

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2287/2012

Reserved on : 14.02.2017.

Pronounced on : 22.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Sh. Narottam Sharma,
Asst. Director (Vig.),
Vikas Sadan, INA,
New Delhi.
R/o C-3/160, Brij Puri,
Delhi-110094.
Aged about 55 years.

.... Applicant

(through Sh. Malaya Chand, Advocate)

Versus

Delhi Development Authority
Through its Vice Chairman,
Vikas Sadan, INA,
New Delhi.

.... Respondents

(through Sh. A.K. Roy for Sh. Manish Garg, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

On 02.01.2002 disciplinary proceedings were initiated against the applicant and charge sheet was issued. The applicant appeared in Limited Departmental Examination held during the year 2003 for filling up the post of Assistant. He was declared successful vide order dated 21.04.2003. He could, however, not be promoted

immediately since disciplinary proceedings initiated against him vide charge sheet dated 02.01.2002 was pending. In this charge sheet on 07.06.2004 penalty of stoppage of increment for a period of one year was awarded to the applicant. The applicant filed an appeal and the penalty was modified to the extent of reduction by one stage in the scale of pay without cumulative effect for a period of one year w.e.f. 07.06.2004 vide order dated 01.02.2005. Since this order was not challenged by the applicant in any forum, it attained finality. The currency of the aforesaid penalty ended on 07.06.2005. Consequently, the applicant was promoted to the post of Assistant w.e.f. this date vide order dated 24.08.2005. The applicant was assigned seniority above his junior Sh. Lokender Kumar Saxena, who was promoted vide order dated 29.03.2003. On 11.03.2010 pursuant to recommendations of DPC, certain Assistants having minimum qualifying service of six years were considered for promotion to the post of Asstt. Director. Name of the applicant also figured in this list. On 16.07.2010, the applicant was promoted as Asstt. Director. Now by the impugned order dated 31.05.2012, the respondents have postponed the date of promotion of the applicant from 16.07.2010 to 01.08.2011. His seniority has also been ordered to be accordingly fixed. The applicant has challenged the aforesaid order in this O.A.

2. In their reply, the respondents have submitted that the currency of the period of penalty that had been awarded to the applicant

expired only on 07.06.2005. His six years of qualifying service for next promotion would also count from that date only. However, inadvertently, his name got recommended giving him the benefit of retrospective promotion w.e.f. 29.05.2003. This mistake was subsequently realized and a review DPC then recommended that applicant's promotion to the post of Assistant Director issued vide order dated 16.07.2010 be withdrawn and he be promoted instead w.e.f. 01.08.2011. The respondents have submitted that they only corrected an error, which had occurred while granting promotion to the applicant earlier.

3. We have heard both sides and have perused the material placed on record. Learned counsel for the applicant argued that the action taken by the respondents was contrary to the Instructions issued vide D.G., P&T's letter No. 7/31/63-SPB-II dated 25.06.1965, according to which if an officer has been punished in the disciplinary proceedings then he should be promoted only after the expiry of the penalty but his seniority may be determined on the basis of rank obtained by him in the competitive examination. Further, the applicant's counsel stated that the impugned order had been passed without giving a show cause notice to the applicant. Thus, there has been complete violation of principles of natural justice. In this regard, he has relied on the judgment of Hon'ble High Court of Delhi in the case of **Munazir Hussain Vs. DDA & Anr.** [WP(C) No.

19687/2004] dated 11.11.2005. He has also relied on the judgment of Apex Court in the case of **Official Liquidator Vs. Dayanand**, 2008 (13) SCALE 558 wherein it has been laid down that fairness is nascent addition to principles of natural justice. He further submitted that in the case of **Dharam Pal Vs. DDA** (OA-715/2011) this Tribunal on 18.02.2011 protected the applicant by directing the respondents to maintain status quo.

4. Respondents on the other hand relied on the judgment of Apex Court in the case of **UOI Vs. Narendra Singh**, (2008)1 SCC (L&) 547 to say that an error or a mistaken decision can always be rectified.

5. We have considered the aforesaid submissions of the parties. We find that the Instructions relied upon by the applicant pertained to D.G., P&T and were not directly applicable to the applicant who was working with DDA. On the other hand, we find that DoP&T has issued clear instructions on this subject vide their O.M. No. 22034/5/2004-Estt.(D) dated 15.12.2004. The aforesaid Instructions are reproduced hereunder:-

“Promotion of persons undergoing a penalty

The undersigned is directed to refer to DoPT OM No. 21/5/70-Estt (A) dated 15th May, 1971(reiterated vide O.M. No. 22011/2/78-Estt(A) dated 16.2.1979) and to say that in terms of the provisions of these Office Memoranda, a Government servant, on whom a minor penalty of withholding of increment etc. has been imposed should be considered for promotion by

the Departmental Promotion Committee which meets after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given effect **after** the expiry of the currency of the penalty. It has, however, been separately clarified vide Office Memorandum No. 22011/2/92-Estt (D) dated 30th November, 1995 that in such cases, the seniority would be fixed according to the position of the officer in the panel on the basis of which he is promoted on expiry of the period of currency of the penalty.

2. Doubts have been expressed regarding the pay fixation and date of commencement of the eligibility service in such cases. It is clarified that since the promotion is to take effect only from a date subsequent to the expiry of the currency of the penalty, the officer would be entitled to pay fixation in the promotional grade with effect from the date of actual promotion only. Even if a person junior to him in the panel is promoted earlier, it will have no bearing on the pay to be allowed on promotion to the officer on whom a penalty was imposed, and there shall be no stepping up of his pay.

3. Similarly, as the officer undergoing penalty is not to be promoted during the currency of the penalty, the eligibility service in the promotional grade for further promotion shall commence only from the date of actual promotion and in no case, it may be related, even notionally, to the date of promotion of the junior in the panel."

5.1 A mere reading of these Instructions would make it abundantly clear that an officer undergoing penalty can be promoted only after expiry of the penalty and that in such cases his eligibility for next promotion shall also commence from the date of actual promotion and shall not be related even notionally to the date of promotion of the junior in the panel. This stands to reason as a government servant undergoing penalty cannot be treated in the same manner as Government servant, who has an unblemished record. Thus, the

decision of the respondents was in accordance with DoP&T Instructions.

5.2 The applicant has also questioned the decision on the grounds that the same has been taken without issuing a show cause notice to him and, therefore, there has been denial of natural justice to him. It is not disputed by the respondents that no show cause notice was indeed issued to the applicant. However, we find that the decision in the instant case was taken on the basis of factual matrix of this case. Even if a show cause notice had been issued to the applicant, there was nothing that he could have said in reply to the same, which would have altered the factual matrix of this case. In such a situation, show cause notice would have served no purpose and would have remained an empty formality. We are, therefore, of the opinion that non issue of such a notice has not caused any prejudice to the applicant and thus there has been no violation of principles of natural justice.

6. No other point was raised before us by learned counsel for the applicant. We are, therefore, of the opinion that there is no merit in this O.A. Accordingly, the same is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member(A)

/Vinita/