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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A NO. 1783/94

New Delhi this the 16th Day of November, 1994.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER(A)

Const.Narinder Kumar,
son of Sh. Nathu Singh,
Resident of/Care of PPG, Lines,
Rashtrapati Bhawan,
New Delhi.
(By Advocate Shri Sunil Malhotra)

Applicant.

VERSUS

1. Commissioner of Police,
Police Head Quarter,
New Delhi - 110 002.

2. Deputy Commissioner of Police,
Rashtrapati Bhawan,
New Delhi.
(By Advocate Shri Rajindra Pandita)

Respondent

ORDER (ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

The only grievance of the applicant is that by the order dated 3.6.1993 the promotion List-A of the applicant was kept in abeyance because there was some proceedings pending against the applicant at the time of announcement of the promotion results.

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✓ 2. The applicant has prayed for the grant of relief quashing the order dated 26.5.93 conveyed to him vide letter dated 3.6.93 with the directions to the respondents that the applicant be sent to the Lower School Course at PTS Jharoda Kalan, New Delhi for requisite training with all benefits of seniority and promotion from the date of admission to promotion list-A w.e.f. 2.12.1992.

3. A notice was issued to the respondents. Shri Rajindra Pandita appeared and opposed the admission of this application and did not choose to file any reply as basically a legal issue is involved in this case.

4. The contention of the learned counsel is that when the respondents have taken a decision under rule 15(2) of Delhi Police Promotion and Confirmation Rules, 1980 then the pendency of any criminal case should not be a hurdle in giving promotion to the applicant on the basis of the order of 20.12.1992. Learned counsel has also referred to the case of Union of India V/S K.V.Jankiraman reported in 1991 Vol-III Judgement Today page 527. The contention of the learned counsel for the applicant is that if a minor offence under section 92, 93 & 97 of DP Act and offence of a trivial nature and the proceedings may continue for considerable time even in the meantime the applicant is not given the benefit of the order dated 6.12.1992.

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5. The contention of the learned counsel is also that on the same basis there was a disciplinary department enquiry under section 21 of DP Act and under rule 12(2) of DPP&CRules,1980 and by the order dated 29.9.1993, the Deputy Commissioner of Police dropped this enquiry at this stage.

6. The counsel for the respondents, however, opposed the maintainability of this application itself as in the array of parties the proper respondents have not been impleaded. It is also stated that the applicant has not exhausted the departmental remedies. On merits also the learned counsel has opposed the grant of the relief.

7. Also rule 15(2)^{of} the DP Act does not apply to the present case at all as in a case where the preliminary enquiry is held before initiating a departmental enquiry. Here simultaneous disciplinary enquiry has been initiated when already there was a criminal case commences on the basis of FIR under certain provisions of section 92, 93 & 97 of the DP Act. It is not the case of the applicant that the departmental proceedings have been wrongly initiated. It is also not the case that he has been exonerated from the departmental enquiry. The order passed by the disciplinary authority only goes to show that the disciplinary proceedings have been dropped "AT THIS STAGE". There is some substance of the contention of the learned counsel of the applicant that when the disciplinary proceedings were coming to an end that should have been

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finally decided either way. But this is also not the case for our consideration in this application. What the applicant has prayed is that during the pendency of the criminal case he should be given benefit of promotion being empaneled in List-A by the order dated 2.12.1992. The provisions of Delhi Police Promotion and Confirmation Rules, 1980 under rule 5 sub clause(iii) specifically bars the promotion or sending to the Lower School Course of any sub-ordinate rank police officers facing the departmental enquiry or criminal proceedings. The contention of this learned counsel is that this rule is to be read in confirmity with rule 12(2) of the Delhi Police Punishment Rule, 1980 and a harmonious construction as arrived at. However, both the provisions of rule 15(2) as well as the aforesaid clause 5 (iii) are on different aspects. Rule 15(2) lays down for initiation of departmental enquiry while the aforesaid clause prohibits the admission of subordinate rank police officers facing a departmental enquiry. The said provisions have not been challenged before us. We have to follow these provisions in letter of ^{spirit.} / . Thus, there is a bar against the applicant for sending him to the Lower School Course despite of his promotion by the order dated 2.12.1992.

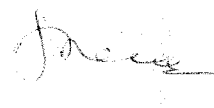
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8. Regarding the case of K.V.Jankiraman, this case also comes in the way of the applicant. The contention of the learned counsel that promotion has to be effected as the applicant has not yet been served with a Charge of Memo of the Criminal case. If there is same matter when the DPC is held to consider for promotion then case of such of applicant's case can be get along with the recommendation of the DPC in a sealed cover and that has to be opened when the involvement of such persons ends. If it is in his favour he has to be given benefit and if it goes against, he cannot get any advantage. In the case of Kewal Kumar vs. Union of India reported in the same Journal JT 1993(2) SC 705 which clarified the position where it has been laid down that pendency of departmental enquiry or criminal case can be a ground for withholding promotion and keeping the matter in the recommendation of the DPC in a sealed cover.

9. However, this is up to the applicant to make representation to the respondents because the offence under section 92, 93 & 97 is of a trivial nature and highlighting the facts that the appeal in the criminal case is not likely to end in the near future. The applicant may also emphasize that the departmental enquiry against him has been dropped.

10. In view of the above facts and circumstances the impugned order does not call for any interference and OA is, therefore, dismissed with costs on the parties.


(B.K.SINGH)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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