

S.A.A. Abbasi Vs. the Chairman and Another

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Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : Jan-17-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mr. Shekhar Agarwal, Member (a)

Appeal No. : OA.No. 4106 of 2012

Appellant : S.A.A. Abbasi

Respondent : The Chairman and Another

Judgement :

Shekhar Agarwal, Member (A):

1. Following relief has been sought in this O.A.:-

(i) To grant to the applicant promotion to the post of Addl. CPFC from the date of promotion of immediate junior officer to the applicant. To grant arrear of pay with all other consequential benefits.

To make payment of interest at the rate of 18% per annum on the arrears of pay for the period from the date of due to the date of payment.

May also issue such other order/direction as may be deemed fit and appropriate in the facts of the case.

2. Facts of the case are that the applicant started his service as Assistant Provident Fund Commissioner on 17.12.1990 on being selected as a direct recruit by UPSC. On 22.03.1995 he was promoted as Regional Provident Fund Commissioner Grade-II and regularized as such on 22.09.1999. On 17.01.2006 he was promoted as Regional Provident Fund Commissioner Grade-I on ad hoc basis. However, on 20.05.2009 he was awarded a major penalty of lowering by five stages in time scale for a period of five years. On 04.12.2009 he was also reverted to the post of RPFC Grade-II. He filed OAs No. 3595/2009 and 3587/2009 against the order of punishment as well as against the order of reversion. Both these OAs were allowed on 02.07.2010 by this Tribunal and directions were issued to give promotion to the applicant as RPFC Grade-I with all consequential benefits. A review DPC was held on 25.08.2011 in which the applicant amongst others was recommended for promotion as RPFC Grade-I. On 01.09.2011 the applicant was granted notional promotion as RPFC Grade-I w.e.f. 01.07.2005. However, this was made subject to the outcome of decision in Writ Petition No. 6404/2010.

2.1 On 16.02.2012 a review DPC was held to consider the promotions to the post of Addl. CPFC against panel years 2010-2011 and 2011-2012. The applicant, at that time according to him, was the senior most for being considered. However, on 29.02.2012 orders for others were issued but the applicants name did not figure in the promotion list. On 13.03.2012 the applicant submitted a representation against denial of promotion as Addl. CPFC. Separately, on 13.09.2012 the Honble High Court of Delhi dismissed the Writ Petition No. 6404/2010 and confirmed the order of the Tribunal in OA-3595/2009. Honble High Court of Delhi, however, gave liberty to the respondents to issue fresh charge sheet to the applicant, if they so desired. The said charge sheet was issued on 27.09.2012. The claim of the applicant is that on the date promotions to the post of Addl. CPFC were made, there was no charge sheet pending against him. This is because the charge sheet earlier issued to him had been quashed by the Tribunal (this order had already been upheld by the Honble High Court of Delhi) and fresh charge sheet was issued only on 28.09.2012. Therefore, the respondents should have promoted him as Addl. CPFC when they promoted his juniors on 29.02.2012.

3. In their reply, the basic facts of the case have not been disputed by the respondents. Their contention is that while upholding the judgment of the Tribunal by which the charge sheet against the applicant had been quashed, the Honble High Court of Delhi had given liberty to the respondents to serve a fresh charge sheet, if they so desired. This charge sheet has since been served on the applicant on 28.09.2012. Thus, the applicant has still not been exonerated of the allegations made against him and therefore has no right of promotion.

4. We have heard both sides and have perused the material on record.

4.1 The applicant has relied on the judgment of Hon'ble Supreme Court in the case of UOI and Ors. Vs. Sangram Keshari Nayak, JT 2007(6) SC 272. In Paras-5 to 8 of the aforesaid judgment the following has been observed:-

5. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.

6. Terms and conditions of an employee working under the Central Government are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.

7. Whereas paragraph 6 of the said circular letter provides for a sealed cover procedure to be adopted by the DPC, the same has to be taken recourse to only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. The recommendations of the DPC, therefore, can be

refused to be given effect to only inter alia when one or the other conditions mentioned in paragraph 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a charge-sheet had been issued or, in other words, a disciplinary proceeding was pending. Admittedly, a charge-sheet was issued as against him only on 24.09.1999.

8. Thus, there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999. No material was placed before the DPC to take recourse to the sealed cover procedure. In fact, none existed at the material time. Paragraph 2 of the said circular specifically refers to submission of charge-sheet as the cut-off date when a departmental proceeding can be said to have been initiated. Even otherwise such a meaning had been given thereto by this Court in *K.V. Janakiraman (supra)* holding:

"16 The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure."

The applicant has also relied on the judgment of Honble Supreme Court in the case of The Union of India and Ors. Vs. Anil Kumar Sarkar, (Civil Appeal No. 2537/2013) dated 15.03.2013. In Paras-11 and 12 of the aforesaid judgment the following has been observed:-

11. As per paragraph 2 of the said memorandum, at the time of consideration of the Government servants for promotion, the following details of Government servants in the consideration zone for promotion falling in the categories mentioned should be specifically brought to the notice of the DPC, viz., (i) Government servant is under suspension; (ii) Government servant has been served with a charge sheet and the disciplinary proceedings are pending; and (iii) Government servant is facing prosecution for a criminal charge and the said proceedings are pending. As rightly observed by the High Court, if the above conditions are available, even one of them, then the DPC has to apply the sealed cover process. In the case on hand, it is not in dispute that the relevant date is 21.04.2003, when the respondents batch mates were promoted, admittedly on that date the respondent was not under suspension, no charge sheet was served upon him nor he was facing any criminal prosecution. In such circumstances, in terms of paragraph 2 referred to above, the recommendation of the DPC has to be honored and there is no question of applying sealed cover process.

12. Mr. Mohan Jain, learned ASG submitted that paragraph 2 has to be read along with paragraph 7 of the office memorandum dated 14.09.1992. We have already extracted paragraph 7 of the memorandum which makes it clear that a government servant, who is recommended for promotion by the DPC if any of the circumstances mentioned in para 2 of the said memorandum arises after the recommendations of the DPC are received, but before he is actually promoted will be considered as if his case has been placed in a sealed cover by the DPC. After extracting para 2, we also highlighted the three conditions prescribed therein. Though, learned ASG has mentioned that four charge sheets were issued to the respondent, enquires were completed and show cause notices had already been served on the respondent, on the relevant date, namely, 21.04.2003, when his batch mates were promoted, none of the conditions was in existence in the case of the respondent. Admittedly, the respondent was not placed under suspension,

charge sheet had been issued only on 13.08.2003 i.e. nearly after 4 months, no disciplinary proceedings were initiated or pending as on 21.04.2003. In such circumstances, we are of the view that the High Court is fully justified in issuing direction based on para 2 of the memorandum. No doubt, the learned ASG heavily relied on later part of para 7 of the memorandum which reads as under:

He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.

Inasmuch as none of the circumstances was in existence as on 21.04.2003, reliance placed on the later part of para 7 cannot be accepted or even not applicable.

Thus, as per the above citation since on the date of consideration no proceedings were pending against the applicant, he deserved to be considered and promoted from the date his immediate junior was promoted.

We are also convinced that the case of the applicant is also covered by judgment of this very Bench of the Tribunal in the case of Sh. Satyendra Kumar Singh Vs. UOI and Ors. (OA-4237/2012) dated 24.05.2013 which has also been upheld by the Hon'ble High Court of Delhi.

Under these circumstances, this O.A. is allowed and the respondents are directed to consider promoting the applicant as Addl. CPFC from the date his immediate junior was so promoted. In case he was considered by the DPC held on 16.02.2012 then the recommendations of the DPC will be acted upon. In case he was not so considered a review DPC will be held to consider the case of the applicant. If promoted the applicant will also be entitled to consequential benefits of seniority and pay fixation. Since he has already retired he will also be entitled to re-fixation of pension and payment of arrears of pension as a result of such re-fixation. This exercise will be completed within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.