

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

107.

OA 475/2016

Ex Sub (Amb Asst) Ram Pratap	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. S S Pandey, Advocate
For Respondents	:	Mr. V Pattabhi Ram, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
08.01.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks promotion to the post of Sub Maj w.e.f. 1st November, 2015 as ordered vide Annexure A2 dated 24th September, 2015.

2. It is the case of the applicant that the disciplinary proceedings initiated against him on 16th December, 2015 on account of his having lost the Identity Card cannot come in the way of granting promotion to him.

3. Facts in nutshell, indicate that the applicant was due for promotion and after considering his case for promotion in accordance with law, orders were passed on 24th September, 2015 vide Annexure A2 granting promotion to him w.e.f. 1st November, 2015 and he was to

join the duties in Military Hospital, Dehradun on the promoted post w.e.f. 1st November, 2015. After issuance of the movement order when the applicant was proceeding for joining the promoted post at Military Hospital, Dehradun and was travelling by train .i.e., Mussoorie Express for Dehradun from Sarai Rohilla Station, New Delhi, some miscreant snatched his Identity Card from his chest pocket and ran away from there. On the same being reported to the Unit a Court of Inquiry (CoI) was conducted and the proceedings of the CoI were placed before the Competent Authority, i.e., Commandant of the Unit and the following directions were issued on 16th December, 2015:-

"DIRECTIONS OF MR-N05354M BRIG YS BISHT, COMMANDANT, MH DEHRADUN

- 1. Perused proceedings of C of I.*
 - 2. JC- 698312F Sub/AA Ram Pratap had secured the identity Card with chain in the left breast pocket as per standing instruction on the subject. The card was snatched by a hooligan, while the JCO was in train journey during preparatory lve.*
 - 3. Counter Int angle on part of the JCO is ruled out however, possibility of misuse of Identity Card by some Anti National Elements cannot be ruled out.*
 - 4. Disciplinary action be initiated against JC- 698312F Sub/AA Ram Pratap of MH Dehradun for loss of Identity Card.*
 - 5. New Identity Card be issue to individual."*
4. Referring to the same, Shri S.S. Pandey, learned counsel for the applicant pointed out that in Para 2 of the aforesaid findings the Commanding Officer accepted the findings of

the CoI which did not hold the applicant guilty or being negligent in the matter of protecting his Identity Card.

5. However, having exonerated the applicant of the charging, ordering of the Disciplinary proceedings and further withholding the promotion on the ground that Disciplinary proceedings have been initiated on 16th December, 2015 according to learned counsel is unsustainable in law.

6. In support of his contention, learned counsel for the applicant invites our attention to the judgment of this Bench in the case of Lt Col Devesh Jayant Joshi vs. Union of India & Ors. (OA1326/2022 decided on 16th October, 2023) wherein after taking note of the principles laid down in the matter of denying promotion on account of initiation or pendency of Departmental proceedings, it has been categorically held by the Bench that until and unless the Disciplinary proceedings already initiated are pending on the date for consideration for promotion by an appropriate committee, a subsequent disciplinary action initiated cannot be a ground for denying promotion. Learned counsel for the applicant invites our attention to the findings recorded in the case of Lt Col Devesh Jayant Joshi (supra) in Para 25 and 26 where the Bench has referred to the judgments in the

case of Union of India vs. K.V. Jankiraman P (1991 Vol 4 SCC 109) decided by the Hon'ble Supreme Court and another judgment of this Tribunal in the case of Col Punam Bali Vs. Union of India & Ors. (OA 282/2013 decided on 17.04.2014).

7. Respondents have filed a detailed counter affidavit. Even though they do not dispute the factual position as narrated hereinabove. It is their contention that on account of the CoI pending against the applicant, he was not permitted to join on the promoted post w.e.f., 1st November, 2015 and before joining on the promoted post. the Competent Authority has directed for initiating disciplinary action on 16th December, 2015. The pendency of the Disciplinary proceedings on 16th December, 2015, according to the respondents, debarred the applicant from claiming promotion and in doing so, it is the case of the respondents that they have not committed any error.

8. We have heard learned counsel for the parties and perused the record. The law laid down by the Hon'ble Supreme Court in various cases starting from K V Jankiraman (Supra) is clear. It is well settled principle of service jurisprudence that an employee can be denied promotion or debarred from taking up promotion in case Disciplinary

proceedings or criminal cases are pending against him. The crucial date on which the pendency of the Disciplinary case or the Departmental Inquiry is to be taken note of, the date on which in case of Departmental Inquiries the Competent Authority takes a decision to initiate Disciplinary inquiry.

9. Hon'ble Supreme Court goes on to say that actually issuance of the charge sheet is not necessary and even a decision taken by the Competent Authority on the file to initiate Departmental Inquiry, the same is sufficient enough to debar an employee from promotion or follow the sealed cover proceeding from the said date. That apart, pendency of the Criminal case starts from the date of the charge sheet has been filed in the Court of Criminal Law or on an FIR cognizance is taken and some action is initiated. If we analyze the facts based on the aforesaid principle of law which has already been reproduced by this Bench itself in Para 25 and 26 of the judgment rendered in the case of *Lt Col Devesh Jayant Joshi* (supra), we find that in this case the decision to initiate Departmental Inquiry against the applicant was taken on 16th December, 2015. However, before that the applicant was already granted promotion and only the physical act of assuming the charge on the promoted post on 1st November, 2015 was to be undertaken by the

applicant. Therefore, once the promotion order was issued on 24th September, 2015, merely because a decision was taken in the matter to initiate Departmental action against him on 16th December, 2015, in our considered view, the same cannot come in the way of denying promotion to the applicant on the post of Sub Maj. That apart, we find in Para 2 of the directions issued by the Commandant on 16th December, 2015 that the Col has found the applicant not responsible for the loss of the identity Card and, therefore, taking note of the peculiar facts and circumstances of this case in the matter of denying promotion to the applicant on the post of Sub Maj w.e.f., 1st November, 2015 the respondents have committed an error of law which requires to be corrected.

10. Having said so, we may further clarify that as far as Disciplinary action to be initiated against the applicant is concerned, we are not commenting on the same and it is for the respondents to proceed in accordance with law, as may be permissible under the Rules and Regulations.

11. The records indicate that Disciplinary inquiry also against the applicant has been conducted and he has been severely reprimanded vide order passed

on 19th December, 2015. i.e., much after the applicant was to be promoted on 24th September, 2015.

12. That being so, in the facts and circumstances of the case, once the decision to initiate Departmental Inquiry was taken after promotion of the applicant and the punishment in the disciplinary inquiry was also initiated after the promotion order was issued, the same cannot come in way of the respondents in granting promotion to the applicant. Accordingly, treating the applicant to have been promoted on the post of Sub Maj w.e.f. 1st November, 2015, respondents are directed to fix all pensionary benefits and other post retrial benefits by treating the applicant to have been promoted on the post of Sub Maj w.e.f., 1st November, 2015. Further as the applicant was denied promotion on the said post, when he had gone to join on 1st November, 2015, on account of the action of the respondents, which is held to be unsustainable in law, the applicant is also entitled to consequential benefits of pay and allowances on the post of Sub Maj w.e.f., 1st November, 2015. The entire arrears of pay from 1st November, 2015 till his date of discharge be paid to the applicant failing which interest @ 6% shall be payable

from the date of this order till realization.

13. Let a copy of this order be provided '*DASTI*' to both the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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