

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2068/89
~~REXX NOX~~

199

DATE OF DECISION 14.11.1990.Ved Prakash Sihmar

Petitioner

Shri B.S. Mainee

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.P. Khurana

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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? yes
4. Whether it needs to be circulated to other Benches of the Tribunal? yes

Abd
 (AMITAV BANERJI)
 CHAIRMAN
 14.11.90.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 2068/89.

DATE OF DECISION: November 14, 1990.

Ved Prakash Sihmar.

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.
The Hon'ble Mr. I.K. Rasgotra, Member(A).

For the Applicant.

.... Shri B.S. Mainee,
Counsel.

For the Respondents.

.... Shri P.P. Khurana,
Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Original Application (O.A.) has been filed by the applicant being aggrieved by the failure of the respondents to promote him as Junior Accounts Officer although he has been selected and ordered to be promoted as Junior Accounts Officer vide letter dated 17.7.1989 (Annexure A-1). His further grievance is that the juniors to him have already been promoted as Junior Accounts Officers while he has been ignored. He has further stated that there is no disciplinary proceedings pending against him nor any chargesheet has been issued to the applicant.

The relevant facts are as follows:

The applicant was appointed as Accounts Clerk w.e.f. 5.8.1977 in the grade of Rs. 260-400. He was promoted as U.D.C. in the grade of Rs. 330-560 w.e.f. 25.8.1981. He

had passed Part I examination of the P&T Junior Accounts Officer in 1983 and Part II of the said examination subsequently. He was promoted as Junior Accountant (PA) on regular basis w.e.f. 1.12.1988 in the scale of Rs.1200-2040. By the letter dated 17.7.1989 (Annexure A1), the Respondent No. 1 passed orders for promotion of a large number of Junior Accountants to the post of Junior Accounts Officers in the scale of Rs.1640-2900. The applicant's name was at serial No. 18 out of 40 persons ordered to be promoted as Junior Accounts Officers. Reference was made to paragraph 7 of the above letter (Annexure A1) which laid down that the appointment of the staff promoted to the post of Junior Accounts Officer was subject to the condition that no disciplinary vigilance case was pending against them. It was further stipulated that in case any disciplinary/vigilance case was pending against any of the staff, they should not be promoted or relieved on promotion and the matter should be reported to the Respondent No. 1. The Respondent No. 2, Chief General Manager (Telecom), Haryana Circle, Ambala Cantt, however, failed to promote and relieve the applicant to take up his job in Punjab Circle. The applicant had submitted a representation to the Respondent No. 2 on 4.9.1989 requesting for his promotion orders vide Annexure A3. He sent another representation on 18.9.1989 (Annexure A4) but received no reply. He met the concerned officers and he was informed that he was not being promoted on account of the fact that some action was pending against him. The applicant's case is

that there is no enquiry pending against him. He submitted that his promotion cannot be withheld under any circumstances on the ground as given out to the applicant because no charge sheet has so far been issued to the applicant and no oral enquiry has even been made from the applicant. He relied on the Full Bench decision of this Tribunal in the case of K. CH. VENKATA REDDY & ORS. VS. UNION OF INDIA & ORS. (ATR 1987(1) CAT-547) where it has been held that the promotion can be withheld only after the chargesheet is issued. He has, therefore, prayed that the Respondents be directed to promote the applicant in accordance with his position as given in Annexure A1. He has further prayed that the Respondents be directed to treat the applicant as promoted from the date his juniors have been promoted.

The Respondents have taken the stand that the applicant has not been relieved for promotion because a Vigilance case is pending against him. It is stated that the applicant could approach a higher authority viz., The Director General Telecom. New Delhi, by way of representation and as such it cannot be said that he has exhausted the departmental remedies available to him. In reply to paragraph 4.16, the following stand is taken:

"The contention made in sub para 4.16 is wrong and hence denied. A Vigilance case is pending against the applicant. The applicant while working as Pre-check clerk in Rohtak during 1987-88 is alleged to have pre-checked the bills of M/s Annupam Constructions Co. New Delhi and did not exercise any check and as a result thereof excess payment of thousands of rupees was made in eight bills. The applicant is

alleged to have done this in connivance with the contractor to benefit him and the action of the applicant is against the provisions of CCS(Conduct) Rules, 1964 as he has failed to maintain absolute integrity and devotion to duty and thus an act of unbecoming of a Govt. servant".

In reply to paragraph 4.18, it has been stated that the Vigilance case has been registered against the applicant under the specific orders of the competent authority. It is further stated that according to the Vigilance Manual, an official cannot be promoted against whom a Vigilance case is pending. After the enquiry of the vigilance case when it is found that the official deserves punishment, then charges are framed and the charge-sheet is issued and the disciplinary proceedings are initiated. It is further stated that a Vigilance case was contemplated against the applicant on 22.4.89 and thereafter a Vigilance case was registered against the applicant under specific orders of the competent authority.

We have heard Shri B.S. Mainee, learned counsel for the applicant and Shri P.P. Khurana, learned counsel for the Respondents.

Shri Mainee relied on the Full Bench decision in the case of K. CH. VENKATA REDDY & ORS VS. U.O.I. & ORS (Supra). He argued that until the chargesheet has been issued, withholding of promotion is in violation of the law laid down by the Full Bench judgement. He then referred

to a decision of the Division Bench in O.A. No. 307/90 (A.K. SINGHAL VS. UNION OF INDIA & ANR.) and O.A. No. 314/90 (B.D. BHAGAT VS. UNION OF INDIA & ANR.), which were decided by a common judgement dated 31.8.1990 by the Principal Bench of the Tribunal where the case of the STATE OF Full Bench as well as the case of C.O. ARUMUGAM VS./TAMIL NADU & OTHERS were referred to. In the latter case, the Division Bench held -

"Obviously, therefore, where the charges have not been framed in the disciplinary proceedings or chargesheet has not been filed in criminal cases deferring the promotion may not be reasonable and appropriate".

Learned counsel also relied on the decision of the Supreme Court in the case of THE STATE OF MP VS. BANI SINGH AND ANR. (1990(2)JT P-54). In that case too the Supreme Court held -

"Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26.11.1980. on this ground was therefore unsupportable."

Shri Maines urged that in view of the law laid down in the above decisions, the Respondents did not act in accordance with law in with-holding the promotion order of the applicant and the applicant is entitled to his posting from the date of the promotion order.

Shri Khurana, learned counsel for the respondents, contended that the Full Bench decision of the Tribunal in the case of K. CH. VENKATA REDDY & ORS. VS. U.O.I. & ORS. (Supra) has been appealed against in the Supreme Court and the operation of that judgement has been stayed. Consequently, it will not be proper to place reliance on the Full Bench decision. We are not impressed with this line of arguments for the reasons that the law laid down in the Full Bench is binding on all Division Benches of the Tribunal until the above decision is set aside by the Supreme Court. Further, in view of the clear pronouncements by the Supreme Court in the case of STATE OF M.P. VS. BANI SINGH & ANR. (Supra) which purports to up-hold the view taken by the Full Bench of the Tribunal in the case of K. CH. VENKATA REDDY (Supra).

Shri Khurana then contended that the Rule permitted the respondents to with-hold the promotion of the applicant on the ground that there was a vigilance enquiry pending against the applicant. We are not impressed by this argument either. The Supreme Court has clearly laid down in the case of STATE OF M.P. VS. BANI SINGH (Supra) and also in STATE OF the case of C.O. ARUMUGAM VS. TAMIL NADU & OTHERS (Supra) that it is only when a charge-sheet or a charge-memo has

been served on the applicant, the promotion order can be held in abeyance. There is no direction by the Supreme Court that if the Vigilance enquiry is pending against an employee, the promotion can be withheld. The commencement of a Vigilance enquiry will not be the same as serving of a charge-memo or a charge-sheet on the employee. The Vigilance enquiry takes time and at best can recommend for starting disciplinary proceedings against the employee. It is only thereafter that a decision is made by the Govt. to frame charges and serve a charge-memo or a charge-sheet, as the case may be, on the employee. At the stage when the Vigilance enquiry has started, there is no certainty that a disciplinary proceeding will at all be commenced against the employee. Consequently, the commencement of Vigilance enquiry cannot be equated with the serving of a charge-sheet or a charge-memo against the applicant. We are, therefore, of the view that in the facts of the case, with-holding of promotion of the applicant was bad in law and cannot be sustained. The applicant is entitled to the benefit of promotion order and posting accordingly.

We, therefore, direct the respondents to promote the applicant in accordance with his position as given in Order dated 17.7.1989 (Annexure A1) keeping in view that his position when promoted would not be lower than his next junior who has been promoted. We

also direct the respondents to pass orders for fixation
of pay as well as arrears to the applicant as due from
the above date.

The O.A. is accordingly allowed. However, we
leave the parties to bear their own costs.

Delwyn
(I.K. RASGOTRA)
MEMBER (A)

08/11/40
(AMITAV BANERJI)
CHAIRMAN

SRD