

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1491 of 2002

New Delhi, this the 17th day of January, 2003

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

Shri I.S. Khanna
S/o Shri R.K. Khanna,
R/o 142-B, LIC,
Rajouri Garden,
New Delhi.

(By Advocate : Shri Amitesh Kumar)Applicant

Versus

1. Govt. of N.C.T. of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. Govt. of N.C.T. of Delhi,
Department of Transport,
Through the Commissioner of Transport,
5/9, Under Hill Road,
Delhi-110054.

(By Advocate : Shri George Paracken)

3. Mohan Singh,
Deputy Director, Transport,
Department of Transport,
5/9, Under Hill Road,
Delhi-110054.

(By Advocate : Shri S.M. Garg)

.....Respondents

ORDER (ORAL)

BY SHRI GOVINDAN S. TAMPI, MEMBER (A) :

Reliefs sought for in this OA are as follows:-

- (a) direct the Respondent Nos.1 & 2 to open the sealed cover which was undertaken by the DPC in respect of the applicant on 14.10.1999.
- (b) direct the Respondents 1 & 2 to act on the recommendation of the DPC held on 14.10.1999 after opening of the sealed cover in respect of the applicant herein and to grant promotion to the post of Deputy Director (Transport);

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(2)

- (c) direct the Respondent Nos.1 & 2 to grant the benefit of seniority and fixation of pay to the applicant herein on his promotion to the post of Deputy Director (Transport) with reference to the date on which he would have been promoted in the normal course;
- (d) direct the respondent Nos. 1 & 2 to pay the monetary benefits of pay and arrears to the applicant in respect of the regularisation of his suspension period w.e.f. 22.12.1995 to 28.09.1999 which has been regularised by the competent authority treating the said period as spent on duty for all purposes;
- (e) direct the Respondent Nos.1 & 2 to revert the Respondent No.3 from the post of Deputy Director (Transport) in case the applicant is to be promoted to the said post in accordance with the recommendations of the DPC held on 14.10.1999;
- (f) direct the Respondent Nos. 1 & 2 not to grant any further promotion to the Respondent No.3 if he is to be reverted back from the post of Deputy Director (Transport) in the eventuality of the promotion of the applicant herein to the post of Deputy Director (Transport); and/or
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(3)

(g) pass any other order(s) or direction(s) which this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the instant case as well as in the interest of justice.

2. The applicant, who joined the Department of Transport, Govt. of N.C.T. of Delhi as a Motor Vehicle Inspector on 6.10.1977, became a Chief Motor Vehicle Inspector on 4.3.1989 in which he is presently continuing with a correct record. In terms of the Recruitment Rules (RRs) for the next post of Deputy Director, 75% is by promotion from the feeder cadres of Motor Licencing Officer, Chief Motor Vehicle Inspector, Technical Officer and Enforcement Officer with 10 years of regular service with the rider that those holding the post on regular basis on the date of notification (18.1.1994) were also eligible after 8 years. One Shri Mohan Singh, S.I. from Delhi Police (respondent No.3) came on deputation to Transport Department in the same capacity as S.I. and following his absorption, he became an Enforcement Officer on 6.9.1989. Though the said person was not eligible for promotion as Deputy Director, he was promoted overlooking the claims of the applicant, who was senior and eligible in terms of the RRs. The applicant along with others challenged the above promotion in OA No.1875/1994, which was allowed on 7.4.1995 holding that respondent No.3 did not have the requisite qualifying service of eight years on 22.8.1994 when the DPC was held. SLP No.12407/1995

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filed by him was dismissed by the Hon'ble Supreme Court on 25.5.1995. He was thereafter reverted on 10.7.1995. Shortly thereafter, the respondents got the applicant involved in a CBI enquiry and placed him under suspension on 22.12.1995 whereunder he continued for a long time. When the chargesheet was issued by the CBI on 14.2.1997, he was made a prosecution witness. Following his repeated representations, a high power review committee met on 3.6.1998 and recommended the applicant's reinstatement but nothing occurred thereafter leading the applicant to file the second OA - OA 223/1999 - In the meanwhile on 7.4.1999, the respondents promoted Shri Mohan Singh as Deputy Director on ad-hoc basis. On 28.9.1999, the applicant's suspension was revoked but with the rider that the revocation was without prejudice to the departmental proceedings initiated against him. He rejoined duty on 5.10.1999. DPC which met on 14.10.1999, kept his case under sealed cover though he was not under suspension, was not subject to any departmental proceedings and was not chargesheeted and thus denied him the promotion. Not only that they also promoted respondent No.3 as Deputy Director and granted him regular seniority as such w.e.f. 8.9.1997. OA 223/1994 was disposed of by the Tribunal on 18.2.2000, directing the respondents to grant the applicant all his legitimate dues, regularise his period of suspension by a reasoned and speaking order with the further directions that if it was found that the applicant's suspension was motivated, persons

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responsible shall be proceeded against. The applicant's pay was refixed on 24.4.2000 and on 6.3.2002, he was informed that his period of suspension from 22.12.1995 to 28.9.1999 was treated as duty for all purposes. All the benefits including pay and allowances, restricted on 24.4.2000 were also released. In spite of the fact that in terms of seniority list dated 31.8.1983, the applicant was junior only to Shri D.S. Dalal, who was facing a penalty and could not be promoted, the respondents had continued to keep his case in a sealed cover and denied him promotion only to safeguard the interest of the respondent No.3 who had been since promoted incorrectly. The applicant's representations have fallen on deaf ears leading to his filing this OA, the third OA a series.

3. Grounds raised in this OA are as follows:-

- i) The applicant's case was kept in the sealed cover by the DPC which met on 14.10.1999, in a malafide manner;
- ii) till date no proceedings have been initiated against the applicant and, therefore, his case could not have been kept in sealed cover;
- iii) respondents' inaction is only to harass the applicant; and
- iv) when the suspension has been revoked and all proceedings have lapsed the applicant should have been extended the benefits which have not been extended as yet.

OA should, therefore, be allowed with full benefits to him, pleades the applicant.

4. According to the official respondents, when DPC met on 14.10.1999 for filling up four posts of Deputy Director, the name of the applicant and one Shri D.S. Dalal were kept in the sealed cover, on account of the pendency of the disciplinary/criminal proceedings against them. Shri Mohan Singh, respondent No.3, who was also considered, was approved and was accordingly promoted. By the time the applicant's suspension was revoked, three posts of Deputy Director were abolished w.e.f. 28.6.2002 and, therefore, the respondents are not in a position to promote the applicant. The official respondents do not deny the facts as to the earlier incorrect promotion of Shri Mohan Singh, respondent No.3 and his ultimate reversion on 16.7.1995 under the specific directions of this Tribunal in OA 1875/1994 issued on 7.4.1995, duly endorsed by the Hon'ble Supreme Court on 25.5.1995. *They aver,*

However, he ~~the~~ applicant had been correctly placed under suspension on 22.12.1995 and ultimately reinstated on 29.9.1999 (He had also applied for voluntary retirement on 15.3.2002, which request he subsequently withdrew). Applicant's suspension was revoked on the basis of the recommendations of the Suspension Review Committee. Department had promoted a suitable person in between, as they needed one officer to look after the work of Deputy Director. *h* ~~h~~ though on 14.10.1999, the applicant was not under suspension, *h* ~~h~~ his suspension

period was not regularised till 6.2.2002 and hence the promotion granted to the respondent No.3, who was ^{found} 'fit' was correct. Official respondents deny that there was anything malafide or improper in his suspension. Once his suspension was regularised, his pay was refixed and he was given all the necessary benefits. As no post of Deputy Director was available, the applicant's case cannot be considered. No special advantage was given to respondent No.3 and no discrimination was shown to the applicant. All the averments to the contrary are baseless. Respondents were making repeated efforts to revive a few posts including the posts of Deputy Director and the applicant would have to wait till their revival. According to the official respondents, they had acted correctly and nothing ^{further} therefore remained to be done by them. Respondents also express their inability to have the sealed cover opened, as in their view exoneration of the applicant per se would not call for opening the sealed cover; especially as posts are not available for being filled up. OA, therefore, has no merit and has to fail, urge the official respondents.

5. Respondent No.3, ^{vigorously} opposes the pleas by the applicant. According to him, the applicant cannot have any grievance against respondent no.3, as the latter's promotion was not at the cost of the applicant but on the basis of his independent merits. At the time of the meeting of the DPC on 14.10.1999, three posts of Deputy Directors were available, two of

which were abolished on 28.6.2001. The applicant, if he genuinely felt aggrieved, ~~he~~ should have challenged the same immediately, which he had not done. Further, the applicant was still not free from blemish and his integrity for the relevant period cannot be certified. Firstly, the OA filed in May, 2002, against the sealed cover procedure adopted on 24.10.1999 was hit by limitation. Besides, as the respondent no.3 was promoted against one of the three vacancies on account of his excellent performance and not against the post meant for the applicant, who did not get selection for want of vigilance clearance, no action can lie against him. Respondent no.3 has been unnecessarily dragged into this controversy. The abolition of two posts of Deputy Director (Transport) was a policy decision of the Govt. for which respondent no.3 cannot be blamed. The applicant was very much involved in the irregularities of the Department, which led to the raids conducted by the CBI and was alleged to be involved in corruption, but CBI did not chargesheet him in the said case due to the reasons best known to them and possibly due to some undue influence of the applicant herein. Further the applicant has not been fully exonerated and will continue to be so until the CBI case was over and the judgement is pronounced by the Trial Judge. The CBI raid was a correct exercise of power and ordered in the interest of the fair name of the Department and the respondents were correct in placing the applicant under suspension, though on account of his undue influence he had not been

chargesheeted by CBI. This does not place him in any honourable pedestal. DPC had kept his case under sealed cover, as proceedings was still pending against him and his suspension though was revoked, the relevant period was yet to be regularised. The same was the only correct action to have been taken. Nothing has been brought on record to show that action initiated against the applicant in any way was mala fide or motivated. Presently, there was no post against which the applicant's case ^{for promotion} could be considered and as respondent no. 3 had been promoted against a different vacancy, he cannot be reverted to accommodate the applicant, as he claims, especially as the promotion of respondent no.3 has been ordered correctly and the said promotion would have taken place even if the applicant and other persons were promoted. Departmental proceedings were clearly contemplated against him as is evident from the order dated 20.8.1989. Respondent No.3 finally states that as he has been correctly promoted against the third vacancy by the competent authority, in October, 1999, but regularlly w.e.f. 8.9.1997, he cannot be reverted from the post of Deputy Director, to accommodate the applicant.

6. During the oral submissions, their respective written pleas were forcefully reiterated by the learned counsel. While Shri Amitesh Kumar, learned counsel for the applicant averred hat his client had been wronged by the respondents, who did not go by the

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rules and conditions - especially the observations of the Hon'ble Supreme Court in the case of UOI and others Vs. K.V. Janakiraman and others (JT 1991 (3) SC 527) and had favoured respondent no.3, Official respondents, through their learned counsel Shri George Parackal, point out that they had acted correctly, and that no favour has been shown to respondent no.3 and they are not able to promote the applicant in the present circumstances. Respondent no.3 urges through his learned counsel Shri S.M. Garg that he could not at all be reverted to accommodate the applicant, as his promotion was correctly ordered against the third vacancy and as the applicant was still not cleared off the charges and was not free from blemish, he could not have been promoted.

7. We have given careful and intense deliberations on the contentions raised by all the parties in the OA and have perused the documents brought on record. Though no preliminary objections has been raised by the official respondents, respondent no.3 - Mohan Singh - has averred that the OA was hit by limitation, as the impugned sealed cover procedure had taken place on 14.10.1999 while the OA has been filed in May, 2002. This has no basis whatsoever. The applicant has very clearly referred to his representations dated 4.8.2000 and 3.9.2001, which have not been disposed of, leading to the filing of this OA. Official respondents have rightly declined

to raise this plea of limitation. This objection raised by the third respondent has to fail.

8. Coming to the merits, the applicant is aggrieved that he has not been promoted as Deputy Director (Transport) inspite of being eligible for the same and that the promotion has gone to a junior, and that too in an unauthorised manner. Facts are not disputed. The applicant, a Chief Motor Vehicle Inspector, belonging to the feeder cadre for promotion to the grade of Deputy Director, found in 1994 that one Shri Mohan Singh, (respondent No.3) was promoted as Deputy Director (Transport) inspite of not being eligible for the same. This led to the filing of OA 1875/1994 among others, by the applicant, which resulted in quashing the order by the Tribunal on 7.4.1995, a judgement duly endorsed by the Hon'ble Supreme Court on 25.5.1995, dismissing the SLP No.12407/1995. Respondent no.3 was ultimately reverted on 10.7.1995. Shortly thereafter following a CBI raid, on a few persons including the applicant, he was placed under suspension on 22.12.1995, which was revoked on 28.9.1999, after the applicant filed the second OA - OA 223/1999 - The revocation order reads as under :-

"Whereas an order placing Shri I.S. Khanna, CMVI under suspension was issued on 22.12.95.

Now, the Chief Secretary, Govt. of Delhi, reinstates Sh. I.S. Khanna, CMVI with immediate effect under the powers conferred upon him in Clause (C) of sub-Rule (5) of Rule 10 of CCS (CCA) Rules, 1965. This order is without prejudice to

the departmental proceedings, which is under process against him."

This order was received by the applicant on 5.10.1999, whereafter he rejoined duties. Till then no chargesheet had been issued to the applicant, and in the CBI's chargesheet dated 14.2.1997, had included him among the prosecution witnesses. Still the DPC which was held on 14.10.1999, placed his case under sealed cover. Thereafter on 24.4.2000, his pay was refixed and on 6.3.2002. His period of suspension from 22.12.1995 to 28.9.1999 was regularised, copy of which reads as below:-

"In pursuance of Order No.3(A)(216)/Tpt/Vig/95/Part File/98 dated 6.2.2002, the period of suspension w.e.f.22.12.95 to 28.9.99 of Sh. I.S. Khanna, CMVI has been regularised by the Competent Authority and the Competent Authority has passed orders that the period under suspension w.e.f.22.12.95 to 28.9.99 may be treated as spent on duty for all purposes and payment of pay and allowances be made accordingly.

Further, the monetary benefits of pay and arrears restricted vide order No.F 3(1)/Admn/Tpl/1642-46 dated 24.4.2000 w.e.f. 22.12.95 to 28.9.99 are hereby ordered to be released."

It is obvious therefore, there was nothing whatsoever against the applicant and his career was unblemished on 14.10.99, when his case was considered by the DPC, which should have come in the way of his promotion, in terms of DOP&T's OM No.22011/4/91-Estt.(A) dated 14.9.1992, issued in the wake of the decision of the Hon'ble Apex Court in UOI and Others Vs. K.V.

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Janakiraman (supra), the relevant portion of which reads as follows:-

"On the first question, as to when for the purposes of the Sealed Cover Procedure the Disciplinary/Criminal proceedings can be said to have commenced, the full Bench of the Tribunal has held that it is only when a charge memo in a Disciplinary Proceedings/Criminal prosecution is issued to the employee that it can be said that the Departmental Proceedings/Criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure..."

Still the respondents have placed his case in sealed cover under the specious plea that certain proceedings against the applicant was under contemplation. This action is indicative of either ignorance about the relevant instructions (which we do not charge the respondents of) or callousness or insensitivity. Either case, the official respondents have not covered themselves in glory. In spite of their loud protestations that they had acted correctly and no undue favour were shown to the respondent no.3, what emerges from the record is something different. As far back as on 1994, the respondents had gone out of the way to promote Shri Mohan Singh, respondent no.3 as Deputy Director, in spite of his being ineligible and the same was set at naught only by the Tribunal's order dated 7.4.1995, duly endorsed by the Hon'ble Supreme Court on 25.5.1995, leading to his reversion. Thereafter the CBI proceedings started, which resulted

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in the applicant's being placed under suspension on 22.12.1995 where he continued till 28.9.1999, despite no chargesheet have^y been raised against him and despite recommendation of the Review Committee, till his filing OA No.223/1999. Even after the revocation of his suspension, he remained where he was, while the respondent no.3 was promoted as Deputy Director on 25.11.1999, but with regular seniority in the grade w.e.f.8.9.1997. In the circumstances, the applicant's version that the official respondents had gone out of the way to favour respondent no.3, made use of the inconsequential proceeding^{initiated} against him, to deny him his legitimate promotion cannot at all be faulted. Respondents have not at all acted as was expected from them as model employers. To crown it all, when the mistakes have been pointed out to them, they have thrown up their hands as despondency and helplessness, and have stated that as two posts of Deputy Director have been abolished, they are not in a position to open the sealed cover to take necessary action. No greater evidence of indifference and reluctance to do what is correct is necessary. If by a misunderstanding or mischief an error has been committed, the same would have to be rectified, at least when pointed out. Respondents have exhibited their reluctance to do so. This has placed them in a very bad light as public servants. Tribunal therefore has to interfere and render justice to the applicant and also to compensate him for the injustice suffered.

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9. As far as the counter affidavit filed by the respondent no.3 is concerned, we have to observe that the same is an exercise in mudslinging which was totally avoidable. While we appreciate his eagerness to hold on to the high post which he has obtained by the undue favour shown by the official respondents, we find that the insinuations and innuendoes, he has been throwing at the applicant were totally uncalled for and have to be deprecated. Respondent no.3 had not exhibited the restraint shown either by the applicant or official respondents in their pleadings. We regret to say, his pleadings have provided a sad reading.

10. In view of the above, the OA succeeds and is accordingly allowed. The respondents are directed to have the sealed cover, wherein the recommendation of DPC held on 14.10.1999, about the applicant are placed, opened and to act accordingly. If the findings, are in his favour, he should be promoted from the date his junior (respondent no.3) was granted promotion with all consequential benefits including pay and arrears. If on account of the abolition of posts, any obstacle has been placed in the way of his promotion, it should be obviated by the respondents by immediately reverting the respondent no.3, whose claim for the post is inferior to that of the applicant. This can be safely and legally done as respondent no.3, who has been incorrectly promoted, had already enjoyed the unintended benefits for nearly five years and cannot, therefore, have any grievance. He has also been put

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on notice. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. The applicant shall also be compensated by award of costs ^{quantified} ~~quantified~~ at Rs.6000/- out of which Rs.3,000/- (Rupees Three Thousand only) shall be borne by the official respondents and Rs.3,000/- (Rupees Three Thousand only) by respondent no.3 - Shri Mohan Singh.

S. Raju

(Shanker Raju)
Member (J)

/ravi/

(Govindan S. Tampi)
Member (A)