

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7625/2000**

Date of Decision : 11th August, 2011

UNION OF INDIA & ANR. Petitioners

Through: Mr. J.P. Sharma, Advocate

Versus

SOMPAL Respondent

Through: Mr. Pradeep Kumar, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE M.L. MEHTA

- | | | |
|----|---|----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | No |

A.K. SIKRI, J. (Oral)

1. This petition is preferred against the orders dated 11.07.2000 passed by the learned Central Administrative Tribunal in OA No. 1692/1997 filed by the respondent herein. The respondent was appointed as Accountant on 12.04.1982 with the petitioner/Controller General of Accountants, Department of Revenue, Ministry of Finance. Thereafter he

was promoted as Junior Accounts Officer with effect from 01.04.1991. In next promotion he was to hold the post of Assistant Accounts Officer ('AAO' for short). As per the recruitment rules, for promotion to the post of Assistant Accounts Officer, the incumbent is to render three years service as Junior Accounts Officer, Grade-C. Assistant Accounts Officer is non selection post. After the respondent had put in 3 years in service and became eligible, he along with others was considered by the Departmental Promotion Committee (DPC) meeting held on 06.06.1995. Promotion orders, pursuant to the said DPC were issued on 09.06.1995. In this order, name of the respondent did not find place. He made representation against his non promotion which was rejected on 28.08.1995 on the ground that the respondent was having one ACR with "average" remarks because of which he was not found fit for promotion, having regard to office memorandum dated 10.04.1989 as per which "average" performance is to be regarded as routine and undistinguished. This OM further stipulates that it is only performance that is above 'average' that is really noteworthy

which could entitle an officer to recognition and suitable rewards in the matter of promotion.

2. After the rejection of the representation, the respondent did not take any immediate steps for challenging the action of the petitioner herein for not promoting the respondent to the aforesaid post. In the mean time, another DPC was held. This time the respondent was found fit for promotion and promotion orders in his case was passed on 17.04.1996.

3. After getting the promotion, respondent made another representation requesting for ante dating his promotion i.e. with effect from 09.06.95 when earlier DPC had met and had found him not fit for promotion. This representation was again rejected on the same ground on which earlier representation was rejected on 28.08.1995 namely the respondent did not fulfill requisite benchmark. Challenging the non promotion as well as the rejection, the respondent filed the aforesaid OA on 25.07.1997.

4. In the reply filed by the petitioner herein to the said OA, a preliminary objection was taken that the OA was time barred as it was not filed within one year of the rejection of

the representation. The claim of the respondent for promotion to the post of AAO w.e.f. 06.07.1995 was also contested on merits. The Tribunal vide impugned order dated 11.07.2000, has allowed the OA of the respondent herein. Plea of the petitioner herein, challenging the maintainability of the OA as time barred, has been rejected. On merits, the Tribunal has held that mere 'average' grading could not be a reason to deny the promotion when it was a non selection post and the criteria were "seniority subject to fitness". Since the post of AAO was an upgraded post, OM dated 10.04.1989 would not be permissible for consideration for selection to such upgraded post.

5. After hearing the counsel for the parties, we are of the opinion that the Tribunal wrongly held that the OA preferred by the respondent herein was within the period of limitation. We may note that for arriving at this conclusion, the Tribunal has taken into consideration the date of 17.04.1996, on which date promotion orders in respect of the respondent to the post of AAO were issued, and further holding that the respondent in these circumstances had made a request for

antedating of the promotion. This approach is clearly erroneous. As pointed out above, on the earlier occasion when the first DPC was held on 06.06.95 respondent was not promoted as he was not found fit for promotion by the DPC. Promotion orders of others including juniors of the respondent were issued on 09.06.1995. Cause of action accrued on that date to the respondent as respondent was aggrieved by this non-promotion. In fact, as pointed out above, the respondent had even made a representation immediately thereafter which was, however, turned down on 28.08.1995. As per the provisions of Section 21 of the Administrative Tribunals Act once a representation is filed and not decided within six months, the aggrieved party can approach the Tribunal by filing an application under Section 19 of the Act within one year from the expiry of 6 months. That would mean that in case application is preferred which has not been decided within the period of limitation for the applicant would get 18 months time to move the Tribunal. On the other hand in case representation is rejected, then the limitation of one year from the date of rejection is provided by Section 21 of the Act.

In the instant case since the representation was specifically rejected on 28.08.95, the respondent could file the application under Section 19 of the Administrative Tribunals Act within one year thereafter i.e. by 27.8.1996. However, OA was filed only on 25.07.1997 which was clearly time barred. The Tribunal has calculated the period from 17.4.1996 when the promotion orders of the respondent to the post of AAO were issued. This was, as already noted above, on the basis of second DPC held and had no correlation with non promotion as a result of first DPC held on 6.6.95. The promotion order of the respondent passed in altogether different DPC could not provide a fresh cause of action to the respondent who was denied promotion in the first instance on the basis of DPC held on 6.6.95. In view of the aforesaid when we find that OA filed by the respondent was itself time barred, it is not necessary to go into the merits of the case. We, thus, allow the present writ petition and set aside the order of the Tribunal on the aforesaid ground.

6. At the same time, the facts of this case and the subsequent events which have taken place after the filing of

the writ petition, prompt us to make certain observations regarding non recovery of amount already paid to the respondent herein.

7. We find from the record that the writ petition filed by the petitioner was first listed on December 18, 2000, however, at request made by the petitioner, it was adjourned. Thereafter also on various occasions adjournments were sought. For the first time the petitioner argued the matter on November 22, 2001 when notice was issued. Rule D.B. was thereafter issued on October 15, 2003. Number of hearings took place in between, but, there was no order staying the impugned decision of the Tribunal. When the matter came up on 3rd November, 2009, counsel for the respondent stated that the review DPC had already been held which had granted promotion to the respondent from the date his juniors were promoted and on this ground the petition was dismissed. However, thereafter on CM preferred by the petitioner, the writ petition was revived. Since the review DPC was held by the petitioner themselves and the monatory benefits have been given to the petitioner and the period was not

substantial, even when the OA is dismissed it would be in the in the fitness of things that the amount already paid would not be recovered from the respondent. We hope that the competent authority will give due diligence of these observations of ours and pass appropriate orders. There shall, however, be not orders as to cost.

8. The petition stands disposed of.

(A.K. SIKRI)
JUDGE

(M.L.MEHTA)
JUDGE

August 11, 2011
awanish