

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.040/00057/2018

Date of order: This the 12th day of February, 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Shri Kamal Nayan Goswami
Junior Engineer (Civil)
Office of the CCE (Army) No. 3
Narangi Cantt. Pin-900328
C/o-99 APO, Assam.

...Applicant

By Advocates: Mr. M. Chanda, Mrs. U. Dutta & Ms. D. Neog

-Versus-

1. The Union of India
Represented by the Secretary
To the Govt. of India
Ministry of Defence, New Delhi – 110001.
2. Director General (Pers) E1B
Military Engineer Services, Engineer-in-Chief Branch
Integrated HQ of MOD (Army), New Delhi, Pin – 110011.
3. The Chief Engineer Eastern Command
Engineers Branch, Pin-908542, C/o 99 APO.
4. Chief Engineer, CCE (Army) No. 3
Narangi, Cantt. Guwahati
Pin – 900328, C/O 99 APO, Assam.
5. Engineer-in-Chief
Military Engineer Services
IHQ of MOD (Army) DHQ
PO – New Delhi – 110011.

...Respondents

By Advocate: Mr. V.K. Vatra, Sr. SC

O R D E R (O R A L)**MANJULA DAS, JUDICIAL MEMBER:**

The present O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned letter dated 9-1-2018 and further be pleased to direct the respondent to open the sealed cover where in findings of the DPC is kept due to pendency of the criminal proceeding instituted through special case no 5/2012 before the Ld special judge CBI Assam and further be pleased to promote the applicant on the basis of the findings including all benefit i.e. seniority, financial benefit in the grade of AE B/R in the light of promotion order dated 13.05.2013.
- 8.2 That the Hon'ble tribunal pleased to direct the respondents to grant benefit of third MACP as due and admissible to the applicant with immediate effect with arrear monetary benefit.
- 8.3 Costs of the application.
- 8.4 Any other relief (s) to which the applicants are entitled as the Hon'ble Tribunal may deem fit and proper."

2. At the outset of his argument, Mr. M. Chanda, learned counsel appearing on behalf of the applicant submits that so far

relief 8.2 is concerned, applicant has already got the relief. However, the relief sought in para 8.1 is remained.

3. It was submitted by Mr. Chanda that the applicant was initially appointed as Supdt. B/R (Building/Road) Grade-II in the year of 1987 in the Military Engineer Services, Govt. of India, Ministry of Defence. He is presently serving as Junior Engineer (Civil) erstwhile Supdt. B/R Grade-II in the office of the CCE (Army) No. 3 Narangi Cantt, Pin 900328, C/O 99 APO. According to Mr. Chanda, while the applicant serving as JE 9Civil) in the office of the Garrison Engineer (Air Force), Borjhar, Guwahati, a criminal proceeding was instituted against the applicant and others under section 120 B/471/420 IPC and under Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act 1988 at the instance of CBI and the case was registered as Special Case No. 05/2012. The Ld. Special Judge, CBI, Guwahati, Assam vide judgment and order dated 30.09.2016 acquitted the applicant on merit and set him at liberty.

4. While the said criminal proceeding was instituted during the year 2012, the respondents issued a promotion order vide DG HQ letter baring No. MES/76/2013 dated 13.05.2013 whereby as many as 14 Junior Engineers (Civil) were promoted to the Grade of Asstt. Engineer (B/R) including 05 juniors of the applicant. At the relevant time when the promotion order dated 13.05.2013 was issued promoting the juniors of the applicant, no other disciplinary

proceeding or criminal proceeding was pending against the applicant. Vide letter No. 131834/3/6535/ENGRS/EID dated 29.11.2012, it was informed by HQ Eastern Command to Chief Engineer Shillong Zone that the applicant is involved in a CBI case from 13.04.2012 but the same has not been mentioned in the integrity certificate submitted vide CWE Tezpur letter dated 20.11.2012. However, it is evident from HQ Eastern Command letter bearing No. 131834/3/6492/ENGRS/EID dated 26.10.2012 whereby, integrity vigilance clearance and ACR's of the JE's who were within the zone of consideration were instructed to be forwarded for onwards transmission, wherein the name of the applicant is also figured. However, name of the applicant was not included in the promotion order dated 13.05.2013 due to pendency of the criminal proceeding.

5. Applicant vide his representation dated 24.05.2013 as well as 20.03.2014 requested the DG HQ MOD, New Delhi requested to follow the sealed cover procedure in his case, since final judgment is yet to be pronounced in the pending criminal proceeding. Thereafter, applicant submitted one representation on 24.10.2016 for consideration of his promotion to the post of Asstt. Engineer B/R for the year 2012-13 in the light of promotion order dated 13.05.2013, in view of this acquittal in the criminal proceeding. Finding no response for consideration of this promotion to the grade of AE B/R at par with his juniors, the applicant again submitted another representation for

his promotion for the year 2012-13 on 03.11.2017. The Chief Engineer, Narangi vide letter dated 06.12.2017 addressed to the HQ Chief Engineer Eastern Command intimated that penalty of "CENSURE" was imposed vide letter dated 11.10.2017. The Chief Engineer Eastern Command vide order dated 15.12.2017 recommended the case of the applicant for both promotion and MACP and forwarded the same to the Headquarters, Eastern Command for further necessary action.

6. According to Mr. Chanda, the penalty of "CENSURE" imposed upon the applicant vide order dated 11.10.2017 as indicated in the Chief Engineer letter dated 06.11.2017 pursuant to a separate departmental proceeding which was initiated vide charge memorandum dated 18.05.2016 for imposition of minor penalty proceeding which was finally concluded by way of minor penalty of "CENSURE", the said proceeding which was initiated subsequently vide memorandum dated 18.05.2016 has no nexus with his claim for promotion to the grade of AE B/R at least w.e.f. promotion of his juniors, issued vide order dated 13.05.2013 wherein the findings of the DPC proceeding is kept under sealed cover due to pendency of the criminal proceeding No. 05/2012 before the Ld. Special Judge CBI, Guwahati, Assam. As such, applicant has acquired a valuable legal right for his promotion to the Grade of AE B/R at least from the date of promotion of his immediate juniors with all consequential benefit

including seniority as granted vide promotion order dated 13.05.2013.

7. Considering the above facts, it is obligatory part of the respondents to open the sealed cover and to give effect of the same when the juniors and batch mates were promoted vide promotion order dated 13.05.2013 in the event of recommendation of DPC. As such, the penalty of "CENSURE" imposed upon the applicant pursuant to a separate proceeding instituted vide charge sheet dated 18.05.2016 has no relevancy with the claim of the applicant for retrospective promotion. To substantiate his argument, learned counsel for the applicant has relied upon the following decisions:-

1. **Union of India and Ors. Vs. Dr. Sudha Salhan (1998) 3 SCC 394;**
2. **Delhi Jal Board Vs. Mahinder Singh (2000) 7 SCC 210; and**
3. **A. Verma Reddy Vs. Controller General of Defence Accounts, New Delhi and Ors. of Andhra Pradesh High Court in W.P. No. 17905 of 2000 dated 20.07.2001.**

In the case of **Dr. Sudha Salhan**, the Hon'ble Apex Court held that:-

"The question, however, stands concluded by a Three Judge decision of this Court in Union of India and Ors. Vs. K.B.Jankiraman & Ors. (1991 (4) SCC 109 in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has

any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officers, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

In the case of **Mahinder Singh**, the Hon'ble Apex Court held that:-

"The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under [Article 16](#) of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the Disciplinary Enquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any Disciplinary Enquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer. If he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench."

In the case of **A. Verma Reddy**, the Hon'ble Andhra Pradesh High Court has held that – 'An employee cannot be denied consideration for promotion on the ground that he was awarded the punishment of censure'.

Further held that – 'Denial of promotion on the ground of pendency of disciplinary proceedings due to misreading of facts and non application of mind held not justified'.

In view of the above, Mr. Chanda vociferously argued that the applicant is legally entitled to benefit retrospective promotion at par with his juniors and also the third MACP due an admissible to the applicant.

8. Heard Mr. M. Chanda, learned counsel for the applicant and Mr. V.K. Vatra, Sr. Standing counsel for the respondents. We have gone through the documents as well as decisions relied upon by the learned counsel for the applicant. It is noted that the penalty of "CENSURE" has no relevancy inasmuch as charge sheet was issued subsequently on 18.05.2016 whereas "CENSURE" is given on 11.10.2017 whereas his promotion was due on 13.05.2013 from the very date of his immediate juniors have been promoted. It is further noted that findings of the DPC proceeding is kept under sealed cover due to pendency of Criminal case No. 5/12 before the Special Judge CBI, Guwahati whereas the applicant was exonerated on 30.09.2016.

9. In the case of **Dr. Sudha Salhan (supra)**, the Hon'ble Apex Court categorically held that ***if the officers, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the***

Departmental Promotion Committee would be opened, and the recommendation would be given effect to.

10. Considering the above fact, it is justified to direct the respondent authority to open the sealed cover and if the applicant is otherwise found eligible, the benefits be extended to the applicant along with consequential benefits. Ordered accordingly. The entire exercise shall be carried out by the respondent authorities within a period of three months from the date of receipt copy of this order.

11. O.A. stands disposed of accordingly. There shall be no order as to costs.

**(NEKKHOMANG NEIHSIAL)
MEMBER (A)**

**(MANJULA DAS)
MEMBER (J)**