

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1578
T.A. No.

1989.

DATE OF DECISION 20 Nov. 89

Shri T.J.S. Chawla, Applicant (s)

In person. Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Shri P.P. Khurana, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (Judicial).

The Hon'ble Mr. P.C. Jain, Member (Administrative).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Shri T.S. Oberoi, Member (Judl.)

....

The applicant who was, at relevant time in 1984, working as a Personal Assistant to respondent No.2, Shri C. Sudhindra Member (RM), (previously Director, CSMRS), Central Water Commission (M/O W.R.), New Delhi, had filed OA No.173/87, challenging adverse remarks in his A.C.R. for the year 1984. In that OA, the applicant had also moved MP No.1121/89, seeking to stall the promotion of respondent No.2 (No.3 in the earlier OA No.173/87), mainly on the ground that in view of the pendency of OA No.173/87 against respondent No.3, and others, he ought not to have been promoted as Member (RM), Central Water Commission, New Delhi. The said MP was, however, summarily dismissed by order dated 31.5.1989, holding: "it is obvious that the question of promotion or non-promotion of respondent No.3 is wholly irrelevant as far as the prayer for expunction of the adverse remarks in the main

[Signature]

OA-173/87 is concerned. For such an issue, it is open to the applicant to file a 'separate application,' (Copy of the order enclosed as Annexure 'A' to the present OA). Thereafter, the applicant moved the present OA.

2. Notice of admission was issued to the respondents, vide our order dated 11.8.1989. However, on 15.9.1989, the date fixed for the purpose, the applicant could not personally appear because of his stated illness. The respondents were duly represented by their counsel. On 6.10.1989 also, the applicant could not appear and sent a request for adjournment, duly supported with a Medical certificate. The request was granted, and the case adjourned to 17.10.1989. Arguments were heard on behalf of the applicant, who argued his case personally, and also on behalf of the respondents, through their counsel.

3. The applicant, vide his present OA, as sought for the following reliefs: -

- "a) to declare and decide the infirmity in law regarding the promotion of respondent No.2, Shri C. Sudhindra and set aside the promotion order No.3/4/88-Estt.I (Annex. 'E' at page 19/20) dated 30.6.1989 by declaring it as VOID keeping in view the serious charges pending against the respondent No.2 Shri C. Sudhindra, since the charges are unbecoming of an officer on the part of the respondent No.2 Shri Sudhindra and moreover for these orders, the vigilance clearance has been given illegally by suppressing the facts about the pendency of the case against the respondent No.2 Shri Sudhindra from the purview of the UPSC(DPC) and Deptt. of Personnel and Training (ACC) and their approval obtained by deceit;
- b) to fix the responsibility of the officer concerned, who have gone out of the way to favour the accused officer by violating all the norms laid down for the promotion of Government servants and take suitable appropriate necessary disciplinary action against the abovesaid officers under the service rules and other relevant laws of the land;
- c) to file the explanation dated 31.10.84 of the applicant in his CR Folder Dossier, under intimation to him, for which even natural justice has not been done and the

Memo dated 19.10.1984 has been got filed in the CR Folder Dossier file without any inquiry or probe or CONVERSELY to withdraw the impugned Memo dated 19.10.84 therefrom to avoid it serving as a time bomb device which may blast at the appropriate time devastating the career prospects of the applicant, pending adjudication of OA-173/87.

- d) to freeze the Confidential Report for 1984 of the applicant pending adjudication of OA-173/87 so that no adverse or negative opinion is formed by any concerned authority on account of biasism, malafide, vindictiveness and misuse of official position of the respondent No.2, Shri C.Sudhindra to save the applicant from the avoidable impending damage till final disposal of OA-173/87;
- e) That after completion of PROCEEDINGS OF THIS CASE KINDLY NOT TO PLACE THIS APPLICATION ON BOARD AND TO DISPOSE of this application AS EARLY AS POSSIBLE IN THE INTEREST OF PROPER AND TIMELY JUSTICE SO THAT THE ACCUSED OFFICER SHRI C.SUDHINDRA, the respondent No.2, is not allowed to CONTINUE ANY MORE TO TAKE ADVANTAGE OF HIS OWN WRONGS AGAINST THE PRINCIPLES OF JUSTICE, by holding the post of Member in CMC or equivalent post elsewhere on deputation and the status quo as on the date of filing/admission of OA 173/87 is restored till the final disposal of OA-173/87 & thereafter depending upon the decision of OA-173/87. The placement of this case after completion of proceedings ON BOARD would cause undue routine delay and make its decision infructuous at a later date, pending adjudication of 173/87;
- f) that since all these years the applicant is undergoing serious mental strains and stresses due to the malafide and vindictiveness of Shri C.Sudhindra, the respondent No. 2, which has not only spoiled the personal health of the applicant but has also affected his family life very badly, adequate financial (pecuniary) compensation, as deemed fit by this Hon'ble Tribunal, may be ordered to be paid to the applicant by the respondent No.2 Shri C.Sudhindra."

He has also sought for the order on interim relief, as per items 8(c) and 8(d) of the main relief. He has also prayed for hearing of the present OA alongwith OA-173/87.

4. During arguments, the applicant reiterated his request for hearing of the present OA along with OA-173/87 expeditiously after admitting the present OA. The learned counsel for the respondents, on the other hand, questioned the admissibility

of the present OA, in view of the reliefs sought, for being not maintainable.

5. We have given our careful consideration to the rival contentions. We have also carefully perused the present OA, the various documents filed alongwith it and also the contents of OA-173/87 (copy enclosed as Annexure-H to the present OA), so far as it is relevant for purposes of deciding the present matter before us. As for reliefs regarding challenging of adverse remarks in applicant's ACR for the year 1984, the same form the subject matter of a separate OA-173/87, pending consideration, and therefore, to our mind, cannot be adjudicated in the present OA. As regards the remaining reliefs, out of the ~~remaining~~ reliefs sought for, vide para 8(a) to 8(f) of the present OA, which concern the stalling of the promotion of respondent No.2, it may be mentioned that the applicant, according to his own case, is no more serving under respondent No.2. His apprehension is that having been promoted as Chairman, Central Water Commission, respondent No.2 is now in a better position to influence the officer under whom he is presently serving, and is, therefore, likely to sway his opinion, against him. He however, does not allege direct interference by respondent No.2 in this matter, but alleges that he is being threatened to withdraw his earlier OA-172/87, because of possible pressure or influence by respondent No.2, being a Member in the same organisation. After giving our careful thought to this aspect of the case, we feel disinclined to find any force ~~of~~ merit in the plea of the applicant. We are afraid, we cannot proceed on mere assumptions and conjectures and find ourselves unable to be convinced to find any merit in applicant's plea. We also find no merit in the applicant's plea, seeking to restrain the respondent No.1, not to promote respondent No.2, on the ground that

7

: 5 :

respondent No.2 was facing the present proceedings, being devoid of force, as these proceedings can hardly be equated with "prosecution in a court of law", as attempted to be made out, by the applicant, in terms of Ministry of Home Affairs O.M. No.22011/1/79-Estt.(A). The result is that this application is liable to be dismissed at the stage of admission itself, and we dismiss the same, accordingly, without, however, any order as to costs.

6. The applicant may move the appropriate quarters, for hearing of OA No.173/87, out of turn, if so advised.

P.C. Jain
26/11/89
(P.C. Jain)
Member (Admn.)

T.S. Oberoi
26.11.89
(T.S. Oberoi)
Member (Judl.)