

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 623/2000

1. New Delhi this the 5th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tamai, Member (A)

Ajay Yadav,
Inspector, Department of Food,
Supplies and Consumer Affairs,
Govt. of NCT of Delhi, House
No. 189/2, Prem Nagar Opposite
Telephone Exchange, Gurgaon
Haryana.

..Applicant

(By Advocate Sh. S. N. Anand)

VERSUS

1. Government of National Capital
Territory of Delhi through
Chief Secretary, Old Secretariat,
Delhi.

2. Secretary, Services
Govt. of NCT of Delhi,
5, Shyam Nath Mukherjee Road,
Delhi.

3. The Commissioner,
Department of Food, Supplies and
Consumer Affairs, Govt. of NCT of
Delhi. K-Block, Vikas Bhawan, I.P.
Estate, New Delhi 110002

..Respondents

(By Advocate Sh. Harvir Singh)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application the applicant has sought a direction to the respondents to open the sealed cover and give effect to its findings forthwith and grant him promotion to Grade I of Delhi Administration Subordinate Service (DASS) from the date his juniors have been promoted.

2. The brief relevant facts of the case which are not disputed by the learned counsel for the parties, ^{are as} _{that} the applicant was placed under suspension on 1.11.1996, which has been revoked by order dated 23.9.1999. An FIR had been lodged against him on 14.10.1996. In the meantime, after

the applicant had been placed under suspension, according to the learned counsel for the applicant four DPCs have been held, namely, ^{on 18/} 18.9.1996, 16.7.1997, 30.4.1998 and 2.3.2000.

The main grievance of the applicant is that the respondents have failed to follow the procedure laid down in such matters by the Govt. of India, O.M..dated 14.9.1992, copy placed on record. In particular, Shri S.N.Anand, learned counsel submits that the appointing authority has not cared to review the situation of the sealed cover separately adopted in the case of the applicant, to consider whether he should not be given ad hoc promotion to the higher post or not.

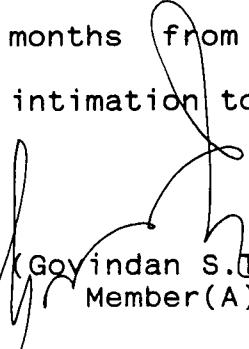
3. The respondents in their reply have submitted that the applicant has not ^{been 18/} denied consideration of his case for promotion which he is entitled under law. They have stated that because of his earlier suspension and the present pendency of the criminal proceedings, 'sealed cover' procedure has been adopted in accordance with the relevant rules and instructions, and there is nothing illegal or arbitrary in their action of withholding his promotion till he is exonerated from the charges.

4. In the Govt.of India, DOP&T OM dated 14.9.1992 detailed instructions have been issued by the Govt.of India, which admittedly have also been followed by the Respondents. Paragraph 5 of this OM deals with the procedure for ad hoc promotion in cases where the disciplinary case/ investigation/ criminal prosecution against the Govt.servant is not concluded even after the expiry of two years from the date of meeting of the first DPC, the findings in respect of a Govt.servant will be kept in a sealed cover. According to the learned counsel for the respondents, the applicant's

case has been placed in the sealed cover by the second DPC held on 16.7.1997. Admittedly the criminal prosecution against the applicant is still pending and has not been concluded by the competent criminal court. The instruction further provides that in such a situation, the appointing authority may review the case of the Govt.servant, provided he is under suspension, to consider the desirability of giving him ad hoc promotion, keeping in view the ~~offer of~~ ^{offer of} following aspects mentioned therein. From the documents on record and the submissions of the learned counsel for the respondents we find that this exercise has not apparently been done by the appointing authority, in terms of Paragraphs 4 and 5 of the DOPT OM dated 14.9.1992.

5. In the ~~above~~ facts and circumstances of the case, mentioned above, the OA is disposed of with the following directions:-

The respondents are directed to re examine the case of the applicant in terms of the aforesaid Govt.of India OM dated 14.9.1992 and pass a reasoned and speaking order within two months from the date of receipt of a copy of this order, with intimation to the applicant. No order as to costs.


(Goyindan S. Tamai)
Member(A)

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(Smt. Lakshmi Swaminathan)
Vice Chairman(J)