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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.552/2000 with OA No.1014/2000

New Delhi, this 19th day of January, 2001

Hon'ble Shri V.K. Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Shashi Bhushan Sharma (OA No.552/2000)
E-1067, Saraswati Vihar
Delhi

Suniti Kumar Gupta (OA No.1014/2000)
D-1/39, Janakpuri
New Delhi

.. Applicants

(By Shri M.K.Gupta, Advocate)

versus

Government of NCT of Delhi, through

1. Chief Secretary
5, Sham Nath Marg, Delhi-54
2. Principal Secretary (Medical)
5, Sham Nath Marg, Delhi-54
3. Ashok Bakshi
Director(PFA)
A-20, Lawrence Road Industrial Area
New Delhi .. Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER

By Shri Shanker Raju

By this order, we proceed to dispose of these two OAs involving common question of law.

2. Applicants presently working as Food Inspectors with the respondents for the last more than 15 years are being aggrieved by an order passed by the respondents on 21.1.2000, whereby financial upgradation of the applicants to the pay scale of Rs.6500-10500 with effect from 9.8.99 has been kept in abeyance on the alleged ground that vigilance clearance has not been given and the applicants have been proceeded against in a disciplinary proceedings.

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3. Brief facts of the case are that the DPC was held on 7.1.2000 to consider implementing Assured Career Progression (ACP, for short) Scheme of the Government and in view of clause 11 of the conditions, the cases of the applicants have been kept in abeyance as grant of financial upgradation to be regulated under ACP Scheme shall be subject to rules governing normal promotion in the matter of disciplinary proceedings pending against government servants. Memo dated 11.10.99 proposing initiation of disciplinary proceedings was issued against the applicants on the ground that there was some irregularity in collection of food samples by them.

4. The aforesaid Memo was replied to and thereafter on 24.1.2000 the applicant (in OA No.552/2000) was placed under suspension. Thereafter despite his representations there has no response and promotion under ACP Scheme has been denied to both the applicants. The applicants further have taken the plea that according to Central Vigilance Commission's order dated 29.6.99, no action can be taken against government servants on any anonymous complaint and the same should be filed. It has been further contended by the learned counsel for the applicants that it is alleged against the applicants that Case No.33/99 was initiated against them by the Anti Corruption Branch and as such they have been denied the benefit of ACP Scheme. Regarding case No.33/99 a query has been asked by the Anti Corruption Branch from the Director(PFA) on 21.5.2000 and the query has been answered to by the latter on 6.7.2000 whereby it has been clearly stated that in the matter of lifting samples under Section 10 and 11 of PFA Act, Food

Inspector under the existing policy is not allowed to do so on his own and it has to be done in the presence of SDM/LHA who has been entrusted with the power of local Health authority.

5. Applicants contend that sealed cover procedure has been resorted to arbitrarily with due malafide of the R-3 and mere investigation is not sufficient to withhold promotion. According to the applicants, the crucial date for consideration is the date when DPC meets and in these cases, no case was pending against the applicants. They further stated that the reason given by the respondents to withhold financial upgradation does not form part of the order and the same would not be supplemented by additional pleadings. Counsel for the applicants has relied upon the cases of Hon'ble Supreme in M.S.Gill Vs. Chief Election Commissioner 1978(1) SCC 405, UOI Vs. Dr. Sudha Salhan 1998(3) SCC 394, UOI Vs. Kewal Kumar 1993 SCC(L&S) 744 and State of MP Vs. Srikant Chaphekar 1993 SCC (L&S) 48 to contend that respondents have not come with any specific reason as to whether disciplinary proceedings have been ordered against the applicants or a decision has been taken on file and also no FIR has been registered against the applicants in the alleged case No.33/99. Applicants contend that denial of ACP promotion on 7.1.2000 when one of them was not under suspension and their cases are not being covered by Clause 11 (supra), denial of their legitimate claim is bad in law.

6. Respondents in their reply refuted the plea of the applicants and contented that the applicants have come to the Tribunal without awaiting the outcome of their

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representations. According to the respondents, a complaint was received against the applicants and as directed by the Minister of Health, a case No.33/99 was initiated against them by the Anti Corruption Branch. They contend that Shri Sharma (OA 552/2000) was placed under suspension for alleged misbehaviour. They deny any malafide on the part of R-3 as he is neither a member of the DPC/Selection Committee, nor a Vigilance Officer. They rely upon the communication sent by Anti Corruption Branch on 19.1.2000 wherein it has been stated that enquiry against the applicants is pending with them and was under process. In view of this position, respondents contended that according to the instructions contained in ACP Scheme, applicants have not been denied their legitimate right but they have decided to keep the case in abeyance till a decision of the vigilance case is known. According to them seeking vigilance clearance before actual order of promotion is mandatory under column 17.1 contained in Swamy's Manual of Establishment and Administration.

7. Applicants in their rejoinder reiterated the pleas taken in the OA and further stated that one of them (Shashi Bhushan Sharma) filed MA No.2228/2000 seeking production of records relating to case No.33/99 and to ascertain whether any proceeding is pending against him or not as well as copy of complaint dated 30.7.99 be given to him. Respondents in their reply to the MA have denied to give a copy of case No.33/99 and stated that the same is available with Anti Corruption Branch which has not been impleaded as necessary party.

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8. We have carefully gone through the rival contentions of the parties and perused the available records on file. The main uncontroverted facts are that the DPC met on 7.1.2000 under ACP Scheme and financial upgradation has been given to similarly situated persons for in the year 1999. Applicant in OA No.552/2000 admittedly was placed under suspension on 24.1.2000 and he along with other applicant also was issued a memo on 11.10.99 pursuant to complaints against them. In one of the OAs, we find that the respondents have not given any vigilance clearance and it has been reported by the Anti Corruption Branch that enquiry against the applicant is pending with them and the same is under process. On our asking, the learned counsel was unable to enlighten us about the stage of disciplinary proceedings against the applicants or whether any decision has been taken in regard to case No.33/99. At one place respondents refer to vigilance enquiry and on the other hand they referred to an investigation in case No.33/99. MA No.2278/2000 filed by one of the applicants has also not been satisfactorily replied by the respondents.

9. In our view, relying upon the ratio of the Hon'ble Supreme Court in Dr. Sudha Salhan (supra), the occasion to adopt sealed cover procedure is when a decision is taken by the government to initiate disciplinary proceedings against a government servant or a criminal investigation has been started against him by lodging of FIR. Apart from this, the crucial date for consideration is the date of convening of the DPC. If the government servant is not under suspension and neither a decision has been taken to initiate disciplinary proceedings against him nor FIR has been

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lodged against him, resorting to sealed cover procedure would be against government rules on promotions as well as dictum laid down by the Supreme Court.

10. As we have stated above, in these two OAs the fact of pendency of disciplinary proceedings or its stage has not been ascertained due to lack of information by the Government counsel. We are, however, of the opinion that if no FIR is registered against the applicants as on 7.1.2000, clause 11 of the conditions of ACP scheme would not be applicable to them in the circumstances and action of the respondents to adopt sealed cover procedure, as also denial of financial upgradation to them, would be against the principle of law.

11. In the interest of justice, we direct the respondents to verify from the concerned authorities i.e. Anti Corruption Branch of Govt. of NCT of Delhi as to the stage of disciplinary proceedings or criminal case against the applicants as on 7.1.2000. In the event it is found that no decision to initiate disciplinary proceedings was taken or FIR has been lodged against the applicants, they would be entitled for financial upgradation to the pay scale of Rs.6500-10500 alongwith other similarly placed with effect from 9.8.1999.

12. The OAs are allowed to the above extent. There shall be no order as to costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A) 19.01.2001

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