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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 238 of 2002

New Delhi, this the 26th day of July, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S. A. T. RIZVI, MEMBER (A)

Shri Y. P. Munjal
working as Assistant A/c Officer
Drug Control Department, Government of
NCT and residing at B-5/3, Ashok Vihar-III,
New Delhi-110 052. Applicant

By Advocate: Shri D. R. Roy.

Versus

Union of India through

1. Chief Secretary, Government of NCT of Delhi
Players' Building,
I.P. Estate,
Delhi Sachivalaya,
New Delhi.
2. Principal Secretary (Finance)
Players' Building,
I.P. Estate,
Delhi Sachivalaya,
New Delhi.
3. Director Vigilance,
NCT of Delhi,
Old Secretariat,
Delhi-110 054. Respondents

By Advocate: Shri George Paracken.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

In this OA applicant has challenged the inaction of the respondents whereby it is alleged that the respondents had made ad hoc promotions for the post of Accounts Officer in grade of Rs.7500-250-12000 on 9.2.2001 and 29.6.2001. It is alleged that several juniors to the applicant had been promoted but the applicant has been ignored without any cause.

2. The applicant further submits that his name



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stands in the relative seniority list at S.No.229 whereas the 4 persons standing at S.No.230, 231, 233 and 234 were promoted while he has been ignored.

3. It is further alleged that the applicant went from pillar to post and made enquiries about why his name being omitted when he learnt that the Commandant, Home Guards and Civil Defence has sought permission for prosecution of the applicant over certain embezzlement of the Government fund. The matter came up from the Vigilance Office and was rejected by respondent No.2. For the said offence, an FIR No.559/97 under Section 406/34 IPC was registered but the same was found to be having no prima facie case against the applicant. When second time the case of the applicant came up for consideration for promotion on 3.5.2001, the vigilance clearance report was duly sent in respect of the applicant but still the applicant was not promoted, but juniors to the applicant had been promoted.

4. The OA is being contested by the respondents. The respondents in their reply pleaded that the applicant is involved in FIR 559/97 PS Rajouri Garden which has been lodged by the Directorate General of Home Guards for embezzlement/misappropriation of the Government funds and the case was fixed in the court of Shri P.S. Malik, M.M. for 11.10.2000.

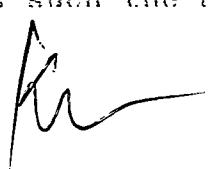
5. It is also stated that the Deputy Director, Civil Defence has rejected the request for grant of permission to prosecute the applicant.



6. It is further stated that the name of the applicant also figures in the report of Transport Department, Crime Branch regarding misappropriation of Government funds for investigation and registration of case. Accordingly, the Directorate of Vigilance, Government of NCT of Delhi had not accorded vigilance clearance in respect of the applicant at the time of ad hoc promotion to the post of Accounts Officer, so on this ground the applicant was not granted ad hoc promotion.

7. We have heard Shri D.R. Roy for the applicant and Shri George Paracken for the respondents.

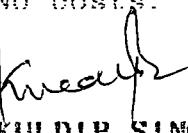
8. The learned counsel appearing for the applicant submitted that since the request for grant of sanction to prosecute the applicant had been rejected by the competent authority so the applicant cannot be prosecuted and the vigilance clearance should have been given in favour of the applicant so that the applicant could have been promoted. As against this, the learned counsel appearing for the respondents submitted that it is an admitted case of the applicant himself that a case have been registered and is pending trial before the learned MM and sanction of prosecution has not been granted because it was not required. It is not a case that the sanction to prosecute the case has been rejected on merits and moreover still the case is pending trial before the criminal court, so the Directorate of Vigilance has rightly withheld the vigilance clearance in respect of the applicant as such the applicant cannot be granted ad hoc promotion.



9. In our view also since for the purpose of grant of promotion a vigilance clearance is a must, so the Directorate of Vigilance has rightly withheld the vigilance clearance as the applicant is facing trial before the learned Metropolitan Magistrate for embezzlement of funds. Besides that the Transport Department has lodged another complaint against the applicant which also pertains to embezzlement of Government funds, so we find that the OA does not call for any interference. However, if and when the criminal trial culminates in favour of applicant, the department shall re-consider the case of the applicant for grant of vigilance clearance, and after the vigilance clearance is granted, the respondents may consider the promotion of the applicant to the post in question as per extant rules.

10. OA is disposed of as above. No costs.


(S.A.T. RIZVI)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL.)

Rakesh