

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 809 of 2012

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

ARUNAVA DAS

VS

UNION OF INDIA & ORS.

For the applicant : None

For the respondents : Ms. M. Bhattacharyya, counsel

Order on : 12.9.16.

O R D E RMs. Bidisha Banerjee, J.M.

Ld. Counsels were heard and materials on records were perused.

2. This application has been filed seeking the following reliefs :

- a) An order quashing and/or setting aside the impugned communication 9.7.12 as well as the letter dated 28.8.12, office order dated 29.8.12 and memo dated 31.8.12 at Annexures A/11, A/15, A/16 and A/17 respectively to original application;
- b) An order directing the respondents to give effect to the OM dated 3.2.2010 followed by office order dated 12.2.2010 and also an order directing the respondent to treat the applicant as promoted as Accounts Officer in CCA West Bengal in DOT with retrospective effect when other Assistant Accounts Officer mentioned in OM dated 14.1.2010 were posted on promotion with all consequential benefits.
- c) An order holding that the subsequent order dated 3.7.12 as mentioned in Annexure A/11 is bad in law.

3. The admitted facts that could be culled out from the pleadings of the parties are as under :

The applicant was promoted to Accounts Officer (AO) from AAO, vide order dated 14.1.10. He was asked to submit his choice of posting as Accounts Officer vide communication dated 3.6.11. He was not released and so he made a representation on 17.6.11 whereafter he was informed that due to non-

issuance of vigilance clearance his promotion could not be effected. The applicant at one breathe has denied pendency of any vigilance case, but has at the same breathe admitted that vigilance clearance was given on 15.2.11.

Subsequently he was directed to be posted to CCA (Assam) Telecom Circle. The applicant is aggrieved as according to him he was denied promotion and posting at CCA (West Bengal) Circle w.e.f. the date of issuance of promotion order, i.e. 14.1.10.

4. The respondents in their reply have averred as under :

That after the promotion, an office order dated 12.2.10 was issued to the officers to submit their acceptance or otherwise, within 10 days to make arrangement for relieve. A letter was issued to the Vigilance Section on 9.2.10 for processing the case for promotion and posting in DOT in the cadre of Accounts Officer. The Vigilance Section withheld its clearance on the ground that the applicant was proceeded under Rule 16 of CCS (CCA) Rules, 1965 and was awarded a punishment of stoppage of next increment for three years without cumulative effect from 1.7.06 to 30.6.09, by the CPMG (West Bengal) Circle vide memo dated 3.4.06. Although the currency of punishment was over on 30.6.09, in terms of DOPT OM dated 14.12.07 vigilance clearance could not be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed on an officer and for a period of five years in case of a major penalty during which period the performance of the officer is to be closely watched. Since the performance was found clear from vigilance angle, the clearance was ultimately issued on 15.2.11. His name was forwarded to the Directorate for effecting promotion and finally he was promoted to the post of Accounts Officer w.e.f. 15.2.11 retrospectively vide Directorate's letter dated 3.7.12 communicated on 9.7.12.

5. According to the respondents the DOPT letter dated 14.1.10 had two parts. The first part conveyed promotion and the second part allotted place of posting subject to vigilance clearance. Therefore unless vigilance clearance was given the promotion could not take effect. Further, since the post could not

kept vacant for long, it was filled up and by the time the promotion order dated 3.7.12 was issued there was no vacancy in West Bengal Circle, so the applicant had to be adjusted against vacancy in Assam Circle.

6. The respondents have further pleaded that as per transfer policy under OM dated 27.6.11, on promotion to AAO to AO cadre the candidates could be posted out of the Circle and therefore they submitted that there was no infirmity in posting him out of Circle or to turn down the request of the applicant dated 17.7.12 for change of place of posting. Therefore according to the respondents they were absolutely justified in issuing the promotion order in 2012.

7. We have perused the DOPT OM dated 14.12.07, as contained in Annexure R/2 to the reply. It clearly mandates withholding of vigilance clearance for a period of three years after currency of the penalty, in the following words :

"Vigilance clearance will not normally be granted for a period of three years after the currency of the punishment, if a minor penalty has been imposed on an officer. In case of imposition of a major penalty, vigilance clearance will not normally be granted for a period of five years, after the currency of punishment. During the period, the performance of the officer should be closely watched."

The respondents have applied this provision, as their reply amply demonstrates.

8. The promotion order dated 14.1.2010 unambiguously spelt out the following :

"3. Orders regarding place of posting in respect of the officers allotted to DOP/DOT will be issued by the DDG(PAF)/DDG(FEB).

xxx xxx xxx xxx

5. *Head of the Postal Accounts offices will communicate the orders and the place of posting to the officer(s) concerned immediately and obtain from them their acceptance of the offer of promotion within 10 days of the receipt of this memorandum and forward the same to this office. Acceptance of the offer includes the acceptance of the place of posting and no representation for change of place of posting will be entertained. The officers may be immediately relieved by the authorities concerned to report for duty on promotion in the place of their posting.*

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9. The promotion of the officer(s) as in para (1) above is subject to the condition that no disciplinary / vigilance case of the types referred to in the Department of Personnel and Training OM No. 22011/4/91-ESTT (A) dated 14.9.1992 is pending against them and such case, if any, be referred to the Directorate, and no promotion be made. Further, if in respect of any officer some punishment like stoppage of increment etc. is current, he/she should not be promoted/relieved on promotion and his/her case should be reported to this office immediately."

The order dated 14.1.2010 was forwarded on 5.2.2010 with order dated 3.2.2010 which clearly spelt out that

"Before relieving the officers, it may be ensured that no vigilance/disciplinary case are pending against them."

After obtaining vigilance clearance on 15.2.11 (Annexure A/7) the applicant was asked to give his option for posting. On his representation dated 17.6.11 he was intimated on 1.7.11 that promotion could not be granted due to non-issuance of vigilance clearance. The said order dated 1.7.11 is not under challenge in this OA. We have noted the supporting rules supra and found the stand to be absolutely in order.

9. We have also noted that on 9.7.12 (Annexure A/11) the order of the competent authority dated 3.7.12 granting regular promotion to the applicant an AAO to the cadre of AO, subject to terms and conditions as contained in the original promotion order dated 14.1.10 was served. Applicant was granted promotion w.e.f. 15.2.11 retrospectively from the date when vigilance clearance was conveyed and not from the subsequent date when the promotion order dated 3.7.12 was issued. Monetary benefit was however, granted from the date he actually assumed the charge of AO cadre. The applicant has failed to make out a case that he was eligible to retrospective promotion w.e.f. the date of the original promotion order i.e. 14.1.10. Although he has claimed such relief, the basis of such claim is not supplied.

10. Further, we noted a communication dated 10.1.13 which manifests that between 1.7.12 to 10.1.13 there was no vacancy in the West Bengal Circle. Therefore, it is a fact that by the time the vigilance clearance was obtained and

promotion order of 3.7.12 was issued there was infact no vacancy in the West Bengal Circle to accommodate the applicant.

11. In view of above, when promotion was granted retrospectively from the date vigilance clearance was obtained in scrupulous observation of DOPT OM dated 14.12.07, we find no infirmity with the respondents' action, more so in view of the fact that the propriety of or correctness of applicability of DOPT OM dated 14.12.07 upon the applicant as also the communication dated 1.7.11, have not been assailed in this OA.

12. However, neither the applicant nor the respondents have placed any provision which would demonstrate that after obtaining vigilance clearance, whether the applicant would still be deprived of his promotion w.e.f. the date of promotion order, when no proceedings were pending and currency of penalty was already over.

13. Therefore let a reasoned and speaking order be issued to that effect by two months from the date of receipt of the copy of this order.

14. Accordingly the OA is disposed of. No costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANÉRJEE)
MEMBER (J)

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