

Central Administrative Tribunal, Principal Bench

Original Application No. 1159 of 2002

New Delhi, this the 3rd day of May, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member(A)

Shri Radhe Shyam
S/o Shri Om Prakash, Aged 43 years
B-34, Bhagwati Garden Extn.,
Kakrola More
Uttam Nagar, New Delhi-59

... Applicant

(By Advocate: Shri K.K. Sharma with Shri S.P. Chadha)

Versus

1. Union of India
Through Secretary,
Urban Development Ministry of
Nirman Bhawan,
New Delhi
2. Director General of Works
Central Public Works Department
Nirman Bhawan, New Delhi
3. Chief Engineer
Public Works Department
Zone-3, Govt. of Delhi
MSO Building, IP Estate,
New Delhi-110002.
4. Superintending Engineer
Public Works Department, Circle-6
10th Floor, MSO Building
I.T.O., New Delhi-2

- Respondents

O R D E R (ORAL)

By Hon'ble Mr. S.A.T. Rizvi, Member(A)

Welding of one of the gates of Housing Complex's boundary of the CBI colony in Vasant Vihar, New Delhi gave way resulting in an accident in which a child died. The applicant who was a Junior Engineer (in short 'JE') at the time the accident took place, had his conduct in the matter investigated by higher authorities. As a result, an FIR (Annexure A-9) was lodged in respect of the aforesaid incident on 7.9.94. Later, on completion of investigation, a chargesheet has been filed in the Court of Sessions on 7.6.95 (Annexure A-9A). Aforesaid chargesheet

names the applicant as well as one Shri R.N.Sharma who was Assistant Engineer at the time of the incident. The said case is pending in the Court of Sessions.

2. During the aforesaid period, the applicant became entitled for benefit under the ACP Scheme which has been denied to him on 13.11.2000 (Annexure A-5). When it came to his promotion to the post of Assistant Engineer, he was declared successful for the purpose after clearing the Limited Departmental Examination. However, he has not been considered for appointment on promotion. His name does not figure in the list of those appointed as Assistant Engineers (Annexure A-4). The aforesaid list was issued on 4.4.2001. Having been denied promotion as well as benefit under the ACP scheme as above, the applicant proceeded to file a series of representations. The respondents have, after consideration, rejected the aforesaid representations by letters dated 2.7.2001 and 26.2.2002 (Annexure A-1 collectively). The stand taken by the respondents in the aforesaid letters is that the applicant's representations can be considered only after he has been completely exonerated in the aforesaid criminal case.

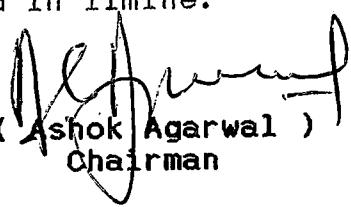
3. The learned counsel appearing on behalf of the applicant submits that while the applicant has been singled out for the denial of benefit under the ACP scheme as well as in matters of promotion, the aforesaid Assistant Engineer namely Shri R.N.Sharma whose name also figures in the aforesaid chargesheet, has been allowed to retire with full benefits. On this basis, the action taken against the

applicant by denying him the aforesaid benefits should also be struck down. In support of this contention, the learned counsel has relied on the ratio of the judgement rendered by the Supreme Court in the case of E.S. Reddi vs. Chief Secretary, Government of A.P. & anr., (1987) 3 SCC 258. In that case, the Government had singled out an officer for adverse action (suspension pending enquiry), letting off the co-delinquent officers. The court had, in the circumstances of that case, held that on being satisfied that the plea is substantiated by the record produced by the Govt., it will be competent for the court to advise the Govt. to take similar adverse action against the other equally culpable officers also otherwise it would revoke the adverse order made against the aggrieved officer.

4. We have considered the submissions made by the learned counsel and find that in this case, the action taken by the respondents has not been selective. Both the applicant as well as the aforesaid Shri R.N. Sharma, Assistant Engineer at that time, have been charged before the Court of Criminal Jurisdiction. In the circumstances, the law laid down by the Supreme Court in the above mentioned case will not find application in the present situation. There is no other ground available for interfering with the orders passed by the respondents which have been impugned in this OA.

5. In the light of the foregoing, we find no merit in the present OA which is dismissed in limine.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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