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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

M.A. No. 1646/94
in
O.A. No. 1179/94

New Delhi this the 27th Day of July 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Jagjit Singh,
Son of Shri Tara Singh,
20 Bharat Nagar,
Delhi-110 052.

2. Shri Ajay Kumar Bhatnagar,
Son of Late Shri M.S.Bhatnagar,
31/1 Railway Colony,
Kishan Ganj,
Delhi-110 052.

3. Shri M.K. Bansal,
Son of Shri Tirath Raj,
L-212 Sastri Nagar,
Delhi-110 052.

4. Shri Ashok Kumar,
Son of Shri Ram Autar Singh,
Plot No. 345,
Pocket No. G-30,,
Sector 3, Rohini,
New Delhi-110 085.

5. Shri V.K. Sharma,
Son of Shri Amar Singh Bohra,
18/93 C East Moti Bagh,
S. Rohilla,
Delhi.

6. Shri J.L.Koli,
Son of Shri Ganga Ram,
F-294/5 Sector 12,
New Vijay Nagar,
Ghaziabad.

... Applicants

Vs

1. Union of India,
through Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

2. General Manager,
Northern Railways,
Baroda House,
New Delhi.

3. Financial Advisor & Chief
Accounts Officer,
Northern Railway, New Delhi.

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

All the above mentioned applicants have joined in this application and have the grievance that in terms of letter dated 29.4.1994 certain orders for promotion of 15 Section Officers to the post of Senior Section Officer has been issued as a result of restructuring scheme where certain posts of Section Officers have been upgraded as Senior Section Officer. They have therefore prayed that the respondents be directed to give them promotion from the date any of their junior Section Officer has been promoted as Senior Section Officer. On notice the respondents contested the application and filed reply that the applicants are under a cloud of major penalty under and as such the decision was taken not to promote them as they were not cleared from the vigilance angle.

The applicants have also filed the rejoinder reiterating the grounds taken in the application and also filing order dated 29.3.1994 whereby two persons Sudeep Kumar and Ranbir Singh of Scheduled Caste category who are also named to be proceeded in the departmental enquiry have been given promotion to the post of Senior Section Officer. It is, therefore, urged that the respondents cannot discriminate. The applicants and those two given promotion are also delinquent in the same departmental enquiry to be proceeded on the advise of Central Vigilance Commission under the orders of General Manager, Vigilance, Baroda House.

The learned counsel for the applicant has also got certain departmental file summoined and the respondents have placed those files regarding considering of promotion to the post of Senior Section Officer and regardiang initiation of departmental proceedings against the applicants. We have gone through the departmental file and the MA in this regard stands allowed.

The learned counsel for the applicant argued that in the case of sealed cover delinquent must on the date when DPC held be served with a copy of the chargesheet and in this connection he has referred to the decision of the Full Bench of the Tribunal in the case of K. Venkatareddy reported in 1986 (2) ATR P _____. He has further emphasised the fact that the Hon'ble Supreme Court in the case of Union of India vs. K.V. Jankiraman reported in 1992(1)ATJ P 372 has laid down specific law and the ratio has been enunciated in Para 16 a d 17 of the reports. The learned counsel has also referred to the decisioin in the case of Khurana reported in Judgement Today 1993(2) P 695 and that of Kewal Kumar in the same journal at P 705. Taking lead from all these cases the learned counsel placed the arguments that the applicants were not under a shadow of enquiry having not been informed earlier to the date of issue of the orders for promotion which is dated 22.4.1994. The decision in this regard has been taken by the respondents competent authority after the consideration of the applicants for promotion i.e. on 29.4.1994. We have given a careful consideration to

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all these aspects. The law on the point is clear. A person is not to be rewarded if he is under the cloud of the enquiry. In the present case the misconduct alleged against the applicants and two others Sudeep Kumar and Ranbir Singh that they used unfair means in the selection for the post of Section Officers notified in 1988. On the basis of certain investigation on 21.6.1993 Director of Vigilance have given an opinion that the applicants who are listed at the bottom of the letter be proceeded against the departmental enquiry. The controversy lies in the perception of the learned counsel regarding the initiation of the disciplinary proceeding against the applicants. The contention of the learned counsel is that the orders initiating disciplinary proceedings was issued subsequently in the month of July 1994. Having given due consideration in the light of the cited law we are afraid that this contention is totally unacceptable. As early as in June 1993 the investigation has almost come to an end and it has culminated in issue of the letter of 25.3.1994 regarding the suspension of the applicants and two others named above alongwith certain other persons. In view of this we cannot accept the contention raised by the learned counsel that the applicants should be given promotion during the pendency of this departmental enquiry. We are fortified in our view by almost a similar case though the different facts are quoted by the Hon'ble Supreme Court in K.V. Jankiraman (Supra) Para 36 and 37 of the reports. In that case certain employees had withdrawn LTC claim and the criminal case for defrauding the

Government was lodged against them but subsequently the employees tendered the advance of the LTC and the criminal proceedings were dropped. In December 1986 the DPC held and made recommendations for those acquitted accused for promotion. The departmental enquiry initiation action was taken in 1987. The promotion was withheld and those persons approached the Tribunal which graciously granted the relief of promotion to those persons facing departmental enquiry. The Hon'ble Supreme Court observed that the Tribunal has acted mechanically as the action had already been initiated in a criminal case against those persons much before the DPC met. In the present case the misconduct alleged is of an examination notified in 1988 and it is alleged that the applicants used unfair means in getting selected to the post of Section Officers. The investigation commenced and the applicants too were interrogated and CVC ultimately advised Head of the Department, Headquarters, Northern Railways, New Delhi that the *prima facie* case is made out on which the General Manager, Vigilance issued the orders for suspension in March 1994. Thus, the case is fully covered by the case of K.V. Jankiraman. In fact the learned counsel has quoted the case of Kewal Kumar and Khurana (Supra) but these are of no help to the applicants in the case of Kewal Kumar also the FIR of 1989 prevented the promotion though chargesheet was issued in August 1990. to initiate departmental proceedings.

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The learned counsel has also referred to the fact that the letter of 25.3.1994 is not for initiation of the departmental proceedings is only an expression of the desire of the Railway Board to initiate disciplinary proceedings to suspend the applicants and initiate disciplinary proceedings in SF 5. In fact this letter itself is based on an earlier enquiry may be called a preliminary enquiry and the applicants too had knowledge of the same so it cannot be said that the applicants were have unaware.

However, a fact remains that the respondents have discriminated the applicants and given promotion to Sudeep Kumar and Ranbir Singh though they were similarly in the same category of delinquency as the applicants. The action of the respondents is to be enquired into as to how the vigilance has given clearance in the case of these two persons by the letter of 16.3.1994. These two persons have also been suspended. It is expected by the respondents that they will seriously take the matter against the officers who have lightly dealt the matter of vigilance clearance withholding of the applicants and given clearance to those Sudeep Kumar and Ranbir Singh who had equal fault as alleged in the letter of 25.3.1994.

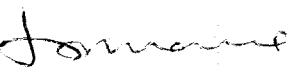
We do not find that this is a case where the Tribunal can interfere.

The application, therefore, is dismissed as devoid of merit with the observation that the respondents will take action accordingly as observed in the latter part of the judgement.

The departmental files received are returned.


(B.K. Singh)

Member(A)


(J.P. Sharma)

Member(J)

Mittal