

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A./100/2310/2013

New Delhi, this the 2nd day of January, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Dr. B.P. Sinha
S/o Late Shri A.P. Sinha
Residing at M-690, G.F.,
Princeton Floor, Sector-51,
Gurgaon – 122018, Haryana ... Applicant

(Through Ms. Rohini PD, Advocate)

Versus

1. Secretary, Mines,
Ministry of Mines,
Shastri Bhawan, Govt. of India
New Delhi
2. The Controller General
Indian Bureau of Mines,
Ministry of Mines,
Govt. of India, Indira Bhawan, Civil Lines
Nagpur-440001
3. Union of India
Through DOP&T
North Block, New Delhi
4. Shri Virender Singh
Under Secretary to Govt. of India
Ministry of Personnel, Public Grievances & Pension
DoP&T, North Block,
New Delhi
5. Union Public Service Commission
Through Secretary,
Dholpur House, Shahjahan Road,
New Delhi

(Through Shri Rajeev Kumar, for respondents 1 to 4
Shri R.V. Sinha and Shri Amit Sinha, for UPSC)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The facts of this OA would shock the conscience of anyone who has slightest concern for efficiency and honesty as regards functioning of the government, that too at the highest level. A deeper look into the issue would leave absolutely no doubt that authorities at the highest level, at the relevant point of time, acted in tandem on the one hand, to continue an otherwise objectionable officer at the helm of affairs and on the other, to deny the applicant what was legitimately due to him. Since all this occurred in the Indian Bureau of Mines (IBM), the reasons are not too far to seek. The mining went unabated but unfortunately not of any mineral.

2. The applicant was appointed as Assistant Controller of Mines in IBM, Government of India on 30.04.1979 by way of direct recruitment. He was promoted to the post of Deputy Controller and thereafter as Regional Controller. For the purpose of promotion to the post of Controller, the DPC was held on 17.01.2007. The applicant, however, was

overlooked and his juniors were promoted with effect from 28.02.2007. The applicant filed OA 66/2007 before the Patna Bench of the Tribunal feeling aggrieved by the denial of promotion. The OA was allowed and direction was issued to hold a review DPC to consider the case of the applicant. At that point of time, the post of Chief Controller became vacant on 1.07.2008. A review DPC, as directed by the Tribunal in OA 66/2007, was held on 3.10.2008. It has downgraded the ACRs of the applicant and as a consequence, he was declared 'unfit'.

3. The applicant knocked the doors of this Bench of the Tribunal by filing OA 640/2009, feeling aggrieved by the action of the review DPC. The OA was allowed on 22.10.2009. The order passed therein was upheld in Writ Petition and thereafter in SLP. As a result, the applicant was promoted to the post of Controller through order dated 21.04.2010, with effect from the date his juniors were promoted i.e. 28.02.2007.

4. In the meanwhile, DPC was held on 30.07.2009 for selecting candidates for promotion to the post of

Chief Controller. The name of one Shri Ranjan Sahai was recommended. However, the ACC did not clear his name on the ground that disciplinary proceedings were pending against him.

5. The applicant filed OA 3535/2010 before this Bench claiming relief as regards promotion to the post of Chief Controller. He pleaded that once he was promoted to the post of Controller with effect from 28.02.2007, he became senior to Shri Ranjan Sahai and thereby was entitled to be considered by a Review DPC. The fact that appointment of Shri Ranjan Sahai could not take place was also mentioned. The OA was allowed on 23.12.2010 directing the respondents to hold review DPC. Certain miscellaneous proceedings were initiated to get the directions in OA 3535/2010 implemented and ultimately, the review DPC was held on 9.07.2012. The name of the applicant was recommended.

6. However, through an order dated 11.12.2012, the ACC directed that the recommendations of the review DPC in respect of the applicant for promotion to the post of Chief Controller shall be deemed to have been

placed in sealed cover. The reason appears to be that a charge memo was issued to the applicant on 30.03.2012 in relation to certain alleged acts and omissions referable to remote past.

7. This OA is filed with a prayer to set aside order dated 11.12.2012 issued on the directions of the ACC and to direct the respondents to implement the recommendations of the DPC convened on 9.07.2012. Prayer is also made to declare the OM dated 2.11.2012, relied on by the respondents, as illegal and to take into account the purport of OM dated 21.11.2002. Other consequential reliefs are also prayed.

8. Two important developments have taken place during the pendency of this OA. The first is that the applicant retired on 30.09.2013 and the second is that through an order dated 29.08.2014, the competent authority has dropped the charges framed against the applicant through charge memo dated 30.03.2012.

9. The applicant contends that at the stage of promotion to the posts of Controller and Chief Controller, gross injustice was done to him, with a view to favour some interested persons and promotions

which he was legitimately entitled to, were denied to him. He further contends that the review DPC for the post of Chief Controller was held after a prolonged legal battle and the respondents brought into existence a charge memo with the sole objective of defeating his right of promotion and to accommodate Shri Ranjan Sahai in some capacity or the other in the department.

10. The UPSC and the Ministry of mines have filed separate counter affidavits. They contend that the applicant was promoted to the post of Controller, duly implementing the directions issued by the Tribunal in various proceedings and review DPC was also convened for promotion to the post of Chief Controller. They further state that but for the fact that the Disciplinary Authority (DA) issued a charge memo to the applicant, the recommendations of the DPC would have been implemented and that by the time the hurdle was removed, the applicant retired from service.

11. We heard Ms. Rohini PD, for the applicant, Shri Rajeev Kumar, for Union of India and Shri R.V. Sinha, for UPSC.

12. It is rather unfortunate that the brilliant career of the applicant was permitted to be spoiled, obviously at the instance of somebody who wanted to reach the top even by resorting to foul means. His promotion to the post of Controller was denied though nothing adverse against him was found and his juniors were promoted. The direction issued by the Patna Bench of this Tribunal in OA 66/2007, no doubt resulted in holding of review DPC. The amount of malice which the applicant had to face is evident from the fact that the DPC has chosen to downgrade his ACRs and, as a result, to declare him 'unfit'. It was a case of gross misuse of power by that agency. We would have analyzed the act of downgrading the ACRs of the applicant and depending on the facts, passed the strictures against the concerned members of review DPC, but for the fact that it is not an issue in this OA. Even after OA 640/2009 was allowed by this Bench, the respondents did not intend to give what was due to the applicant. Writ Petition and SLP were filed unsuccessfully. Left with no alternative, the respondents promoted the applicant to the post of Controller on 21.04.2010 with effect from 28.02.2007.

13. During this entire episode, Shri Ranjan Sahai became senior in the post of Controller and his name was recommended by the DPC which met on 30.07.2009. However, his name was not cleared by the ACC. Once the applicant became senior to Shri Ranjan Sahai, the respondents, in all fairness, should have convened the review DPC for promotion to the post of Chief Controller. Consistent with their attitude, they sat over the matter and the applicant had to file OA 3535/2010. Though the OA was allowed on 23.12.2010, it was not implemented till 9.07.2012 and, in the meanwhile, Shri Ranjan Sahai was permitted to function as the head of the organization. The Administrative Authority at the highest level was happy and comfortable with an officer who was not cleared by ACC and successfully ensured that the applicant comes nowhere near. The reasons are not far to seek.

14. The applicant moved this Tribunal for implementation of the order in OA 3535/2010 and the review DPC was held as late as on 9.07.2012 and it recommended the name of the applicant. However,

being sure that the applicant would come out successfully in review DPC, the respondents managed to get a charge memo issued to him on 30.03.2012. That became a hurdle for the ACC to clear the name of the applicant, which was recommended by the review DPC. The impugned order came to be issued in that context.

15. To meet the circumstances of this nature, the DoP&T issued circulars from time to time. Initially, it was through OM dated 14.09.1992. Thereafter, OM dated 21.11.2002 was issued. Its contents are brief and succinct, which read as follows:

"The undersigned is directed to refer to the instructions on sealed cover procedure as contained in this Department's OM No.22011/4/91-Estt. (A) dated 14.09.1992 and to say that a question whether the sealed cover procedure is to be followed by a Review DPC has been consideration of this Department in the light of the decision of the Central Administrative Tribunal in certain cases. The matter has been considered in consultation with the Ministry of Law and it has been decided that the sealed cover procedure as contained in the OM dated 14.09.1992 cannot be resorted to by the Review DPC if no departmental proceedings or criminal prosecution was pending against the Government servant concerned or he/she was not under suspension at the time of meeting of the original DPC or before promotion of his junior on the basis of the recommendations of the original DPC.

2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned these instructions are issued after consultation with the Comptroller and Auditor General of India."

16. From this, it is clear that whenever an officer is considered by a review DPC, it is only the circumstances, obtaining at the time when the original DPC met, that shall be taken into consideration. For example, if a junior is promoted overlooking a senior and a charge sheet is issued to the latter after such promotion, the same does not become a hurdle when the case is considered by the review DPC. Notwithstanding these clear instructions, the respondents denied the benefit of the recommendations of review DPC to the applicant. The whole exercise is tainted with arbitrariness and malafides. The fact that the charge memo dated 30.03.2012 was invented with the sole objective of denying promotion to the applicant, is evident from the fact that the DA dropped the charges against the applicant on 29.08.2014. The DA, however, ensured that proceedings are dropped when the applicant is no longer in service and could not become a hurdle in performance of their unlawful activities. We are compelled to observe that the whole

episode smacks of foul play and arbitrariness on the part of the respondents. Every step was meticulously planned to ensure that unlawful activities are continued unabated. The loss to the country could be phenomenal.

17. Under these circumstances, we allow the OA and set aside the impugned orders. The applicant shall be deemed to have retired from the post of Chief Controller and his pension and other benefits shall be reckoned on that basis. We award Rs.1,00,000/- (Rupees one lakh only) as a compensation for the gross injustice meted out to the applicant and mental agony he was subjected to. This exercise shall be completed within a period of two months from the receipt of a certified copy of this order. A copy of this order shall be marked to the secretariat of A.C.C.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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