

Central Administrative Tribunal, Principal Bench

Original Application No. 1037 of 1998

New Delhi, this the 30th day of January, 2001

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

K.K. Marwah
S/o late Shri Pyare Lal
R/o A-247, Shiv Nagar,
New Delhi-18

- Applicant

(By Advocate - Shri Ashish Kalia)

Versus

1. Govt. of Delhi, through
the Chief Secretary
Delhi Administration
Delhi

2. The Director of Education
Old Secretariat
Delhi

- Respondents

(By Advocate - Shri Ashwini Bhardwaj, proxy for
Shri Rajan Sharma)

O R D E R (ORAL)

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

This OA has been filed by the applicant who had joined as PGT in the pay scale of Rs. 550-900 on 7.5.70 in the Technical Education Cadre which was finally merged with the General Education Cadre after the recommendations of the Chattopadhyay Committee. The applicant has a grievance that his junior namely Shri Jai Singh has been promoted to the post of Vice Principal which is a selection post but he has not been considered. He has submitted that his case for promotion can only be reviewed by a competent D.P.C. on availability of vigilance clearance. He has alleged that department is denying vigilance clearance for his promotion to the post of Vice Principal without any rhyme and reason on the plea that they have proposed to hold an enquiry.

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2. The plea of the applicant is that no chargesheet has been issued to him and therefore, the department cannot withhold vigilance clearance and as such, he is entitled for a review DPC.

3. O.A. is being contested by respondents. The main plea of the respondents is that since departmental proceedings are pending against the applicant, vigilance clearance cannot be given in his favour. They have denied that applicant has been discriminated by non-consideration under "Seal-Cover" procedure for promotion to the selection post of Vice Principal. It is also denied that Shri Jai Singh is junior to the applicant.

4. We have heard learned counsel for the parties and gone through the records.

5. Learned counsel for the applicant submitted that on the same allegations as are contained in the memorandum of chargesheet issued on 23.11.2000, the applicant was tried by a criminal court vide FIR No.559/76 wherein the date of commission of this case was mentioned as 23.6.76 and in that case vide judgement dated 11.2.91, he has been acquitted by the criminal court. He has further submitted that on the date when juniors to the applicant were considered for promotion, neither any chargesheet was pending against the applicant nor any memo was issued to him and,

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therefore, the applicant was entitled for vigilance clearance so that his case could be considered by the review DPC.

6. In reply to the submissions of Shri Ashish Kalia, learned proxy counsel for the respondents Shri Ashwini Bhardwaj submitted that now since the chargesheet has been issued to the applicant, the respondents would be unable to issue vigilance clearance in favour of the applicant.

7. After having considered the rival submissions of the parties, we are of the view that as the date when the DPC met to consider the case of promotion, particularly when the juniors to applicant were considered and promoted, since on that date no chargesheet was pending against the applicant, the department was under legal obligation to consider the case of the applicant also. For this purpose, we are also fortified by the judgement given by the apex court in the case of Union of India vs. K.V. Jankiraman, AIR 1991 SC 2010 which lays down that if on the date of holding of DPC, the disciplinary proceedings are not pending, then the department is bound to consider the case of employee otherwise "sealed cover procedure" is to be adopted. In this case, since the criminal proceedings had come to an end by judgement of acquittal in respect of applicant, and thereafter no proceedings were pending, then department was bound to consider the case of the applicant.

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8. Hence, we allow the OA and direct the respondents to constitute a review DPC and consider the case of applicant irrespective of the fact whether vigilance clearance is given by the department or not and if the review DPC otherwise finds the applicant fit for promotion, then the applicant shall be promoted subject to final outcome of the departmental proceedings. These directions should be implemented within a period of two months from the date of receipt of a copy of this order. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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