

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00489/2012

Pronounced on : 20.09.2019
(Reserved on : 04.09.2019

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

Phusa Ram S/o Shri Ram Chandra, By Caste Jat, R/o Ward No.14,
 Choudhary Moti Ram Road, Purani Aabadi, Sri Ganganagar (Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. M.S. Godara, proxy for Mr. J.K. Mishra

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. SE, CWE, Sri Ganganagar HQ, Sri Ganganagar (Rajasthan).

RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav for R1 & R2

ORDER

Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

"8(a) By an appropriate order, writ or direction, the impugned order dated 30.11.2011 (Annexure A1) may kindly be quashed and set aside.

(b) By an appropriate writ, order or direction the respondents may kindly be directed to keep the recommendation of the promotion of the respondent no.3 in sealed cover and further directed to promote the applicant as he stands next in the promotion list to the respondent no.3.

(c) Any other order, which this Hon'ble Tribunal deems fit, just and proper in the facts and circumstances of this case, may kindly be passed in favour of the applicant."

2. This Original Application has been made against the order dated 30.11.2011 passed by SE, CWE, Sri Ganganagar by which the respondent no.3 was promoted from the post of Painter HS to M.C.M. (Annexure A1).

3. The brief facts of the present case as narrated by the applicant are that the applicant is working as H.S. Painter in the office of SE, CWE, Sri Ganganagar HQ, Sri Ganganagar. The seniority list was prepared by respondent no.2 on 05.01.2009 for promotion from H.S. to M.C.M. in which the name of respondent no.3 was shown at Sr. No.(t) and also the name of the applicant was shown at Sr.No.(u) in the same seniority list (Annexure A2). As per the Govt. of India, Ministry of Defence OM dated 20.05.2003 as amended vide Govt. of India, Ministry of Defence, OM No.11(1)/2002/D/(Civ.), dated 27.03.2006, respondent no.2 kept the recommendations of promotion of respondent no.3 in a sealed cover till finalization of the Criminal Revision No.485/2002, vide its order dated 12.08.2009 (Annexure A3) which is still pending before the Hon'ble High Court. On 30.11.2011, respondent no.2 promoted respondent no.3 w.e.f. 01.10.2007.

4. It is further stated that the promotion of respondent no.3 was kept in a sealed cover vide its order dated 12.08.2009 in Criminal Revision No.485/2002 on the ground of pendency before the Hon'ble High Court. After issuance of the letter dated 12.08.2009, no circumstances in regard to criminal case which has not been changed, inspite of this fact, respondent no.2 promoted respondent no.3 with effect from 01.10.2007. Aggrieved from the impugned order dated 30.11.2011, the applicant has submitted a representation dated 19.03.2012 (Annexure A4) to respondent no.2, and thereafter, he again submitted new representation

dated 04.05.2012 (Annexure A5) to the Commander Works Engineer, Sri Ganganagar, which was not availed and the concerned authorities did not give any reply to the said representation filed by the applicant. Aggrieved by the action of the respondents, applicant has no other alternative remedy except to approach this Hon'ble Tribunal for redressal of his grievance. Hence this OA.

5. In the written statement filed on behalf of the respondents, wherein it has been stated that answering respondent no.2 promoted Shri Hanuman Singh, MCM Painter, Sri Ganganagar (Respondent No.3) in accordance with Para 5 of Govt. of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi vide its letter No.22011/4/91-Estt(A), dated 14.09.1992 (Annexure R1). The relevant Paragraph 5 of the said letter is reproduced hereunder:-

"5. Inspite of six monthly review referred to in para 4 above, there may be some cases where the disciplinary case/criminal prosecution against the Govt. servant is not concluded even after the expiry of 2 years from the date of the meeting of the first DPC, which kept its findings in respect of the Govt. servant in a sealed cover. In such a situation the appointing authority may review the case of the Govt. servant provided he is not under suspension to consider the desirability of giving him adhoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against the public interest;*
- b) Whether the charges are grave enough to warrant continued denial of promotion;*
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;*
- d) Whether the delay in the finalization of proceedings, departmental or in a Court of law, is not directly or indirectly attributable to the Govt. servant concerned; and*
- e) Whether there is any likelihood or misuse of official position which the Govt. servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case / criminal prosecution. The appointing authority should also consult the central bureau of investigation and take their view into account where the departmental proceedings or criminal prosecution arose out of the investigation conducted by the bureau.*

6. It is also stated that Shri Hanuman Singh-Respondent no.3 was involved in a quarrel and sentenced one month, six months and two years simple imprisonment under different sections of IPC in Case No.106/99/4001 by First Class Magistrate Sadulshahar, Sri Ganganagar on 13.01.2001. Therefore, Shri Hanuman Singh-respondent no.3 had filed Criminal Revision Petition No.485/2002 in the Hon'ble High Court, Jodhpur since the Criminal case was pending from 2002 and accordingly respondent no.3 was promoted on 30.11.2011 with effect from 01.10.2007.

7. It is also further stated that the applicant has given wrong statement and he has not given any representation dated 19.03.2012 to respondent no.2. The applicant gave only one representation dated 04.05.2012 (Annexure A5) to HQ, Chief Engineer, Bhatinda Zone, Bhatinda. The application dated 04.05.2012 was received vide HQ Chief Engineer, Bhatinda Zone, Bhatinda's letter dated 26.05.2012 (Annexure R2) and the same was replied to the HQ Chief Engineer, Bhatinda Zone, Bhatinda vide HQ CWE, Sri Ganganagar's letter dated 17.07.2012 (Annexure R2). The contentions of the applicant that he did not receive any reply is incorrect. It is further added that respondent no.3-Shri Hanuman Singh has expired on 31.01.2015 and the applicant is senior most in seniority list of Painter HS-I category for promotion to the post of Painter MCM. But due to reduction in the ceiling/authorization in the category of Painter from 01.04.2013 (2013-14), there is no vacancy available for promotion of the applicant in category of Painter MCM. The respondents further state that the applicant will be promoted as and when vacancy will arise since the individual is senior most. The action of the answering respondents is perfectly just and proper being in accordance with the rules on the subject and further neither any *prima facie* is made out in favour of the applicant

nor balance of convenience lies in his favour, therefore, the interim relief prayed for by the applicant is liable to be rejected and the OA may be dismissed with costs.

8. Heard Shri M.S. Godara, proxy for Mr. J.K. Mishra, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for respondents no.1 & 2 and perused the pleadings available on record.

9. The case of the applicant is that his case for promotion HS to MCM has not been dealt with appropriately by the department and he therefore seeks relief for quashing the order dated 30.11.2011 (Annexure A1), directions to keep the recommendations of the promotion of respondent no.3 in a sealed cover and, instead promote the applicant who stands next in seniority. The grounds in which he seeks are that this order quoted ibid is illegal incorrect and improper and also the ground that the power of review has been incorrectly exercised by SE, CWE, Sri Ganganagar in the light of the Criminal Revision Petition No.485/2002, which is pending before the Hon'ble High Court of Rajasthan. Despite this, the SE CWE Sri Ganganagar has reviewed the earlier order.

10. In reply to this, the respondents have clarified that CWE, Sri Ganganagar is the appointing authority for Industrial staff and applicant is an Industrial employee. He is therefore, the competent authority to issue/review the promotion order.

11. In support of their submissions, the learned counsel for the applicant relied upon the judgment delivered by the Jodhpur Bench of this Tribunal in the case of Sagarmal in the year 2007 which is an identical case.

12. Per contra, the learned counsel for the respondents stated that the DPC met and kept the case of respondent no.3 in the sealed cover as

required in view of the pendency of the case. They also submitted that the DPC which met in the year 2009 only for adhoc promotion. In support of their action, the respondent relied upon the para 5 of Govt. of India, Ministry of Personnel, Public Grievances and Pensions, vide their letter dated 14.09.1992 (Annexure R1). The extract para 5 of the same is as below:-

"5. Inspite of six monthly review referred to in para 4 above, there may be some cases where the disciplinary case/criminal prosecution against the Govt. servant is not concluded even after the expiry of 2 years from the date of the meeting of the first DPC, which kept its findings in respect of the Govt. servant in a sealed cover. In such a situation the appointing authority may review the case of the Govt. servant provided he is not under suspension to consider the desirability of giving him adhoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against the public interest;*
- b) Whether the charges are grave enough to warrant continued denial of promotion;*
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;*
- d) Whether the delay in the finalization of proceedings, departmental or in a Court of law, is not directly or indirectly attributable to the Govt. servant concerned; and*
- e) Whether there is any likelihood or misuse of official position which the Govt. servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case / criminal prosecution. The appointing authority should also consult the central bureau of investigation and take their view into account where the departmental proceedings or criminal prosecution arose out of the investigation conducted by the bureau."*

13. Respondents submitted that Shri Hanuman Singh-respondent no.3 had filed Criminal Revision Petition No.485/2002 in the Hon'ble High Court, Jodhpur since the Criminal case was pending from 2002 and accordingly respondent no.3 was promoted on 30.11.2011 with effect from 01.10.2007.

14. They also stated that the respondent no.3 has since expired on 31.01.2015, the case in the High Court abated.

15. In view of the above, it was the case of the respondents that the grievance of the applicant suffers from infirmity and the action of the respondents in granting promotion to respondent no.3 was as per the provisions of Para 5 of the DOPT letter dated 14.09.1992 (Annexure R1).

16. Admittedly, applicant is senior most in the seniority list of Painter HS-I category for the promotion to the post of MCM. However, in view of the reduction of ceiling authorization in this category with effect from 01.04.2013, there is no vacancy available for promotion of the applicant.

17. It is the submission of the respondents that the applicant will be promoted as and when the vacancy will arise since the individual is senior most.

18. The submissions made by the respondents have not been countered by the learned counsel for the applicant. Be that as it may from the submissions made by the respondents it appears that the promotion that has been challenged has infact been made in compliance of the DOPT Order dated 14.09.1992 and authority who has done it is competent to do so.

19. In view of the above, the relief sought by the applicant is not maintainable. The OA therefore deserves to be dismissed and is accordingly dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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