

CENTRAL ADMINISTRATIVE TRIBUNAL,**CHANDIGARH BENCH**

O.A.No.060/00966/2014

Orders pronounced on: 15.10.2015
(Orders reserved on: 05.10.2015)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

Raj Kapoor son of

Sh. Behani Lal, aged 52 years,

Presently working as Junior Engineer (QS&C)

in the office of Chief Engineer,

Pathankot Zone.

... Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence,
Govt. of India, New Delhi.
2. Engineer-in-Chief, Military Engineer Services,
Integrated HQ (Army), Kashmir House,
New Delhi-110011.
3. Chief Engineer, Western Command, Chandigarh.
4. Chief Engineer (HQ), Pathankot Zone, Pathankot-145001.

... Respondents

Present: Mr. D.R. Sharma, counsel for the applicant.
Mr. Sanjay Goyal, counsel for the Respondents.

ORDERHON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The challenge in this Original Application is to Minutes of Departmental Proceedings Committee dated 25.4.2011 (Annexure A-2) in which the applicant has been assessed as "unfit" for promotion to the post of Assistant Engineer (QS&C) and for issuance of direction to the respondents to promote him from due date at par with his juniors with all the consequential benefits.
2. The brief facts which led to the filing of the present Original Application are that the applicant was one of the senior most Junior Engineer (Quantity Serving and Contracts) and was eligible for promotion to the post of Assistant Engineer (QS&C) w.e.f. December, on completion of 7 years of service in the grade of Rs.5500-9000. He claims that he has all good ACRs and nothing adverse was ever conveyed to him. He was granted benefit of financial up gradation under Assured Career Progression in the year 2005 w.e.f. 1999 and 2nd financial up gradation under ACP in the year 2010 w.e.f. 2007. The applicant is at Sr. No. 47 of All India Seniority list of J.E (QS&C) as circulated on 16.9.2010. On 1.2.2011, a panel of promotion to the post of Assistant Engineer (QS&C) in the pay scale of Rs.6,500-10500 (pre-revised) in MES was issued (Annexure A-6). However, Sh. Ajay Gupta, immediate junior

(Sr. No. 48) and Sh. Shashi Kumar Raina, immediate senior (Sr. No. 46) were promoted vide orders dated 9.2.2011. The applicant submitted a representation dated 10.2.2011 claiming his promotion at par with his junior.

3. The applicant had been issued a charge sheet dated 12.9.2009 which resulted into imposition of a minor penalty of censure on 23.2.2011. The applicant claims that respondents unnecessarily took a period of more than 1-1/2 years in deciding the charge sheet dated 12.9.2009 for an incident of 2008 which has caused prejudice to the applicant in his promotion as juniors have superseded him for no justified reasons. As per instructions dated 8.1.1971 (Annexure A-17), the minor penalty charge sheet was to be decided within 3 months.
4. The applicant invited information under RTI Act, 2005 upon which he came to know that DPC had assessed him as unfit on the basis of pendency of two minor penalty charge sheets issued to him and continuance of minor penalty of withholding of increment for 3 years without cumulative effect imposed on 6.1.2009. The DPC has wrongly recorded about pendency of two charge-sheets as minor penalty charge sheet dated 7.5.2009 was already over on 11.11.2010 with imposition of penalty of censure. The O.A. No. 1248-JK-2011 filed by applicant against the same was dismissed on 5.9.2014. Another penalty charge sheet was issued on 12.9.2009 which

was over on 23.2.2011 with imposition of penalty of "Censure". This too was not sustainable due to delay. The applicant filed O.A.No. 1262-JK-2011 against the same which was allowed on 16.9.2014 and penalty was set aside. The applicant was imposed penalty of withholding of 3 increments without cumulative effect on 6.1.2009 which expired on 5.1.2012. This charge-sheet was issued after a period of 7 years as incident took place in 2001 and department took 11 months to decide the charge sheet. The applicant filed O.A.No. 1257-JK-2011 which was dismissed on 5.9.2014. The representations filed by the applicant for his promotion from due date has not evoked any response hence this O.A.

5. Upon notice the respondents entered their appearance and filed a detailed reply contesting the claim of the applicant. They submit that applicant was imposed penalty of censure on 13.2.2007; withholding of increments for a period of 3 years without cumulative effect on 6.1.2009; minor penalty of censure on 11.11.2010; and minor penalty of censure imposed on 23.2.2011. The applicant was considered for promotion against the vacancy year 2010-11 by DPC held on 27.1.2011 which found him as unfit for promotion due to aforesaid penalty. Thus, he could not find a place in the promotion orders. He was also considered for promotion against the vacancies for the years 2011-12 and 2012-13 by DPC held on 2.5.2013 but

due to aforesaid penalties, he was declared unfit by DPC and thus could not be promoted. As per Guidelines issued on 10.4.1989, the DPC enjoys full discretion to devide its own method for objective assessment of the suitability of candidate who is to be considered. The DPC has to consider an employee as fit or unfit on the basis of overall assessment of work and conduct. The DPC found the applicant as unfit for promotion and as such the proceedings cannot be challenged by him.

6. The applicant has filed a rejoinder reiterating the submissions made in the Original Application.
7. We have heard learned counsel for the parties and perused the material on record.
8. A conjunctive perusal of pleadings would indicate that the applicant was indeed undergoing penalty at the time his promotion took place and the DPC after considering his case for promotion declared him as unfit for promotion. Placing reliance on **A.D. Khunger Vs. UOI etc.** 1991 (2) ATJ 326, the applicant claims that the penalty of censure is not an obstacle for promotion of an employee. The said decision cannot be of any help to the applicant inasmuch as the case of the applicant has been considered in this case and upon overall assessment of his record and due to being under penalty, he has been declared as unfit for promotion. It is not that he has not been considered for promotion on the basis of the minor penalty. The applicant has

claimed that he could not be punished due to delay in disciplinary proceedings but the fact remains that two cases filed by him were dismissed and penalty did operate and during operation of the penalty he could not be promoted by the respondents as penalty of withholding of increment was imposed on 6.1.2009 for a period of three years which remained in operation upto 2012. The penalty of censure was imposed on 11.11.2010. He was also imposed punishment of censure on 23.2.2011 which took after completion of currency period of earlier penalty. Even if one were to ignore the penalties of censure, the fact remains that penalty of withholding of increment was still against him upto 2012.

9. It is well established that normally the recommendations of the Selection Committee or DPC cannot be challenged except on the ground of malafides or serious violation of the statutory rules. The Courts cannot sit as an appellate authority to examine recommendations of the Selection Committee like Court of appeal. This discretion has been given to the Selection Committee only and Courts rarely sit as a Court of appeal to examine selection of candidates nor is it the business of Court to examine each candidate and record its opinion. Reference in this regard may be made to **M.V.THIMMIAIAH AND OTHERS**

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(2008) 2 SCC 119). The petitioner has failed to point out malafides or violations of any statutory rules.

10. In view thereof, this Original Application turns out to be devoid of any merit and is dismissed.
11. The parties are left to bear their own costs.

Sanjiv
(SANJEEV KAUSHIK)
MEMBER (J)

Rajwant
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 15.10.2015

HC*