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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2091/89 198
T.A. No.

DATE OF DECISION 24.11.1989.

V.G. Kutty, Applicant (s)

Sh. B.B. Srivastava, Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Sh.S.Kharbanda, Dy. Director Advocate for the Respondent (s)
(Estt) on behalf of the respondents.

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman.

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
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 I.K. Rasgotra, Administrative Member)

The applicant, who is working as a Deputy Director in Central Social Welfare Board, filed this application under Section 19 of the Administrative Tribunals Act, 1985, on October 3, 1989 seeking relief against the impugned order No.F.4-8/87-Admn. dated 29-6-1989, promoting an officer Junior to him as Joint Director. *de*

2.1. The facts of the case are that ^{the} applicant was placed under suspension vide order dated 4-12-1986 as a case of alleged criminal conspiracy had been filed by the C.B.I. against the applicant and others in the court of Metropolitan Magistrate, New Delhi. The charges against the applicant were not proved and the Magistrate vide judgement dated 14-7-1988 discharged him. Consequently the order of suspension was revoked w.e.f. 23-1-1989 vide SCWB Memo No.F.1-29/84-Coord.

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(2) In May 1989 a D.P.C. was held to fill up three vacant posts of Joint Directors. On the recommendations of the D.P.C. besides promoting the Deputy Director immediately senior to the applicant, another Deputy Director immediately junior to him had also been promoted by CSWB vide order

No.F-4-8/87-Admn dated 29-6-1987. The applicant is stated to have been considered by the D.P.C. but in his case sealed cover procedure was adopted. The applicant has, therefore, prayed for directing the respondents to open the sealed cover and if he is declared fit for promotion by the D.P.C., to promote him to the post of Joint Director w.e.f. the date his immediate junior was promoted with consequential benefits. Pending final decision, the applicant also prayed for interim relief seeking to protect his interest by keeping one post of Joint Director vacant for him and making the promotions of his junior and others subject to the outcome of this application.

3. On 6-10-1989, the Tribunal passed an order directing the respondents to maintain "Status-quo as of that date."

4. The respondents did not file any counter-affidavit nor have they engaged an advocate to plead their case. They however, filed a letter dated 6-11-1989 when the case came up for hearing on 7-11-1989 stating that:

- (a) "No charge-sheet has been issued" to the applicant; and
- (b) Sealed Cover procedure was adopted by D.P.C. on 6-6-1989 in the absence of vigilance clearance in his case.

The respondents have, further filed a copy of C.B.I.'s letter dated 25-10-1989 stating that C.B.I. had filed a revision in the relevant court against the discharge order of Metropolitan Magistrate, New Delhi.

5. We have gone through the records carefully. At the time when the D.P.C. was held in June, 1989, there was neither

any criminal case nor any disciplinary case pending against the applicant. In fact the criminal case against him had been discharged and the suspension revoked as mentioned above. Thus the adoption of the Sealed Cover procedure by the D.P.C. was totally unjustifiable and unfair. The law in this regard has been clearly enunciated in the case of K.Ch. Venkata Reddy & Others Vs. Union of India (CAT 1987(2) SLJ 115). In that case, the Full Bench of the Tribunal held that the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before. It was also held that the sealed cover procedure to be valid should also provide for the payment of salary for the period during which the promotion was withheld, alongwith all consequential benefits in case he is completely exonerated in the disciplinary or criminal proceedings.

6. Accordingly we direct the respondents to open the 'Sealed Cover' and to order the promotion of the applicant as Joint Director if he had been found fit by the DPC with effect from the date his junior was promoted or from the date he is actually due for such promotion. We further direct that the applicant should be granted all the consequential benefits pursuant to the promotion to the post of Joint Director from the date due, i.e., the date of promotion.

There will be no orders as to costs.

I. K. Rasgotra
(I. K. RASGOTRA) 24/11/87
ADMINISTRATIVE MEMBER

P. K. Kartha
24/11/87
(P. K. KARTHA)
VICE CHAIRMAN(J)