

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 255/2011**

Reserved on: 24.01.2019  
Pronounced on: 06.02.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)  
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

N.K. Verma S/o Late Shri H.D.Verma, aged about 61 years, B-92, Vaishali Nagar, Jaipur last posted as Accounts Officer at NCC Directorate of Rajasthan, D-87, Meera Marg, Bani Park, Jaipur (Parent office Principal Controller of Defence Accounts, South West Command Khatipura Road, Jaipur-302012).

Legal heirs

1/1 Ashish Varma S/o Late Shri Nirmal Kant Varma, aged 30 year, R/o K-90, Ansal Sushant City, Kalwar Road, Jaipur.

1/2 Akansha Varma D/o Late Shri Nirmal Kant Varma, aged 30 year, R/o K-90, Ansal Sushant City, Kalwar Road, Jaipur.

...Applicants.

(By Advocate: Shri Vigyan Shah for Shri Mahendra Shah)

Versus

1. Union of India through its Secretary to Govt. of India, Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts, Ministry of Defence, Ulan Batar Road, Palam, Delhi Cantt-110010.
3. The Principal Controller of Defence Accounts, South West Command, Khatipura Road, Jaipur-302012.
4. Y.K. Sharma, Senior Accounts Officer, Local Audit Office, Army Kota

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Through Pr. Controller of Defence Accounts(SWC),  
Khatipura Road, Jaipur.

5. D.R. Gupta, Senior Accounts Officer,  
Local Audit Office, Army Kota  
Principal Controller of Defence Accounts Office (SWC),  
Through Pr. Controller of Defence Accounts(SWC),  
Khatipura Road, Jaipur.

...Respondents.

(By Advocate: Shri Rajendra Vaish)

### **ORDER**

**Per: A.Mukhopadhaya, Member (A):**

This Original Application, (OA), arises from the denial of promotion to the applicant from the post of Accounts Officer to the post of Senior Accounts Officer as evidenced in the promotion orders issued by the respondents on 30.04.2007, purportedly on account of disciplinary proceedings having been initiated against him vide Memorandum of Charges dated 27.04.2007. The applicant states that he was not considered for promotion even by the subsequent DPCs against the vacancies for the year 2008-2009, 2009-2010 and 2010-2011 due to this pending disciplinary case and thus superannuated without being given the benefit of this promotion on 31.08.2010.

2. Briefly, the facts of the case are that the applicant, whose name was not included in the promotion list issued on 30.04.2007 as mentioned above, represented to the respondents stating that being senior to the persons promoted on 30.04.2007 and there

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being no disciplinary enquiry pending against him on that date, the respondents should have promoted him to the post of Senior Accounts Officer on 30.04.2007. The chargesheet against him dated 27.04.2007, the applicant states, was served upon him vide forwarding letter issued on 04.05.2007 and served on him only thereafter and thus, on the date of passage of promotion orders dated 30.04.2007, no memorandum of charges had been communicated or conveyed to him. Accordingly, his name should have been considered for promotion by the DPC which had been convened on 25.04.2007 and he should have been duly promoted to the post of Senior Accounts Officer as per rules on 30.04.2007.

3. As regards the disciplinary proceedings in question and the penalty of reduction of pay to one stage lower in the pay scale till his retirement on 31.08.2010 vide respondents' order dated 26.05.2010, (Annexure A/2), the applicant points out that this order was unwarranted in view of the Presenting Officer having specifically brought on record in a written brief submitted by him to the Inquiry Authority, (Annexure A/9), that he was **"of the opinion that all the purchases have been made under the powers of appropriate CFA and no undue pecuniary gain to the supplier has been resulted by the act of charge officer. Therefore, no charges can be established against the charge officer."** The inquiry report, (Annexure A/10), also

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reiterated that **“there were no witnesses from either side”** in the inquiry and recorded the following findings and conclusion:-

Findings of the Inquiry Authority

**“After careful analysis and evaluation of the evidences adduced during the inquiry, the undersigned is of the considered view that only four out of the six bills referred in the charge sheet were relevant in the case of the C.O. The provisions of Paras 119 and 121(b) of UA Manual deal with contractors’ bills for works etc. as distinct from local purchase bills pointed through the charge sheet. The C.O. is fully justified in submitting that in terms of the provisions of Appendix I to Office Manual Part I quoted in his statement of defence, he was required to carry out only a test check on the audit carried out by his staff and did not have to go over the entire ground covered by them. Hence non-detection and not objecting to the blank/non dated bills during test check at his level can only be treated as a minor omission, which in turn, may not be given any cognisance due to the fact that the bills in question bore Supply Order No. and the stores purchased through these bills were also certified to have been accounted for by way of CRV action by the executives, and as such there was no chance for the C.O. to unduly benefit the suppliers. The contentions made by the C.O. in this regard have also been stated to be convincing as per the P.O.’s written brief. Further, it has been ascertained by the I.A. through mandatory questions during general examination that whenever bills with blank/non date were noticed by him during his percentage check, the same used to be handed over to the executive authorities for rectification and resubmission.**

**As regards vetting of six bills referred in the charge sheet, it has been established that two of the said supply orders had not been vetted by him. In so far as the remaining four supply orders are concerned, it has transpired that the same are endorsed with the certificates under Item 5(a) (ii) of Table B of RMES, which**

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**entitles MES authorities to purchase stores not available under rate running contracts. Even the stores under DGS&D rate contracts can be purchased by them within the powers vested vide Item 5(b) of Table B of RMES. As the value of each such supply order was well below the financial ceiling of Rs.20,000/- laid down therein, the placing thereof by the GE under his powers would have been in order. Incidentally, the C.O. has also submitted that conservancy items like broomsticks, acids, phenoil and sundry items like nuts, bolts, warcels of assorted sizes purchased through these bills/supply orders are not expected to be covered under DGS&D rate contracts. The P.O. has also opined accordingly through his written brief. Hence, contravention to the provisions of Para 743 of RMES was not found to have been made by the C.O. in the case of vetting of supply orders as referred in the charge sheet. Further, the details of the exact amount of undue pecuniary gains stated to have been caused by the C.O. through vetting of supply orders admissible under relevant certificates endorsed thereon, have not been found accounted for in the charge sheet to justify the allegation.**

#### Conclusion

**“The undersigned is, therefore, of the opinion that the charge framed against Shri N.K.Verma, AO vide Annexure I to the CGDA New Delhi Memorandum No.AN/XIII/13700(363)06 dated 27.04.07 has not been proved.”**

However, the Disciplinary Authority, (DA), i.e. CGDA, disagreed with the findings of the Inquiry Officer, (IO); (Annexure A/11 dated 06.08.2009). The applicant submitted his reply against the DA's disagreement note on 18.08.2009; (Annexure A/12). Since this remained undecided for a while, he brought his grievance to this Tribunal vide OA No.185/2010. The same was disposed of by

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this Tribunal's order dated 13.04.2010 directing the respondents **"to take follow up action of reply so submitted by the applicant on the disagreement note dated 6.8.2009 also keeping in view the report submitted by the Presenting Officer and the finding recorded by the Inquiry Officer and to take such decision as far as possible within two months from the date of receipt of a copy of this order. It will also be open for the applicant to make representation to the respondents for his promotion to the post of Sr. Accounts Officer."**

Finally, the DA passed the impugned order on 26.05.2010; (Annexure A/2). A plain reading of this order which was passed after the Tribunal's order of 13.04.2010 as reproduced above, reveals that no reference was made in this to the Tribunal's orders on OA No.185/2010 as referred to above either in general or specifically with reference to the report submitted by the Presenting Officer and the findings recorded by the IO.

4. A further representation made in this regard on 12.07.2010 as well as the applicant's appeal against the DA's order dated 26.05.2010 were also rejected by the respondents vide their letter dated 25.08.2010 (Annexure A/3), and their order dated 28.12.2010, (Annexure A/1), respectively. Aggrieved by this

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sequence of events, the applicant has approached this Tribunal seeking the following relief:-

- (i) The impugned orders dated 26.05.2010, 28.12.2010 and 25.08.2010 be declared illegal being arbitrary and therefore the same be quashed and set aside.
- (ii) The respondents be directed to consider the applicant for promotion to the post of Sr. Accounts Officer w.e.f. 30.04.2007 and thereafter to the higher posts with all consequential benefits.
- (iii) Any other relief which is deemed fit and proper in the facts and circumstances of the case be also passed in favour of the applicant.

5. In reply, the respondents aver that the DPC held on 25.04.2007 rightly did not consider the applicant's case for promotion keeping in view Para-7 of DoP&T OM dated 14.09.1992, (Annexure R/2), which is reproduced below:

**"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also."**

Para-2 of this OM referred to in Para 7 above is reproduced below:

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**“2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee.**

- i) Government servants under suspension;**
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and**
- iii) Government servants in respect of whom prosecution for criminal charge is pending.”**

6. The respondents aver in their reply that the chargesheet in the disciplinary proceedings was **“issued”** on 27.04.2007 and **“conveyed to the applicant vide letter dated 04.05.2007”** and that therefore the provisions of Para 7 read with Para 2 of OM dated 14.09.1992 would be applicable in this case. The respondents further aver that the penalty imposed on the applicant vide DA’s order dated 26.05.2010, (Annexure A/2), and the subsequent order dated 28.12.2010 of the Appellate Authority, (Annexure A/1), rejecting the appeal of the applicant against this penalty order were both just, proper and in accordance with law. They contend that they have fully complied with the judgment/order of this Tribunal dated 13.04.2010 passed in OA No.185/2010. The respondents further contend that by the time the disciplinary proceedings in question attained finality, the DPC for the vacancies for the year 2010-11 had also



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been held on 12.04.2010 and it was thus not feasible to place the case of the applicant before a DPC as the applicant superannuated on 31.08.2010.

7. During the hearing of this OA, learned counsel for the respondents stated on 30.07.2018, (order sheet refers), that an FIR was lodged against the applicant on 30.10.2004 and pursuant thereto, disciplinary action had been contemplated against him. Since the fact with regard to registration of an F.I.R. against the applicant was disputed by learned counsel for the applicant, this Tribunal directed the respondents to place copies of the F.I.R. as well as advice of CVC on record. On placement of the said F.I.R. on record, (a perusal of the order sheet dated 27.09.2018 refers), it was revealed that the applicant was not named as an accused therein. The respondents were then directed to file an affidavit stating therein as to what was the outcome of the F.I.R. No.JAI 2004 A 0022 dated 30.10.2004, (Annexure R/3 with additional affidavit), and whether the applicant was ever summoned as an accused at any stage during the trial of this case.

8. Learned counsels for the parties were heard and the material available on record was perused.

9. Learned counsel for the applicant, while reiterating the applicant's contentions as detailed above, emphasised that the reply of the respondents clearly admits that the chargesheet in the disciplinary proceedings in question was despatched to the applicant only on 04.05.2007, i.e. well after the DPC for the year 2007-2008 was held on 25.04.2007 and promotion orders subsequently issued on 30.04.2007. Citing a judgment of the Hon'ble Supreme Court in the case of **Union of India Ors. vs. K.V.Jankiraman & Others**, (1991) 4 SCC 109 where it has been held that the sealed cover procedure can be resorted to only when the chargesheet has been issued and further referring to the Apex Court's explanation in the case of **Delhi Development Authority vs. H.C. Khurana**, (1999) 5 SCC 762 where it has been held that the date of issue of the chargesheet would be the same as the date of despatch of chargesheet, learned counsel for the applicant argued that this proved beyond doubt that in the present case, the chargesheet was issued only on 04.05.2007, i.e. well after the passage of the disputed promotion orders on 30.04.2007. He pointed out that the respondents in their reply have also cited the case of **Delhi Development Authority vs. H.C.Khurana, (supra)**, and thus have also acknowledged in effect that the despatch of the chargesheet and therefore its date of issue is indeed 04.05.2007. The applicant's counsel thus contended that when the DPC was convened on 25.04.2007, and the promotion orders were issued, excluding the applicant, on

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30.04.2007, no chargesheet had been issued to him in any disciplinary proceedings contrary to the claims made by the respondents in this regard in their reply and also vide Annexure A/3. He argued that in the circumstances, the provisions of Para 7 read with Para 2 of the DoP&T OM dated 14.09.1992, (Annexure R/2), would clearly not apply in the applicant's case and that therefore he should have been duly promoted to the post of Senior Accounts Officer on 30.04.2007 itself.

10. As regards the reference made by the respondents to the FIR allegedly lodged against the applicant by the CBI in this matter, applicant's counsel drew the Tribunal's attention again to the fact that when the relevant papers were placed on record, it became clear that his contention that the applicant was nowhere named as an accused by the CBI was correct in every detail. He further argued that the applicant therefore did not fall within the category described in Para 7 read with Para 2 of DoP&T OM dated 14.09.1992, (Annexure R/2), and that there was consequently no impediment, either on 25.04.2007 when the DPC was convened, or on 30.04.2007 when the promotion orders in question were passed, in promoting the applicant. The applicant had thus been wrongly deprived of his rightful claim for promotion as Senior Accounts Officer on 30.04.2007. The applicant had been harassed and should now be granted the benefits of such relief as had been sought.

11. *Per contra*, learned counsel for the respondents contended that while the original applicant not being named as an accused in the F.I.R. is evident from the record, the respondents have followed the procedure prescribed in the rules for conducting the disciplinary enquiry in question against the applicant in a completely bonafide manner and that therefore, the orders passed by the Disciplinary Authority on 26.05.2010, (Annexure A/2), and the Appellate Authority on 28.12.2010, (Annexure A/1), are just and legal. He further contended that the documents placed on record with the additional affidavit do refer to CBI case No. RC JAI 2004 A 0022 dated 30.10.2004, as had been contended by the respondents. However he admitted that the applicant's name does not figure as an accused in the F.I.R. lodged in the case; (Annexure R/3 with the additional affidavit).

12. On consideration of the material on record and the arguments of learned counsel for the parties, it is clear that on the date of DPC as well as the subsequent issue of promotion orders in 2007, (i.e. on 25.04.2007 and 30.04.2007 respectively), no chargesheet had been issued/despached to the applicant and therefore it cannot be said that any disciplinary proceedings were pending against him during that period. Similarly, the absence of his name as an accused in the CBI investigation/FIR also confirms that the adverse consequences of Para 7 read with Para 2 of DoP&T OM dated 14.09.1992, (Annexure R/2), should not have

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been visited upon him. Since this was however done, as admitted by the respondents themselves, their action in not promoting the applicant in their order dated 30.04.2007 appears to be completely without any basis in law and rules.

13. As regards the penalty order issued against the applicant in the disciplinary action in question on 26.05.2010, (Annexure A/2), and subsequently upheld by the Appellate Authority on 28.12.2010, (Annexure A/1), it is noted that during the course of these proceedings, neither the Presenting Officer nor the Inquiry Authority felt that any case was made out against the applicant. The case was purportedly decided purely on the basis of documents on record. The fact is mentioned clearly in the inquiry report that no witnesses were ever examined in order to prove the said documents. Also, despite this Tribunal's specific orders of 13.04.2010 in OA no.185/2010 to the respondents to keep in view the Presenting Officer's report and the IO's findings while taking follow-up action on the applicant's reply to the DA's disagreement note on the IO's findings, a plain reading of the DA's order of 26.05.2010 reveals that no discussion or analysis of these appears to have been undertaken in detailed or even in substantive terms. In the circumstances, the DA's penalty order in this case falls short of complying with the Tribunal's order dated 13.04.2010 in OA No.185/2010 in substantive terms. Further, the omission is question, in our view, also raises

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questions as to whether the basic principles of natural justice, which require that a delinquent/accused be considered innocent until charges against him are proved through due/prescribed process, have been adhered to in this case. In this context, the bald assertion in the DA's order that general provisions contained in Part-I of the respondents' own OM are "**not relevant**" in this case can only serve to strengthen the impression that due prescribed/process has only been followed in a mechanical manner here and not in substantive terms.

14. In the result, the OA is allowed. The impugned orders dated 28.12.2010, (Annexure A/1), 26.05.2010, (Annexure A/2), and 25.08.2010, (Annexure A/3), are hereby set aside. The respondents are directed to revisit the entire matter and if there are no other impediments to the promotion of the applicant, (now deceased), grant him notional promotion to the post of Senior Accounts Officer from 30.04.2007 along with all consequential benefits. This exercise may be completed within a period of three months of receipt of a certified copy of this order.

15. There will be no order on costs.

(A.Mukhopadhyaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/