

Central Administrative Tribunal
Principal Bench

O.A. No. 52 of 1999

New Delhi, dated this the 9th November, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri J.C. Bijania,
Superintendent/CDPO,
Children's Home for Boys-I,
Alipur, Delhi.

.. Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. The Lt. Governor,
NCT, Delhi, Raj Niwas,
Delhi-110054.
2. Government of NCT of Delhi,
through its Chief Secretary,
Sham Nath Marg, Delhi-110054.
3. The Director,
Dept. of Social Welfare,
Govt. of NCT of Delhi,
Delhi-110054.

.. Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant seeks a direction to respondents to open the sealed cover of the DPC proceedings held qua him in 1991 and to appoint him as Superintendent Class II on regular basis w.e.f. the date of appointment of his immediate junior. It is also prayed that the punishment order be implemented thereafter by reduction by one stage in the grade of Superintendent II for a period of two years from the date of accrual of first promotion, with consequent benefits.

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2. Admittedly applicant was promoted as Supdt.'CDPO on ad hoc basis on 13.7.82. A DPC meeting was held on 12.3.91 to consider cases for regularisation as Superintendent. Applicant's case was also considered but was not regularised as he had been chargesheeted on 26.9.89 for a major penalty under Rule 14 CCS (CCA) Rules. His case was kept in a sealed cover and a post was kept vacant for him. The second DPC meeting was held on 17.6.94 in which again applicant's case was considered and ordered to be kept in sealed cover due to the vigilance case pending against him. The third DPC meeting was held on 17.2.96 in which applicant's case was again considered, but once again in the absence of vigilance clearance and the pendency of the charge sheet dated 26.9.89, as also the pendency of a complaint against him, applicant was not promoted and his case was kept in sealed cover.

3. Eventually the D.E. was concluded by order dated 14.6.96 by which his pay was reduced by two stage in the time scale for two years with immediate effect during which applicant would not earn increments, and on expiry of which the reduction would have the effect of postponing future increments.

4. Respondents state that accordingly the DPC's recommendations kept in sealed cover were opened for implementation, and were processed in accordance with rules and instructions which are extracted below:

"If the findings are FIT with suitable grading

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action to be taken depends on the result of proceedings/case. If the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover and with reference to the date of promotion of his next junior in the Select Panel. The official will be promoted, if necessary by reverting the junior-most officiating person. His promotion will, however, be effected notionally from the date of his next junior was promoted, but he will not be allowed any arrear of pay for the period of pay preceding the date of actual promotion.

If any penalty is imposed as a result of disciplinary proceedings against the Government servant or he is found guilty in the criminal case, the findings of DPC in the sealed cover will not be acted upon. His case will be considered by the next DPC in the normal course and having regard to the penalty enforced on him."

4A. Respondents state that applicant's case is being placed before a review DPC in the near future.

5. Applicant contends that the disciplinary proceedings were prolonged unnecessarily for which he should not be made to suffer. He argues that had the disciplinary proceedings initiated vide charge sheet dated 26.9.89 been concluded well before the first DPC meeting on 12.3.91, he might have served his punishment by then which would not have then necessitated his case being placed in sealed cover. Reliance is placed on a Delhi High Court judgment dated 12.1.99 in CWP No. 799/97 Shri S.C. Bhagwan Vs. DESU.

6. We have considered the rival contentions carefully.

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7. No rule or instruction has been brought to our notice which permits us to direct respondents to promote applicant w.e.f. 12.3.91 and give effect to the penalty only after he has been promoted. Indeed no materials have been shown to us to enable us to hold that the time taken in the conclusion of the departmental proceedings was entirely because of delay at the hands of respondents alone and applicant is completely blameless in this regard.

8. Now cant it be successfully argued that applicant's non-promotion in 1991 followed by the penalty awarded in 14.6.96 constitutes double punishment. Indeed his non-promotion in 1991 is the consequence of his conduct which led to issue of a charge sheet to him on 28.6.89 followed by the placement of his case in sealed cover. It is for this reason that had he been fully exonerated in the D.E. he could have legally claimed promotion from the date his immediate juniors were so promoted including all consequential benefits and arrears. It is precisely because he was not exonerated, but was awarded a penalty, and a major penalty at that, that the question of promotion applicant w.e.f. 1991 and then imposing the penalty as prayed for by him cannot be granted.

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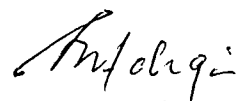
(19)

9. In so far as Bhagwan's case (supra) is concerned, it is clear that the same was disposed of in the light of the facts and circumstances governing that case. The specific instructions extracted in Para 4 above, do not appear to have been cited before the Delhi High Court and may not even have been applicable in that case. These instructions are, however, squarely applicable to the present case, and respondents have acted in accordance with them. Hence Bhagwan's case (supra) does not assist the applicant.

10. In the result the O.A. fails and is dismissed. Ex-parte interim orders dated 1.11.2000 passed on M.A. No. 2686/2000 pressed by applicant staying reversion of the applicant are vacated. No costs.



(Dr. A. Vedavalli)
Member (J)



(S.R. Adige)
Vice Chairman (A)

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