respondents have further stated that while granting ACP, the applicant was granted the pay scale of Accountant as per the standard pay scales for ACP which is next higher to UDC. As regards correct pay scales, it may

Anil Kumar

be mentioned here that though there are two channels from UDC first for Accountant and second for Tourist Information Officer, there is no choice/option at the time of ACP as the ACP is meant for next higher financial upgradation. Thus the action of the respondents is as per the provisions of law & the rules and based on instructions contained in Point No. 48 of DOPT OM No. 35034/1/97 – Estt.(D) (Vol.IV) dated 18.07.2001. Therefore, the applicant is not entitled to get any relief from the respondents. The OA has no merit and, therefore, it should be dismissed.

8. Heard the learned counsel for the parties and perused the relevant documents on record. The learned counsel for the applicant reiterated the arguments which he has taken in his OA. In support of his arguments, he referred to the case of the Rajasthan High Court in the case of **Avadhesh Chandra vs. State of Rajasthan & Others**, Western Law Cases (Raj.) UC 2009 page 32. He also referred to the judgment of the Hon'ble Supreme Court in the case of **Badrinath vs. Government of Tamil Nadu**, AIR 2000 SC 3234.

9. Learned counsel for the respondents mainly argued on clarification issued by the DOPT on Point No. 48 of the OM No. 35034/1/97-Estt (D) (Vol. IV) dated 18.07.2001 (Annexure R/5).

Anil Kumar

10. Having heard the rival submissions of the parties and after perusal of the documents on record, it is clear that the applicant was issued a charge sheet on 07.04.1986 and from the reply of the respondents, it is clear that the Inquiry officer submitted its report on 12.11.1993 i.e. almost after seven years of the issuance of the charge sheet. This inordinate delay in submitting the Inquiry report has not been explained by the respondents in their reply. The CVC advice on this inquiry report was received on 11.02.1994 but the Disciplinary Authority passed the final order on 30.04.2007 i.e. after 13 years of the advice from the CVC. Again this inordinate delay of 13 years has not been explained by the respondents. It is not disputed by the respondents that it took 21 years to finalize the departmental proceedings against the applicant. It is also not the case of the respondents that the applicant was responsible for this inordinate delay. In our opinion, the clarification issued by the DOPT on point No. 48 of the OM dated 18.07.2001 (Annexure R/5) should be applicable in the normal case of the finalization of the departmental proceedings. If the Departmental is taking long 21 years to finalize the departmental proceedings against its official/employee and in the end penalty of censure is awarded and on the basis of that penalty, not granting the ACP appears to be too harsh and against the principles of natural justice. Therefore, we deemed it proper and just to direct the respondents to re-examine the case for grant of ACP to the applicant from the due date expeditiously but in

Anil Kumar

any case not later than a period of three months from the date of receipt of a copy of this order. If the applicant is aggrieved by the decision so taken by the respondents, he is at liberty to file substantive OA.

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

Anil Kumar

(Anil Kumar)
Member (A)

AHQ

J. S. Rathore

(Justice K.S.Rathore)
Member (J)