

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 189/2011

ORDER RESERVED ON 09.02.2015

DATE OF ORDER : 13.2.2015

CORAM :

**HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE SMT. CHAMELI MAJUMDAR, JUDICIAL MEMBER**

M.P. Meena son of Late Shri Badru Ram Meena, by caste Meena, aged about 60 years, resident of outside Suraj Pole Gate, By Pass Laxminarain Puri, Pullia No. 1, Delhi Road, Jaipur. Presently retired as Office Superintendent from the office of Survey of India, Rajasthan, Geospatial Data Centre, Jaipur.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Science and Technology, Survey of India, New Mehroli Road, New Delhi.
2. Surveyor General of India, Survey of India, Hathi Barkala Estate, Dehradoon (Uttra Khand).
3. Additional Surveyor General, Western Zone, Survey of India, Sector 10, Vidhyadhar Nagar, Jaipur.
4. Director, Rajasthan Geospatial Date Centre, Survey of India, Sector-10, Vidhyadhar Nagar, Jaipr.
5. Shri R.S. Meena, Plot No. 22-23, Mahadev Nagar-II, Swef Farm, Near Jyoti Foolay Mahavidhyalaya, Sodala, Jaipur. Presently working as E and A Survey of India, Sector-10, Vidhyadhar Nagar, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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

"(8.1) That by a suitable writ/order or the direction the impugned order dated 25.08.2010 be quashed and set aside.

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(8.2) That by a suitable writ/order or the direction the respondents be directed to treat the applicant as Establishment and Accounts Officer with effect from 25.03.2009 by which date the junior officer, Shri R.S. Meena, has been allowed to hold the post of Establishment and Accounts Officer. The pay and the allowances of the Establishment and Accounts Officers be drawn in favour of the applicant by which the junior officer has been allowed the pay and allowances of the Establishment and Accounts Officer with all the consequential benefits.

(8.3) All the arrears be paid as early as possible.

(8.4) Any other relief which the Hon'ble Bench deems fit."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was promoted to the post of Establishment & Accounts Officer vide order dated 05.07.2007 (Annexure A/2) but till his retirement, he was not allowed to join the said post. The learned counsel for the applicant submitted that one vacant post of Establishment & Accounts Officer was available at Jaipur but due to arbitrary action of the respondents, the post at Jaipur was filled up by one Shri N.R. Verma, who was transferred from Dehradoon to Jaipur and the applicant was transferred from Jaipur to Delhi. Mr. Verma was posted in Dehradoon vide order dated 28.07.2006 on promotion. As per the policy of the Department, the official is eligible for transfer after a period of two years if he has been posted to a particular place on promotion (Annexure A/5). The applicant submitted an application dated 06.07.2007 (Annexure A/7) for being posted at Jaipur. The application of the applicant was rejected by the respondents and he was debarred for

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promotion for one year vide letter dated 30.08.2007 (Annexure A/8).

3. That the applicant was again promoted on the post of Establishment & Accounts Officer vide order dated 23.06.2008 (Annexure A/6). This time he was posted from Jaipur to Lucknow but again he was not posted at Jaipur. He again represented to the respondents vide order dated 07.07.2008 (Annexure A/12) with the prayer that he may be posted at Jaipur but his representation was not accepted. He was again debarred by the respondents for promotion for a period of one year vide order dated 25.08.2008 (Annexure A/13).

4. That one Shri R.S. Meena was promoted to the post of Establishment & Accounts Officer vide order dated 09.01.2009 (Annexure A/14) and he was posted from Jaipur to Gandhinagar with the direction that he must join at Gandhinagar by 06.02.2009 failing which he will be debarred for promotion but instead debarring Shri R.S. Meena, he was posted to Jaipur on a vacant post which arose due to sudden death of Shri N.R. Verma vide order dated 25.03.2009 (Annexure A/15). This shows the extent to which the respondents had attitude of partiality and, therefore, the applicant was never adjusted at Jaipur. The applicant again submitted representations dated 26.05.2009 and 28.07.2010 but the respondents did not allow his prayer. Subsequently, the applicant retired on superannuation in 31.12.2010. Thus the action of the respondents in not posting the applicant on promotion at Jaipur is arbitrary and based on

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mala fide. Therefore, the respondents may be directed to treat the applicant as Establishment & Accounts Officer with effect from 25.03.2009 and allow all consequential benefits.

5. On the other hand, the respondents have filed their reply. The respondents have taken a preliminary objection regarding the limitation. The respondents have stated that the applicant has prayed for promotion on the post of Establishment & Accounts Officer with effect from 25.03.2009 that is from the date when his junior, Shri R.S. Meena, was promoted vide order 09.01.2009 (Annexure A/14). At that time, the applicant remained silent and now after his retirement and after a lapse of more than two years, he has filed the present OA in the year 2011, which is beyond the period of limitation prescribed under Section 21 of the Administrative Tribunal's Act, 1985. Therefore, the present OA of the applicant deserves to be dismissed on this ground alone.

6. On the merits of the case, the respondents have stated that the applicant was offered promotion to the post of Establishment & Accounts Officer in July 2007 and posted at Western Printing Group, New Delhi. He requested for a posting at Jaipur but his request could not be accepted due to non availability of any vacancy at Jaipur. The applicant was informed accordingly. Since he failed to join the new place of posting, he was debarred for promotion for a period of one year with effect from 04.08.2007.

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7. The applicant was again offered promotion to the post of Establishment & Accounts Officer and posted at UPGDC, Lucknow after completion of debarred period. Again the applicant did not move to Lucknow on promotion and applied for giving promotion at Jaipur only. However, due to non availability of vacancy, again his request was turned down. Since he did not move on promotion, he was again debarred for promotion for one year with effect from 22.07.2008.

8. The applicant was again considered by the DPC for promotion for the year 2009 but not found fit by the DPC. So far as respondent no. 5 Shri R.S. Meena is concerned, he was promoted on the post of Establishment & Accounts Officer vide order dated 09.01.2009 (Annexure A/14) and due to sudden death of Shri N.R. Verma, he was posted at Jaipur on promotion in the vacancy which arose due to sudden death of Shri N.R. Verma. The applicant never challenged the order of promotion dated 09.01.2009 and letter dated 31.03.2009.

9. That the applicant was again considered in the year 2010 for promotion by DPC on the post of Establishment & Accounts Officer but the DPC not found him fit for promotion and the same has been intimated to him vide letter dated 25.08.2010 (Annexure A/1). The applicant has since retired from service on superannuation on 31.12.2010 as Office Superintendent. The applicant never challenged the order dated 31.03.2009 denying him promotion against the vacancy for 2009 and now by challenging the letter dated 25.08.2010 (Annexure A/1) has

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prayed to give him promotion with effect from 25.03.2009, the date from which respondent no. 5 has been promoted. Therefore, in view of these facts, the present OA has no merit and it should be dismissed.

10. The applicant has filed the rejoinder.

11. Heard the learned counsel for the parties and perused the documents on record.

12. It is not disputed that the applicant was promoted to the post of Establishment & Accounts Officer vide order dated 05.07.2007 and he was posted to Delhi but the applicant did not join at Delhi. According to the respondents, he could not be posted to Jaipur because there was no vacancy at that point of time at Jaipur. Therefore, the applicant was debarred for promotion for one year. In these circumstances, we do not find any illegality in the order of the respondents to debar the applicant for promotion for a period of one year.

13. Similarly it is not disputed that the applicant was again promoted vide order dated 23.06.2008 on the post of Establishment & Accounts Officer and was posted to Lucknow. Again the applicant made a request to be posted at Jaipur but since there was no vacancy available at Jaipur, he could not be posted at Jaipur. He did not join at Lucknow, therefore, he was debarred for promotion for one year by the respondents. Even for the sake of arguments, if it is accepted that there was

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vacancy at Jaipur in which Shri N.R. Verma was posted even then the applicant had no right to be posted at Jaipur on promotion. It is not disputed by the applicant that the post on which the applicant was promoted was a transferable post, since the applicant had a transfer liability, therefore, it was the duty of the applicant to have joined at the place of his posting particularly on promotion. Thus we do not find any illegality or irregularity or arbitrariness in the action of the respondents to debar the applicant for promotion for one year.

14. So far as the promotion of the applicant for the year 2009 is concerned, it is stated by the respondents that he was considered by the DPC but was not found fit for promotion. Therefore, his junior, Shri R.S. Meena, was promoted. The applicant has not challenged the promotion order of Shri R.S. Meena dated 09.01.2009 (Annexure A/14). Since he was not promoted to the post of Establishment & Accounts Officer in 2009, therefore, he could not have been posted to that post at Jaipur even in March, 2009 when the vacancy arose due to the sudden death of Shri N.R. Verma. Moreover, the applicant was debarred for promotion vide order dated 25.08.2008 (Annexure A/13) with effect from 22.07.2008. This debarment period was to be over on 21.07.2009. Therefore, even if the applicant could have been promoted by the DPC for 2009, he could not have been posted in March 2009 at Jaipur because that was the period for which the applicant was debarred for promotion. The order dated 25.08.2008 has not been challenged by the applicant in the present OA. Thus the promotion and posting of Shri R.S.

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Meena at Jaipur cannot be said to be against the rules or based on mala fides of the respondents. Moreover, the applicant has not leveled specific allegation of mala fide against any of the official respondents and has not made them party by name.

15. The applicant was again considered for promotion for the vacancy of the year 2010 but the DPC did not find him fit for promotion. Any Government employee has a right for consideration of promotion but no right to be promoted. The applicant was considered by the DPC but the DPC did not find the applicant fit for promotion. The applicant cannot claim promotion as a right. Thus we do not find any illegality/infirmity in the order of the respondents dated 25.08.2010 (Annexure A/1).

16. Thus on the basis of above discussion, we find that the applicant has failed to make out any case for relief in the present OA.

17. Consequently the OA being bereft of merit is dismissed with no order as to costs.

Chameli Majumdar
(SMT. CHAMELI MAJUMDAR)
MEMBER (J)

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul