

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DRAFT~~
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2018 1989.
EXXXX.

DATE OF DECISION 12.7.91

S.S. Rudra

Petitioner

Shri G.K. Aggrawal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri ML Verma

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P.H. Trivedi Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal? N

MGIPRRND-12 CAT/86-3-12-86-15,000

Oberoi 12/7/91
 (T.S. Oberoi)
 M (J)

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S.S. Rudra,
Assistant Engineer (CPWD),
B7/54/2, Safdarjung Enclave,
NEW DELHI 110 029.

: Applicant

Advocate-Shri G.K. Aggrawal)

Versus

1. Union of India,
Through,
The Secretary,
Ministry of Urban Development,
Nirman Bhavan,
NEW DELHI - 110 011.

2. The Director General (Works),
Central Public Works Dept.,
Nirman Bhavan,
NEW DELHI - 110 011.

3. The Chief Engineer (Vigilance)
Central Public Works Dept.,
Nirman Bhavan,
NEW DELHI - 110 011.

: Respondents

(Advocate- Mr. ML Verma)

JUDGMENT

O.A. No. 2018 of 1989

Judgments cited : (1) AIR 1964 SC 364 Union of India v. H.C. Goel

(2) SLJ 1990 (2) (CAT) 630 A. Philip v. Director General of Ordnance Factories

(3) SLJ 1990 (3) (CAT) 209 GM Krishna Reddy v. Sub Divnl. Inspector (Postal) Hosur Sub Div., Hosur & Ors.

(4) AIR 1989 SC 1085 - Union of India v. Parma Nanda

(5) AIR 1963 SC 404 - State of Orissa v. Murlidhar

(6) SLJ 1991 (1) 163 - K.A. Devaky v. The Director, C.I.F. Tech. Cochin & Anr. (Erna).

(7) 1990 (13) ATC 644 - CS Ramchandra Murthy v. Union of India

(8) AIR 1959 SC 319 - G. Nageshwar Rao v. A.P.S.R.T. Corpn.

(9) 1990 (3) SCC 563 - ~~State of M.P.~~ v. Home Decoratores & Finance (P) Ltd.

(10) 1980 (3) SLR (Delhi) 555 - K.M. Agrahari v. Lt. Governor, Delhi Administration & Ors.

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Dated : 12th July, 91

(Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman)

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant S.S. Rudra, Assistant Engineer (Civil), C.P.W.E., New Delhi has asked for the relief of setting aside the charge sheet dt. 25.9.1984 and the order of penalty of censure dt. 10.8.1988 as illegal and to direct the respondents to promote him retrospectively as Executive Engineer (C), when due, at the earliest, ^{as} if no disciplinary proceedings or penalty are against him and in any case prior to the date of impugned order dt. 10.8.1988 with arrears with interest and consequential reliefs.

2. Against the applicant two disciplinary proceedings have been drawn up and two separate orders of penalty of censure were given viz. the order dt. 13.6.1988 and dt. 10.8.1988. The applicant has separately challenged the order dt. 13.6.1988 and a Bench of this Tribunal in OA/2035/89 by its decision dt. 5.9.1990 had held that the question whether penalty awarded was adequate or harsh cannot be gone into. Similarly, the merits of the question whether the Chief Engineer was competent to be the Disciplinary Authority specially as there is no imputation that he had taken any part in any preliminary inquiry or even investigation need to be gone into.

Relying upon the case of *Haridev Goyal v. Union of India A.T.C. 1989 vol. 10 744* - it was held that even though there has been penalty of censure, it should not be treated

as penalty to withhold the promotion of the officer. Accordingly, this Tribunal in that decision decided that the applicant's case should be decided on the basis of D.P.C. held in 1985 and if he had otherwise, been found fit by the D.P.C., penalty of censure in 1988 should not stand in the way of his promotion. It was ordered accordingly and directed to the respondents to consider the case of the applicant for promotion to the grade of Executive Engineer (Civil) on the basis of the findings of D.P.C. held in 1985. The argument of the respondent that in another case filed by Shri G.L. Gupta, Assistant Engineer in OA/910/89 holding D.P.C. for promotion to the grade of Executive Engineer having been stayed, was held not to apply to that case as promotion of the applicant had to be considered on the basis of the DPC meeting already held in 1985.

3. In this case also, the applicant has raised the same and analogous issues and cited authorities in the same manner as in the case referred to, except for the fact that two disciplinary proceedings were separately held and two separate penalties of censure were awarded. The facts and points of law are in many ways identical and analogous. These questions have already been discussed in the judgment referred to. We do not, therefore, propose to burden the record by going over the same ground again, merely because this is another application for another order of penalty. Suffice it to say that the observations in para 9 and 10 of the decision referred to summarised above fully apply to this case also and with which we are in respectful agreement.

Par

4. Respondents have taken the plea that on account of the appeal still not having been decided upon, this

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Tribunal has no jurisdiction. The appeal memo is dt. 10.8.1988. This application is dated 27.9.1989. The reply in which the fact of the pendency of the appeal is stated is dt. 25.1.1990. If, therefore, appeal has not been decided upon well after 6 months of the date of its being filed, as stated in sub clause (2)(B) of section 20 of the Administrative Tribunals Act, there is no bar against approaching the Tribunal.

5. We cannot agree with the stand taken by the respondents that in terms of the office memorandum dt. 12 January, 1988, the case of the applicant can only be considered by the D.P.C. which meets after the date of the order of penalty. The office memorandum referred to is not a part of the statutory rules and can only be regarded as guidelines and in fact has been so described in the subject as follows :

"Procedure and guidelines to be followed".

There is no basis whatever for considering that these guidelines have the force of law. The question has already been settled by the decision and the direction in the judgment referred to in OA/2035/89 dt. 5.9.1990 after an examination of this question. The plea that only DPC which meets next was also raised in that case as seen from the portion at the end of para 7 of that decision.

6. The plea of no DPC having met so far due to the stay order in G.L. Gupta v. Union of India in OA/910/89 has also no weight for the same reasons as given in the decision referred to.

7. Accordingly, we direct that the penalty of censure

shall not be treated as penalty to withhold promotion of the applicant and that his promotion should be decided on the basis of DPC held in 1985; however, if he, otherwise, is found fit by the DPC, the penalty of censure by the impugned order in this case should not stand in the way of his promotion. We order accordingly and direct the respondents to consider the case of the applicant for promotion to the grade of Executive Engineer (Civil) on the basis of the findings of the DPC held in 1985. We direct that the promotion of the applicant be finalised within a period of three months of the date of receipt of this order. Application is disposed of accordingly. Parties to bear their own costs.

Deo 12.7.91
(T S Oberoi)

Member (J)

Patel
(P H Trivedi)
Vice Chairman