

14

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 384/2002

New Delhi, this the 7th day of May, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S.TAMPI, MEMBER (A)

Shri Om Prakash Kain  
Retired Junior Employment Officer  
R/o House No.113  
Bakoli, Post Office Alipur  
Delhi-110036. ... Applicant

(Shri S.C.Luthra, Advocate with Shri  
S.N.Anand, Advocate)

V E R S U S

1. Government of National Capital Territory of Delhi Through Chief Secretary Secretariat, IP Estate ITO Complex New Delhi.
2. Secretary-cum-Director Directorate of Employment Government of National Capital Territory of Delhi 2-Battery Lane Delhi-110054.
3. Additional Secretary (Services) Government of NCT of Delhi Secretariat, IP Estate ITO Complex New Delhi. ... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

Applicant (Om Prakash Kain) has retired as Junior Employment Officer. By virtue of the present application, he seeks quashing of the order dated 23.3.2000 by virtue of which the order



promoting him to the post of Grade-I (DASS) had been cancelled with retrospective effect. Resultantly, the applicant seeks that he should be given promotion vide the order of 7.10.1997 and the arrears should be paid to him.

2. Some of the relevant facts are that the applicant was posted as Junior Employment Officer at Najafgarh. He was placed under suspension with effect from 2.7.1997. A major penalty proceeding had been initiated against him. However, on 7.10.1997, he was promoted to Grade I of DASS. The suspension of the applicant was revoked on 24.7.1998. The disciplinary proceedings culminated into imposition of penalty of compulsory on the applicant. The applicant challenged the penalty of compulsory retirement by filing OA No. 1867/1999, but the same was dismissed. It is alleged that since the applicant had been promoted, he could not have been demoted retrospectively and the order cancelling the promotion order after a period of four years is otherwise vitiated and no notice in this regard had been given to the applicant.

3. In the reply filed, the application has been opposed. It has been pointed that the promotion order was issued on 7.10.1997 and it was withdrawn on 23.3.2000. This was a logical action consequent upon the imposition of penalty of compulsory retirement on the applicant. It has

MS Ag — e

- 3 -

been pointed further that the applicant had never joined the Grade I of DASS keeping in view the proceedings that were pending against him. It was explained that the promotion order in respect of the applicant was issued after the recommendations of the Departmental Promotion Committee, but he was never relieved by the Directorate of Employment to join the higher post because of the serious charges of moral turpitude against him. In that view of the matter, according to the respondents, the order is justified.

4. Earlier, the present application had been dismissed by this Tribunal on 14.2.2002 holding that it is barred by the principles of res judicata. The applicant had preferred a Civil Writ Petition No. 3286/2002 and the Delhi High Court on 23.5.2002 had set aside the said order. Hence the matter has been re-heard.

5. The learned counsel for the respondents had taken up a preliminary objection that the application is barred by time and, therefore, there is no ground to delve into the merits of the same. So far as this particular plea is concerned, it has to be stated to be rejected, the reason being that when earlier on 14.2.2002 this Tribunal had dismissed the application on its merits <sup>but</sup> at the preliminary hearing, the delay had been condoned. The said order has not been challenged by the

*As Ag  
e*

respondents in the Delhi High Court nor any such plea was raised at that time. That being the position, it is too late in the day for the respondents to raise this plea.

6. On behalf of the applicant, as referred to above, it has been asserted that the order promoting him had been issued even after the disciplinary proceedings had been initiated and once such a promotion order is issued, it could not be withdrawn.

7. In theory, the argument as put forward seems to be having some basis, but on closer scrutiny, the same is obviously without any substance. The facts clearly show that the applicant had been issued a charge-sheet on 29.9.1997. He was promoted on the recommendations of the Departmental Promotion Committee meeting held on 7.10.1997. One is, therefore, not surprised, as is being pointed at the Bar by the respondents, that there was a mistake because this fact was not brought to the notice of the Departmental Promotion Committee. This gets support from the fact that the applicant had earlier been suspended on 2.7.1997. Once the said fact was not brought to the notice of the Departmental Promotion Committee and if the same was subsequently brought to its notice, we find nothing illegal if the mistake is rectified.

*Ag*

8. In that event, it had been urged that no show cause notice had been served to the applicant.

9. We do not dispute the legal position that when the order has civil consequences, a notice to show cause should always be issued, but the facts of the present case are different. Herein, as already pointed, the applicant had been suspended and in the preceding paragraph, it has been noticed that the promotion order was issued, but the Departmental Promotion Committee was not aware of the suspension order and charges that had not been served upon the applicant. The suspension order was revoked on 24.7.1998, but ultimately as a result of the departmental proceedings, the applicant had been compulsorily retired by way of punishment. The Original Application challenging the same has since been dismissed, but what is most important is that the applicant had not been relieved to take charge of the promotional post. Once the charge has not been taken, in that event, no civil right has accrued in favour of the applicant. In the absence of such a right, issue of a show cause notice or adhering to the principles of natural justice would be an exercise in futility. Taking stock of the proceedings that the applicant was facing and the nature of the totality of the facts, there is no ground to quash

*Ag* e.

-6-

the impugned order.

10. Resultantly, the application, being without merit, must fail and is dismissed. No costs.

Announced.

Uk Mayoh  
(Govindan S. Tampi)  
Member (A)

/sns/

VS Ag  
(V.S. Aggarwal)  
Chairman