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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 116/98

New Delhi, this the 15th day of September, 1998

HON'BLE SHRI N.SAHU, MEMBER(A)  
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

Inder Pal Singh,  
S/o Shri Tek Ram,  
Vill. Samaspur P.O. Ujwa,  
Delhi-110 073.

Working as:

Postal Assistant,  
Indraprastha Head Post Office,  
New Delhi.

....Applicant.

(By Advocate: Shri M.K.Gaur)

Versus

1. Union of India - through  
The Secretary,  
Ministry of Communication,  
Dak Bhawan,  
New Delhi.

2. The Chief Postmaster General,  
Delhi Circle,  
Meghdoot Bhawan,  
New Delhi.

3. The Chief Post Master,  
Indraprastha Head Post Office,  
New Delhi.

.... Respondents

(By Advocate : Shri K.C.D.Gangwani)

O R D E R (ORAL)

BY HON'BLE SHRI N.SAHU, MEMBER(A)

Heard Shri M.K.Gaur, 1d. counsel for applicant  
and Shri K.C.D.Gangwani, 1d. counsel for respondents.

2. The prayer in this O.A. is to set aside the impugned order dated 26.12.97 which disposed of the applicant's representation dated 10.10.97. The representation was that the applicant was unjustly deprived of time bound promotion. He was informed that the DPC could not recommend the applicant's case because of pendency of vigilance inquiry against him in connection

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with the alleged fraudulent encashment of certain substantial amounts through S.B. accounts standing in the books of the Indraprastha Head Post Office wherein the applicant worked during the period of alleged fraud. The DPC didn't keep its finding in a sealed cover in respect of the applicant when it first met on 20.8.97 to consider the name of the applicant for this time bound promotion. A review DPC was held on 19.2.98 and a sealed cover procedure has been followed. The applicant claims that under Rule 21 (2) of CCS (CCA) Rules only three categories of persons would be liable to have their names considered and kept in a sealed cover. Those three categories are -

- i) Government servant under suspension;
- ii) Government servant in respect of whom disciplinary proceedings are pending;
- and
- iii) Government servant in respect of whom prosecution for criminal charge is pending.

3. The applicant is not under suspension and there are no disciplinary proceedings pending against him. Only a vigilance inquiry is going on. The applicant cited the decision of the Hon'ble Supreme Court in the case of State of Punjab and ors. vs. C.L. Goel - 1995 (2) SCC 570. That decision is an authority for the proposition that passage of time ipso facto does not justify dropping of the proceedings nor such a passage of time invalidates the proceedings. The observations relied upon by the applicant here are that in that case applicant should have been considered for promotion and if found fit, granted

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promotion subject to the result of the departmental inquiry. We now have a catena of decisions relying upon Janakiraman's case which settles the legal position. Disciplinary proceedings can be stated to be pending only when a chargesheet is issued against the applicant. This was further enlarged to include cases where the disciplinary authority has recorded its satisfaction about fitness of the case where the chargesheet could be issued. A mere contemplated vigilance inquiry cannot justify the respondents to withhold the promotion. We have inquired from the 1d. counsel for applicant at the Bar as to whether even today the respondents have issued a chargesheet or not. Under instructions of the applicant, the 1d. counsel for applicant states that no chargesheet has been issued so far. Shri K.C.D.Gangwani, 1d. counsel for respondents also states that till May, 1998, no chargesheet was issued to the applicant.

4. We have no other alternative except to quash the order dated 26.12.97 and direct the respondents to open the sealed cover immediately and relate back that sealed cover to the first DPC because the first DPC also denied the promotion to the applicant on the ground that vigilance inquiry is pending against the applicant. We further state that within a period of six weeks from the date of receipt of a copy of this order, the respondents shall open the sealed cover relating it back to the first DPC when the applicant was due for promotion and if found fit in accordance with the findings in the sealed cover, issue the

promotion order subject, however, to the ultimate result of the contemplated departmental inquiry against him.

5. O.A. is disposed of as above. No costs.

A. Kedarkar

( DR. A. VEDAVALI )  
MEMBER(J)

N. Sahu

( N. SAHU )  
MEMBER(A)

/mishra/