

Central Administrative Tribunal, Principal Bench

Original Application No.1497 of 2000

New Delhi, this the 19th day of July, 2001

Hon'ble Mr.Justice Ashok Agarwal, Chairman  
Hon'ble Mr.V.K.Majotra, Member (Admnv)

Dr.A.K.Singh, s/o late Sh.L.P.Singh, R/o  
A-32/3, DDA (SFS), Saket, New Delhi-110017 - Applicant  
(Applicant in person)

Versus

1. Union of India, through its Secretary (Health), Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110001.
2. Director General of Health Services, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110001.
3. Union Public Service Commission, through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110003. - Respondents

(By Advocate Shri V.S.R.Krishna)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The applicant has challenged the validity of the respondents' action in not granting him in situ promotion in the grade of Deputy Assistant Director General in Medical Stores Organisation, DGHS, New Delhi which was due to him in the year 1995 despite that neither the applicant was placed under suspension nor was any investigation pending against him nor had any charge sheet been issued to him till then. Applicant's representation in the matter have remained unresponded. He has sought direction to respondents to grant him in-situ promotion in the grade of Deputy Assistant Director General with effect from 1995 and further in-situ promotion in the grade of Assistant Director General with effect from 25th April,2000 with all consequential benefits.

2. The applicant was appointed as Depot Manager with effect from 25.4.1990. This post is covered by the In-situ Promotion Scheme,1990 and carries a pay scale of



Rs.8000-13500 revised. He became eligible for promotion to the next higher scale of Rs.10,000-15,200 with effect from 1.10.1995 as per the In-situ Promotion Scheme. His case for promotion was referred to Assessment Board in the UPSC in 1997. However, he was suspended on 5.3.1997 and subsequently a charge sheet was issued against him on 27.4.1998. Ultimately the Assessment Board meeting was held on 20.10.1998 and the findings regarding applicant's suitability for in-situ promotion were placed in the sealed cover.

3. We have considered the pleadings of both sides and material on record.

4. Shri V.S.R.Krishna, learned counsel of respondents drew our attention to DOPT's OM NO.22011/4/91-Estt(A) dated 14th September,1992 (Annexure-A) based on the directions of Hon'ble Supreme Court judgment dated 27.8.1991 in the case of Union of India Vs.K.V.Jankiraman,AIR 1991 SC 2010. He contended that in terms of this OM if at the time of consideration of <sup>Case b</sup> the <sup>1</sup> of a Government servant for promotion, if he is under suspension, or ~~if~~ against whom a charge sheet has been issued and the disciplinary proceedings are pendings, and in respect of whom prosecution for a criminal charge is pending, it is obligatory that sealed cover procedure is followed. According to him it is immaterial that at the time when the applicant was eligible for promotion, the applicant was not under suspension and no charge-sheet or disciplinary proceedings or criminal prosecution were pending against him. On the other hand the applicant contended that he became eligible for in-situ promotion to the post of Deputy Assistant Director General in 1995. According to him, he was not responsible for causing any delay in the

holding of the DPC and if the DPC had been held at the relevant time in 1995, the applicant would have been promoted then. Thus, his later suspension or pending disciplinary proceedings should not be held against him in adopting sealed cover procedure in matter of his promotion and causing unnecessary delay in his promotion.

5. Shri Krishna, learned counsel also stated that whereas the enquiry officer has completed disciplinary proceedings against the applicant and submitted the enquiry report to the disciplinary authority, the final decision has not yet been taken by the disciplinary authority.

6. The basic issue for adjudication before us is that when the applicant has not been considered for in-situ promotion immediately when he became eligible in 1995, what the impact of delay in considering of his case for promotion would be? For example, in the present case there has been a delay of three years and the respondents have kept the recommendations of the screening committee for in-situ promotion in the sealed cover because when the DPC was ultimately held disciplinary proceedings against the applicant had been initiated.

7. In **Y.V.Rangaiah Vs.J.Sreenivasa Rao**, (1983)3 SCC 284 it was held that panels for promotion have to be related to the years when vacancies occurred and authorities could be directed to prepare panels on yearwise basis and for the vacancies for earlier years the then existing statutory rules of recruitment have to be applied. The inference from this ratio is that while considering a case of promotion the facts and circumstances obtaining at the time when a candidate becomes eligible have to be taken into consideration.

Developments which occurred at stages later than when a personnel become due for promotion have to be given a go by. Clearly annual confidential reports and charge sheets issued against such personnel in the later years than when he became eligible and due for consideration for promotion cannot be taken into consideration. These observations certainly have an impact on the merits of the instant case.

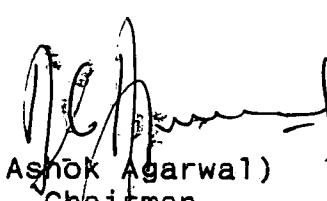
8. We find from the record that the applicant was in no way responsible for causing delay in the holding of the DPC when the applicant became eligible in 1995 for consideration for in-situ promotion. It was ultimately held in 1998 that a charge-sheet should be issued and the recommendations relating to the applicant's promotion were kept in the sealed cover. Although referring to the case of Jankiraman (supra) in the OM dated 14th September, 1992 referred to above Department of Personnel and Training has stated that cases of suspension, disciplinary proceedings or criminal prosecution have to be brought to the notice of the DPC at the time of consideration of such case i.e. at the time when the DPC is held, in our considered view when the DPC is not held timely and is delayed inordinately without any reason attributed to the charged officer, suspension, initiation of disciplinary proceedings and criminal prosecution ordered during the period after the time he became eligible for promotion should not be considered for adopting sealed cover procedure. We derive support from the ratio of the case of Y.V.Rangaiah (supra) where the circumstances obtaining at the relevant time have been accorded importance for consideration of cases even at later stages.

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9. Having regard to the discussion made above and particularly in view of the fact that the applicant was no way responsible for causing delay in the holding of the DPC we are inclined to take benevolent view in the matter by allowing this OA. However, before we may part, we would like to observe that we do not see any difficulty in continuation of the disciplinary enquiry in accordance with rules and the in-situ promotion under consideration here will not wash out the consequences of the alleged misconduct if proved against him.

(X)

10. In the result, the OA succeeds. The respondents are accordingly directed to open the sealed cover of the applicant and act upon the recommendations of the DPC contained in the sealed cover and in case he is found entitled to promotion with effect from April, 1995, he shall be granted the same with all consequential benefits flowing from such promotion. No order as to costs.

  
(Ashok Agarwal)  
Chairman

  
(V.K. Majotra)  
Member (Admnv)

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