

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1688/2000

New Delhi, this the 6th day of February, 2002

Hon'ble Shri M.P. Singh, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

Sub-Inspector Dharamvir Singh  
No.D/2942, S/o Shri Nomi Nath  
presently posted in Diplomatic Security Force,  
Chanakyapuri,  
New Delhi

Applicant

(By Shri H. K. Gangwani, Advocate)

versus

1. NCT of Delhi, thorough  
Chief Secretary, through  
Commissioner of Police  
Police Hqrs., New Delhi
2. Spl. Commissioner of Police/Admn.  
Police Hqrs., New Delhi
3. Addl. Commissioner of Police/Estdt  
Police Hqrs., New Delhi

Respondents

(By Ms. Neelam Singh, Advocate)

ORDER(oral)

By Shri Shanker Raju, Member(J) :

Applicant, who is working a Sub-Inspector, impugns the order passed on 17.4.2000 wherein after being considered for promotion in pursuance of the directions of the Apex Court in C.W.P. No.5363-64/98 decided on 14.12.1999 in the case of Roop Lal and others Vs. U.O.I. and others, for the post of Inspector (Executive) has been placed in sealed cover on account of pendency of the departmental proceedings.

2. The applicant a deputationist in Delhi Police in pursuance of the decision of the Apex Court in Roop Lal's case (supra) has been absorbed in Delhi Police and accordingly a seniority list was prepared wherein his name figures at Sl. No.24 in pursuance of the directions of the Apex Court. A review DPC has been held on

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16.3.2000 and 4.4.2000 to consider the cases of the deputationists for promotion w.e.f. 12.8.1999 to the post of Inspector (Executive) in promotion list 'F'. Applicant made a representation for his promotion as his juniors have been promoted. Despite being accorded a personal hearing, he has not been communicated any decision.

3. The learned counsel of the applicant stated that the applicant was due for promotion w.e.f. 12.8.1994 and at that time no disciplinary proceedings was pending against him. As he was placed under suspension on 27.1.1995 and regular departmental inquiry was initiated on 7.2.1995, resorting the sealed cover was unwarranted. In support of his contention, learned counsel of the applicant Shri H.K. Gangwani, places reliance on the decision of the Coordinate Bench C.L. Sethi Vs. Lt. Governor, Delhi and Anr. in OA No.862/1993 wherein it has been held that at the time of meeting of DPC, if nothing was pending against the applicant, which is adverse to him, his promotion cannot be withheld on a subsequent event.

4. The respondents rebutted the contention of the applicant and stated that the applicant has been awarded three censure on 16.6.19877, 14.2.1995 and 1.1.1994. It is stated that the applicant was proceeded against in a departmental inquiry on 17.2.1995 and after conclusion, the disciplinary authority served him with a copy of the findings. The co-delinquent has already been dismissed on 1.10.1996 and the applicant filed OA No.2375/1996 which has been dismissed on 14.1.1998 with the directions to the disciplinary authority to complete the

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disciplinary proceedings within a period of four months. The applicant evaded his appearance before the disciplinary authority and ultimately filed Civil Writ Petition No.718/1998 which is pending before the Hon'ble High Court of Delhi. In pursuance of the decision in Roop Lal's case, the seniority of the applicant was revised at the time of considering his claim for actual promotion w.e.f.12.8.1994. Thereafter the review DPCs were held on 16.3.2000 and 4.4.2000. As the applicant was facing the departmental inquiry, the recommendation of the review DPCs has been placed in sealed cover and it could be given effect to only after the disciplinary proceedings is finalised. The learned counsel of the respondents placed reliance on para 7 of OM dated 10.9.1991 to contend that if a Govt. servant whose promotion has been recommended by the DPC but before he is actually promoted in the circumstances in para 2 of the OM exist, i.e., if the applicant is facing department proceedings, the promotion shall not be given effect and the recommendation of DPC would be placed in a sealed cover and would be given effect to after the applicant is exonerated from the charge. It is in this view of the matter that their action of resorting to the sealed cover procedure is in consonance with the guide-lines on the subject.

5. We have carefully considered the view as supported by the decision of the Apex Court in the case of Union of India and Anr. Vs. R.S. Sharma ((2000) 4 SCC 394) wherein it has been held that if before actual promotion any of the condition in para 2 of OM dated 10.9.1991 exist, i.e., if a person after being recommended for

promotion but before his actual promotion, he is facing departmental inquiry, in that event, the proceedings of DPC shall be kept in a sealed cover and would be given effect to after the Govt. servant is clearly exonerated from the charges levelled against him. The Apex Court in this decision has taken into consideration the decisions in the cases of Union of India Vs. Dr. Sudha Salhan ((1998) 3 SCC 394) and Union of India Vs. K.V. Jankiraman ((1991) 4 SCC 109).

6. Admittedly having regard to the aforesaid ratio, the applicant has been on revision of the seniority, the promotion of the applicant in terms of the decision in Roop Lal's case has been considered in a review DPC for being promoted to the post of Inspector (Executive). Before he is actually promoted, he was ordered to be held departmentally for a major punishment by an order dated 7.2.1995. Admittedly the said departmental proceedings are still pending against him. In the circumstances, the stand of the respondents to resort to the sealed cover procedure is in consonance with the guide-lines on the subject and we do not find any fault in this. However, on completion of the departmental proceedings the sealed cover shall have to be acted upon and given effect to.

7. For the foregoing reasons, we do not find any merit in the present OA and the same is accordingly dismissed.  
No costs.

S. Raju

(Shanker Raju)  
Member (J)

M.P. Singh

Member (A)

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