

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/21/113/2018

**Reserved on: 05.04.2019
Order pronounced on: 08.04.2019**

Between:

O. Praveen Kumar,
S/o. O. Kashaiah,
Aged about 32 years,
Working as Plane Tabler, Gr.II,
O/o. The Director, Andhra Pradesh
GEO-Spatial Data Centre,
Uppal, Hyderabad – 500 039.

...Applicant

And

1. The Union of India rep. by
The Surveyor General of India,
Dehradun – 248 001,
Uttarakhand State.
2. The Addl. Surveyor General,
Southern Zone, Sarjapur Road,
Koramangala, 2nd Block,
Bangalore – 560 034,
Karnataka State.
3. The Addl. Surveyor General,
IIS&M, Survey of India,
Uppal, Hyderabad.
4. The Director,
The Andhra Pradesh Geo-Spatial Data Centre,
Uppal, Hyderabad – 500 039.
5. The Deputy Surveyor General,
O/o the Surveyor General of India,
Dehradun – 248 001,
Uttarakhand State.

...Respondents

Counsel for the Applicant ... Mrs. Rachna Kumari

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for keeping the promotion of the applicant in abeyance adversely affecting the interests of the applicant.

3. Brief facts of the case are that the applicant while working as Plane Tabler Grade- II in the respondents organisation, a penalty of recovery of Rs 1,20,000 was imposed by the disciplinary authority on 10.2.2017 which was upheld by the appellate authority on 19.5.2017. Aggrieved, applicant approached the Tribunal and the penalty of recovery was stayed vide orders dated 16.6.2017 in OA 458 of 2017. Applicant on passing the written exam for the promotional post of surveyor in August 2016, along with 3 others was sent for training at respondents training institutes located at Hyderabad and Delhi. Applicant received the promotion order which he accepted on 26.12.2017. 4th respondent directed the 3rd respondent on 27.12.2017 to relieve the applicant to enable him to join the promoted post. Thereafter, the very next day ie on 28.12.2017 orders were issued to keep the promotion in abeyance. From 29.12.2017 on wards, applicant represented on several occasions to permit him to join the promoted post but there was no response and hence the OA.

4. The main contention of the applicant was that the minor penalty of recovery was stayed by the Tribunal on 16.6.2017. Hence denying the promotion was illegal. Besides, DPC while considering his past service record,

has promoted the applicant. Respondents are adopting pressure tactics to force him to withdraw the case in the Tribunal by delaying his promotion. Applicant was subjected to double jeopardy by withholding pay and the promotion which is bad in law. As per DOPT memo dt. 15.12.2004 promotion to an employee can be given effect to after the punishment currency is over and if found fit otherwise.

5. Respondents filed a reply statement stating that the applicant was permitted to join the promoted post on 7.3.2018 by giving effect to the promotion from 26.12.2017 vide their letter dated 7.3.2018. The financial benefit was ordered to be given from the date of joining the post. The relief sought by the applicant has been granted and hence the OA has become infructuous.

6. Heard both the counsel and perused the documents plus the material papers submitted.

7. I) The relief sought by the applicant was to grant promotion from 26.12.2017. The same has been granted by the respondents vide letter dated 7.3.2018. Learned counsel for the applicant submitted that the pay and allowances have to be paid from 26.12.2017 and not from 7.3.2018 because it was the mistake of the respondents in delaying the promotion. As seen from the records, applicant was involved in a disciplinary case and it took some time in consulting the vigilance branch of the respondents organisation and obtaining clearance to promote the applicant. The delay is bonafide and not malafide. It is not out of place to state that a bonafide mistake can be corrected. A bonafide mistake cannot be taken advantage of by the applicant. Hon'ble Supreme Court

has observed that a bonafide mistake can be corrected in *VSNL v. Ajit Kumar Kar*, (2008) 11 SCC 591, as under :

“46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.”

Therefore, it does not confer the right on the applicant to seek pay and allowances from 26.12.2017. Besides, without discharging the duties and responsibilities assigned to a higher post, seeking pay and allowances of the said post is not in the realm of reason.

II) Respondents submitting that the applicant be reprimanded for filing the OA is uncalled for. It is the right of the applicant to approach the Tribunal when he is aggrieved to seek justice. It is seen that the OA was filed on 5.2.2018 and the promotion was given on 7.3.2018. Applicant made several representations commencing from 29.12.2017 onwards. Promotion enables an employee to climb the career ladder and it is a crucial event in one's career. It being so important, applicant being apprehensive that the promotion may be denied, approaching this Tribunal cannot be taken objection too. Respondents being a model employer, need to measure their responses and submissions while dealing with the grievances of the employees. They should not jump to conclusions since they have the power to decide the issues. Had they consulted the vigilance branch before denying the promotion, which is usually done, the grievance in question would not have arisen. Respondents need to introspect on the same.

III) Nevertheless, as promotion was granted from the date due as sought by the applicant, as expounded in paras supra, there is no reason for the Tribunal to further intervene in the matter. Hence the OA is dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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