
(2019) 02 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 3831 Of 2018

Sh. Sameer Dikshit

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0022

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : K.S. Chauhan, Sh. Ajit Kumar Ekka, Shailendra Tiwari

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant is working as Chief Workshop Manager, Signal Workshop, Ghaziabad. He became entitled to be considered for inclusion in the panel for the post of DRM in year 2016-2017. However, on account of pendency of two charge memos, one dated 16.03.2012 and another dated 08.09.2015, he was not empanelled. The applicant was also imposed the punishment of stoppage of two increments through an order dated 11.01.2016. He filed OA No. 54/2018, feeling aggrieved by that. The OA was disposed of on 05.01.2018 directing the respondents to dispose of the appeal preferred by the applicant before the Competent Authority within a period of two months from the date of receipt of a certified copy of the order. Time for disposal was extended and ultimately, an order was passed on 09.08.2018 taking the view that the representation made by the applicant for his posting as DRM does not need any consideration. Not only the factum of the punishment but also existence of two more charge sheets referred to above, was taken into account.

2. This OA is filed challenging the order dated 09.08.2018. The applicant contends that the disciplinary proceedings on the basis of charge memo dated 16.03.2012 ended up in exoneration, through an order dated 10.08.2018 and

that the enquiry based on charge sheet dated 08.08.2015 was also recalled by order dated 24.04.2018. He contends that these important developments were not taken into account, by the respondents and the impugned order was passed detrimental to his interest.

3. Respondents filed counter affidavit opposing the OA. It is stated that the inclusion in the panel for posting as DRM is not a matter of right and the respondents have taken these relevant factors into account, while preparing the panel. It is also stated that the fact that the applicant was exonerated in relation to charge memo dated 16.03.2012 could not be taken into account as speaking order was passed before that.

4. We heard Dr. K.S. Chauhan with Sh. Ajit Kumar Ekka, learned counsel for the applicant and Sh. Shailendra Tiwari, learned counsel for the respondents.

5. The applicant was denied inclusion in the panel for appointment to the post of DRM in the year 2016-2017. It was on account of a punishment, which was already operating against him and the pendency of two charge sheets. Record discloses that both the proceedings ended up in exoneration of the allegations made against the applicant. Even while dealing with the representation pertaining to the punishment of stoppage of two increments, the concerned authority was mostly impressed by the factum of pendency of two more charge sheets.

6. Since the impugned order was passed on 09.08.2018, the fact that the disciplinary authority exonerated the applicant from the charges contained in the charge memo dated 16.03.2012 vide order dated 10.08.2018 could not have been taken into account. Though the exoneration in respect of other charge sheet was on 24.04.2018 even its impact was not reflected that much. We are of the view that the impugned order deserves to be set aside in view of these reasons. Respondent No.2 needs to be required to pass a fresh order, taking into account the various aspects mentioned above. It is needless to mention that in case there does not exist any material adverse to the applicant, the feasibility of convening a review DPC needs to be considered for inclusion in the panel for appointment to the post of DRM. However, much would depend upon record and the satisfaction of the appointing authority.

7. We, therefore, allow the OA and set aside the impugned order dated 09.08.2018. We direct the second respondent to pass fresh orders on the feasibility or otherwise of the applicant being included in the panel for appointment to the post of DRM for year 2016-2017, duly taking into account all the developments that have taken place so far. It shall be open to the applicant to submit the relevant documents through a representation. The orders in this behalf shall be passed by respondents within six weeks from the date of receipt of a copy of this order. We further direct that in case the second respondent is of the view that the applicant was otherwise entitled to be considered for inclusion in the panel for appointment to the post of DRM, the feasibility of convening a

review DPC, without any loss of time, shall be considered. There shall be no order as to costs.