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Central Administrative Tribunal
Principal Bench

O.A.No.3062/2002

New Delhi, this the 22nd day of August, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER(J)

HON'BLE SHRI R.K.UPADHYAYA, MEMBER(A)

Madan Pal
s/o Late Ghamandi Singh
r/o C-339, East Kidwai Nagar
New Delhi. ... Applicant

(By Advocate: Shri Harvir Singh)

Vs.

1. Union of India through
Secretary
Ministry of Health and
Family Welfare
Govt. of India
Nirman Bhawan
New Delhi.
2. Director General
Health Services
Govt. of India
Nirman Bhawan
New Delhi.
3. The Principal and Medical
Superintendent
VMMC & Safdarjung Hospital
New Delhi.
4. Surinder Kumar
Chief Sanitary Superintendent
Sanitation Department
New Delhi.

... Respondents

(By Advocate: Sh. S.M.Arif with Respondent No.4 in person)

O R D E R

By Shri Shanker Raju, Member (J):

Through this OA applicant has sought opening of sealed cover for the post of Chief Sanitary Superintendent resorted to by the DPC held on 29.11.2001 with further consideration for promotion from the date of his junior. He also prays for quashment of promotion granted to respondent No.4.

2. Vide MA-723/2003 memorandum dated 3.2.2003 issued by the disciplinary authority disagreeing with the enquiry report where applicant had been exonerated, has been assailed on the ground that on the fourth occasion on same set of allegations and charges which had been dealt with earlier in three departmental proceedings, the enquiry has been proceeded without issuing a show cause notice as to initiation of proceedings on the same set of allegations.

3. MA-1594/2003 has been filed by the respondents for vacation of stay order.

4. By an order dated 31.3.2003 respondents have been restrained from passing any final order on the basis of memorandum dated 3.2.2003 which has been continued till date.

5. The learned counsel for applicant Shri Harvir Singh states that on the basis of enquiry conducted in 1997 without supplying the copy of the enquiry report, a second enquiry was initiated where applicant was exonerated. Not being satisfied with the enquiry report, the disciplinary authority suo moto ordered third enquiry without giving any reasonable opportunity to applicant wherein he was exonerated. Further, fourth enquiry has been initiated which is nullity in law, which resulted in placement of promotion of applicant in sealed cover in the DPC held on 23.11.2001. In this view of the

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matter, the learned counsel seeks quashment of the disagreement note and accord of promotion.

f 6. On the other hand, Shri S. Mohd. Arif, learned counsel for respondents opposed the MA on the ground that whereas relief prayed is for promotion, no disciplinary proceedings have been assailed in the OA as main relief. Through an MA character of the OA cannot be changed being hit by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 as the relief is multiple, not even remotely connected, MA is not maintainable.

7. Insofar as relief in the OA is concerned, it is contended that the sealed cover would be opened on finalization of the enquiry.

8. We have carefully considered the rival contentions of the parties and perused the material available on record.

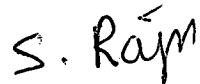
9. Insofar as promotion to the post of Chief Sanitary Superintendent is concerned, as applicant is facing a disciplinary proceeding, which was in existence on the date of DPC, sealed cover resorted to cannot be found fault with. Applicant on conclusion of the proceedings can be accorded promotion in accordance with the rules and instructions.

h 10. As regards MA-723/2003, though applicant has not prayed for any relief pertaining to the

disciplinary proceedings, but as these disciplinary proceedings are consequential and the resort to sealed cover by respondents and its outcome shall affect the promotion of applicant, keeping in view the fact that earlier three enquiries have been held on the same charges without following the rules and fourth chargesheet has been issued without going into the merits of the case, we dispose of this OA as well as MA with liberty to applicant to assail the disagreement and initiation of enquiry within two weeks in separate proceedings in view of the decision of the Apex Court in K.R. Deb Vs. Collector of Central Excise 1971 (2) SCC 102. Till then, the respondents are directed not to pass final order in the disciplinary proceedings. No costs.



(R.K. Upadhyaya)
Member(A)



(Shanker Raju)
Member(J)

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