

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

O.A No. 59/AN/2008
M.A. No. 27/AN/2013

Date of Order: 1.6.19.

Amrish Ch. Rao..... Applicant(s)

Ms. A.Nag..... Advocate for applicant (s)

VERSUS

A&N Administration..... Respondent(s)

Md. Tabraiz..... Advocate for respondent(s)

CORAM

Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether it needs to be circulated to other Benches of Tribunal?

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

O.A No. 59/AN/2008
M.A. No. 27/AN/2013

Date of Order: 7.6.19.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihisial, Administrative Member

Amrish Chandra Rao,
Aged about 66 years,
son of late Gobind Ram,
Retired Higher Grade Clerk,
Andaman and Nicobar Administration,
Resident of RGT Road, Port Blair-744101,
Andaman and Nicobar Islands.

---Applicant

Versus

1. Union of India
Service through the Secretary
Ministry of MHA, North Block,
New Delhi - 110001.
2. The Lieutenant Governor
Andaman & Nicobar Islands
Raj Niwas, Port Blair,
A&N Islands.
3. Chief Secretary (Power)
Andaman & Nicobar Administration
Secretariat, Port Blair,
A&N Islands.
4. Chief Engineer
Andaman Public Works Department,
Port Blair-744101,
A&N Islands.
5. The Executive Engineer,
Construction Division No.1,
Andaman Public Works Department,
Port Blair-744101,
A&N Islands.

----Respondents

For the Applicants: Ms. A.Nag, Counsel
For the Respondents: Md. Tabraiz, Counsel

ORDER

Per: Ms. Bidisha Banerjee, Member (I):

Applicant's case has a checkered history of its own. The applicant had first approached this Tribunal in O.A. 167/AN/2001 against denial of lawful claim for promotion to the post of Head Clerk in Amalgamated Clerical Cadre of A&N Administration. He had prayed for the following relief:

"a) An order commanding the respondent authorities to consider the promotion of the applicant at least to the post of Head Clerk/Assistant Incharge w.e.f. such date as Shri Sheo Ram was promoted to the said post, with all consequential benefits.

b) An order commanding the respondent authorities to fix the pay of the applicant as on the date of his retirement, i.e. 31.01.2008 in the post of Head Clerk deeming that the applicant retired as Head Clerk/Assistant Incharge."

The O.A. was disposed of with the following orders:

"8. Accordingly we hereby dispose of the application with a direction to the respondent authorities, specially respondent No.2 to consider the representation of the applicant treating this OA as a part thereof and pass a reasoned and speaking order according to the rules within a period of 3 months from the date of communication of this order and communicate the same to the applicant within a period of 2 weeks thereafter. In case the decision goes in favour of the applicant, he should be granted all consequential benefits as prayed for in this OA from the date the same is found justified. The arrears in relation to the above order, if any, be paid to the applicant within a period of 2 months thereafter."

On 07.03.2003, the Chief Secretary, A&N Administration, in compliance of the directions of this Tribunal in O.A. 167/AN/2001,

examined the representation dated 14.01.1998 preferred by the applicant and noted as follows:

"(i) Shri Amrish Ch. Rao, was initially appointed to the post of LGC vide Admn's Order No. 1980 dated 21.10.1959 and he joined on this post on 22.10.1959 accordingly. He was subsequently confirmed in the post of LGC with effect from 01.09.1966 vide Admn's Order No. 4143 dated 14.11.1967 and thereafter promoted to the post of Higher Grade Clerk purely on temporary and ad-hoc basis vide Admn's Order No. 3783 dated 20.12.1969, which was subsequently regularized vide Admn's Order No. 4780 dated 02.12.1980. While working as HGC in the Office of the Medical Officer, Dr. R.P.Hospital, Mayabunder, he was transferred to the Office of the Medical Officer (I/C), Civil Hospital, Nancowry by the Directorate of Medical and Health Services vide their Office Order No.358 dated 19.04.1977.

(ii) While Shri Amrish Ch. Rao, HGC holding the charge of Cashier in the O/o the Medical Officer (I/C) Nancowry, a criminal case (Cr.No. 19/80 U/S 409 and 477-A IPC) was registered against him by the police station Nancowry on a written complaint made by the DHS for the misappropriation of government money amounting to Rs. 13010.35 and he was accordingly placed under suspension w.e.f. 23.03.1981 by the Medical Officer (I/C) Nancowry vide his O/O No. 226 dated 23.03.1981, which was revoked on 11.02.1985 by the DHS vide his order No. 370 dated 11.02.1985 with direction to him to report for duties to the Secretary (Perl) A&N Admn. for his posting.

(iii) The criminal case was, however, decided in his favour **on technical grounds of not completing the investigations within the stipulated period** and he was acquitted on 23.10.1990. As his acquittal from the Criminal Case was purely on technical grounds and since there was adequate evidence for initiating disciplinary action against him, the A&N Administration took a decision that Shri Amrish Chandra Rout, HGC be chargesheeted for major penalty proceedings under Rule 14 of CCS(CCA) Rules and accordingly a departmental proceedings was initiated duly serving the Memorandum of Charges to him on 05.08.1992.

(iv) The Inquiry Officer submitted his report to the Disciplinary Authority (CS) on 29.10.1993 stating that the charges against Shri Amrish Ch. Rao, HGC

have been proved but as the report was incomplete, the Disciplinary Authority remanded the DE back to the Inquiry Officer, who conducted further inquiry in 1996 and report was submitted. The Disciplinary Authority, on taking a lenient view, awarded minor penalty of recovery of the loss, i.e. Rs. 4084.60, which was the amount found short in the Govt. CASH during the period from 1977 to 1980 when Shri Amrish Ch. Rao, HGC was posted as Cashier in the O/O MO(I/C) Civil Hospital Noncowry vide Order No. 2093 dated 15.07.1997 and that amount was deposited by him on 06.08.1997. Thereafter, his period of suspension, i.e. w.e.f. 23.03.1981 to 13.02.1985 was treated as period spent on duty for all purpose under FR 54-B vide a Admn's Order No. 2914 dated 06.10.1997 and the Disciplinary Authority (CS) in his minutes at para 313-314 on page 98/N in F.No. 81-392/80-PW has also observed that Applicant's case of promotion etc. have to be separately placed before the DPC. But, the available record reveals that his case for promotion to the next grade, i.e. Head Clerk/AIC could not be taken up before his retired on superannuation on 31.01.1998.

(v) As per the Seniority List of Permanent/temporary Higher Grade Clerks as on 31.01.1985 circulated vide Admn's letter No. 66-1(3)/85-PW dated 26th April 1985, Shri Amrish Ch. Rao, HGC was against Sl. No. 09 just above S/Shri K.Surendran and Sheo Ram at Sl. 10 and 11 respectively. The cases of S/Shri K.Surendran and Sheo Ram, HGCs, were considered for promotion to the post of Head Clerk/AIC by the DPC held on 08.03.1989 with the remarks that "Shri A.C.Rao, HGC, working in the Electricity Department. It appears that no departmental action has been initiated against him. The Head of Department may be asked to clarify and give a report for consideration in the next meeting of the DPC. One vacancy may be maintained for consideration of his case on the basis of the outcome of the criminal case as well as the departmental inquiry. As such, Shri S/Shri K.Surendran and Sheo Ram, HGCs, have been promoted to the post of HC/AIC vide Admn's Order No. 3607 dated 10.05.1989. However, the case of A.C.Rao, HGC could not be considered by the DPC held subsequently as the disciplinary proceedings initiated against him was finalized during July, 1997.

NOW, THEREFORE, the undersigned after careful consideration of the case and going through

the materials available on records finds that the case of Shri A.C.Rao, (Rtd.) Higher Grade Clerk of AC Cadre for his promotion to the post of Head Clerk/AIC from the date of his juniors promoted to the said post deserves consideration and it is accordingly ordered that his case may be placed before a review DPC which may be convened immediately.

2. Since, no review DPC was held thereafter to consider the case of the applicant appropriately on par of his juniors, who were granted promotion in the year 1989, the applicant preferred O.A. 59/AN/2008 for a direction upon the Respondents to give promotion by conducting a review DPC pursuant to the direction of this Tribunal dated 26.11.2002 and consequent upon the order dated 27.03.2003 for promotion to the post of Head Clerk/Assistant In-charge with effect from 08.03.1989 with all consequential benefits and further to fix his pay as on the date of his retirement, i.e. 31.01.1998 in the post of Head Clerk/AIC deeming his retirement from the post of Head Clerk/AIC.

The O.A. was dismissed on the ground of delay on 16.02.2011.

The applicant assailed the order dated 16.02.2011 before the Hon'ble High Court in W.P.C.T. 1328/2011 when this order was quashed with the observations that "if an M.A. is filed, the same should be considered on its own merit".

The applicant preferred M.A. 11/AN/2011, which application, seeking condonation of delay in preferring the O.A., was dismissed on 23.05.2012. Consequently, the O.A. stood dismissed. The applicant again approached the Hon'ble High Court for a second time in W.P.C.T. 545/2012 when the Hon'ble High Court set aside the order passed by

this Tribunal in the MA and OA and remanded the matter back to the Tribunal to "decide the application afresh in accordance with law". Therefore, the O.A. has come up for hearing for a 3rd time before this Tribunal, and we confine ourselves to hear out the matter on merit and limitation.

3. In regard to limitation, we note that the applicant was not procrastinating. He was vigilant of his rights. Hence, M.A. is allowed. ✓

4. At hearing, it transpired that the applicant was suspended from 1981 to 1985, which period got regularized with full pay in the year 1989. No departmental proceeding was pending against him, however, a criminal proceeding initiated in the year 1980 ended into his acquittal, albeit on technical ground in 1990. Long thereafter, a departmental proceeding, for the selfsame cause, was initiated in 1993 that culminated into minor penalty in 1997. Since, no departmental proceeding was pending against the applicant as on the date the earlier DPC met (i.e. in the year 1989) when his juniors were considered and granted promotion in 1989 the action of the Respondent authorities or the DPC in not adopting the sealed cover due to pendency of Cr. Proceedings, could neither be comprehended nor countenanced.

5. Had a sealed cover been adopted, it deserved to be open after acquittal in 1990.

6. We also infer that the Chief Secretary strongly felt that the applicant deserved consideration from the date of promotion of his juniors yet, while holding review DPC on 31.05.2004, the members failed to consider or address the issue why the applicant would not be

entitled to promotion on par with his juniors when they were promoted in 1989.

7. We would discern that the review DPC commented as under:

"As per the Seniority List of Permanent/temporary Higher grade clerks as on 31.01.1985 circulated vide Admn's letter No. 66-1(3)/85-PW dated 26th April, 1985 the name of Shri Amrish Chandra Rao, HGC is shown against Serial No. 09 just above S/Shri K.Surendran and Sheo Ram at Serial 10 & 11 respectively. The cases of S/Shri K.Surendran and Sheo Ram, HGCs were considered for promotion to the post of Head Clerk/AIC by the DPC held on 08.03.1989 with the remarks that "Shri A.C.Rao, is working in the Electricity Department. It appears that no departmental action has been initiated against him. The Head of Department may be asked to clarify and give a report for consideration in the next meeting of the DPC. One vacancy may be maintained for consideration of his case on the basis of the outcome of the Criminal Case as well as the departmental inquiry". However, the case of A.C.Rao, HGC could not be considered by the DPC held subsequently as the disciplinary proceedings initiated against him were finalized during July, 1997."

8. The reason why his case was relegated to the next DPC is not forthcoming. Therefore, we feel it appropriate to direct the authorities to hold a review DPC once again to consider the applicant on par with his juniors, for promotion from the date his juniors were accorded such promotion in 1989. The appropriate order be issued to that effect and depending upon the review DPC proceeding let appropriate benefit be accorded to the applicant as expeditiously as possible including notional fixation of his pay from the date his juniors were promoted, and grant of appropriate consequential benefits including the notional fixation of last

pay drawn and revision of his pension with arrears in accordance with law. The entire exercise be completed within a period of three months.

9. With the aforesaid observation and directions, the O.A. is disposed of without any order as to costs. M.A. 27/AN/2013 is also disposed of accordingly.

N. Neihisal-
Administrative Member

(B.Banerjee)
Judicial Member

RK