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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P. No.310 OF 2003
IN
O.A. No.1698 OF 2002

New Delhi, this the 11th day of December, 2003

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI BHARAT BHUSHAN, MEMBER (J)

Shri A.K. Malhotra,
Son of Late Shri B.L. Malhotra,
PD-28-C, LIG Flats, Vishaka Enclave,
Pitam Pura,
Near N.D. Market,
Delhi-110088.Applicant
(By Advocate : Shri S.M. Ratanpaul)

Versus

Ms. Tinoo Joshi,
Development Commissioner (Handicrafts)
West Block No.7, R.K. Puram,
New Delhi-110066.Respondent
(By Advocate : Shri K.R. Sachdeva)

ORDER (ORAL)

SHRI V.K. MAJOTRA, VICE CHAIRMAN (A) :

We have heard the learned counsel of both sides.

2. OA 1698/2002 was decided vide order dated 18.2.2003 with the following observations/directions:-

"11. In reply, applicant's counsel has submitted that there is no order holding the applicant guilty of offences. Applicant is to be treated as not guilty till it is proved otherwise. Therefore pendency of the said case would not debar the applicant from getting the benefit of second financial upgradation.

12. For the purpose of present application, it becomes unnecessary to ponder over this controversy. The sole controversy is that the benefit had been denied to the applicant due to pendency of disciplinary proceedings. We have already pointed out that, which is mentioned again at the risk of repetition, that this

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Tribunal had earlier directed respondents to pass a reasoned and detailed order as to why the benefit of ACP Scheme cannot be granted to the applicant and his representation be disposed of. It is not the case of respondents in the impugned order that because of pendency of criminal case, the said benefit had been denied. Necessarily therefore it becomes necessary for this Tribunal to dispose of the present application as to why the department has not considered the claim of the benefit.

13. Resultantly, we allow the present application and quash the impugned order dated 7.6.2002. It is directed that application should be considered for grant of second financial upgradation in the pay scale of Rs.10500-15200 with effect from 18.12.1999 in accordance with rules and consequential benefits, if any, should be accorded to him accordingly."

3. Learned counsel of the respondents stated that criminal proceedings have been pending against the applicant in which charges have now been framed against the applicant. Respondents while passing the order dated 9.12.2003 (Annexure R/4) in compliance of directions of this Court have taken into consideration the criminal proceedings against the applicant and also other disciplinary proceedings against the applicant as on 18.12.1999 ^{and b} kept recommendation of the DPC held on 13.10.2003 in a sealed cover, as the applicant was not clear from vigilance angle as on 18.12.1999.

4. To our specific query, learned counsel stated that no disciplinary proceedings were pending against the applicant as on 18.12.1999.

5. On the other hand, learned counsel of the applicant contended that in order dated 18.2.2003,

this Tribunal had observed that pendency of criminal case against the applicant could not have been taken into consideration for denying the benefit of financial upgradation to the applicant. He also relied upon the decision in the case of S.B. Parmar v. Union of India and others passed by the Allahabad Bench on 20.2.2003, reported in 7/2003, Swamysnews 59, and stating that criminal proceedings not involving moral turpitude cannot be a ground for keeping assessment by the DPC in the sealed cover.

6. We have considered the rival contentions of the parties. In order dated 18.2.2003, this Tribunal had specifically observed that "It is not the case of respondents in the impugned order that because of pendency of criminal case, the said benefit had been denied." This issue in our view cannot be re-opened in contempt proceedings before us. Although in the order dated 9.12.2003 passed in pursuance of the Tribunal's directions the respondents have stated that other disciplinary proceedings was also pending against the applicant as on 18.12.1999, the learned counsel ^{of the respondents} stated that this has been mentioned erroneously. No disciplinary proceedings were pending against the applicant as on 18.12.1999.

7. In this backdrop, while the issue of pendency of criminal case against the applicant cannot be re-opened to allow ^{it to} form the basis for denial of financial upgradation, the disciplinary proceedings

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were not pending against the applicant as on 18.12.1999 at all. The respondents should have in all fairness instead of putting the recommendations of the DPC in the sealed cover considered ^h according the financial upgradation to the applicant in the pay scale of Rs.10500-15200 w.e.f. 18.12.1999 without taking into consideration the criminal proceedings pending against the applicant on that date while no disciplinary proceedings were also pending against the applicant on that date.

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8. This has been the spirit of the orders passed by the Tribunal which remain unassailed at the hands of the respondents and have become final.

9. At this stage, learned counsel of the respondents sought four weeks' time for further compliance of the directions of this court by opening the sealed cover containing ^h the DPC's recommendations.

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10. CP No.310/2003 is disposed of as above. Notice issued to the respondent is discharged.



(Bharat Bhushan)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

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