

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 416/88
T.A. No.

199

DATE OF DECISION 16.11.1990.

Shri A.N. Saigal

~~Petitioner~~ Applicant

Shri R.L. Sethi

Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through Chief
Secy., Delhi Adminn.

Respondent

Shri M.M. Sudan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Jud1.)

The Hon'ble Mr. D.K. Chakravorty, 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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by
Hon'ble Mr. D.K. Chakravorty, Member)

The grievance of the applicant relates to his non-promotion on the ground that a vigilance case was pending against him at the time his case came up for consideration for promotion. He has prayed that the respondents be directed to promote him to Grade I (Ministerial), Delhi Administration Subordinate Service in the scale of Rs.1640-2900 from the date his next junior was promoted with consequential benefits accruing therefrom.

2. There is no dispute about the facts of the case. The applicant holds a regular post in Grade II (Ministerial) in the scale of Rs.1400-2300 of the Delhi Administration Subordinate Service. He is eligible for promotion to the post of Grade I of Delhi Administration Subordinate Service

in the scale of Rs.1640-2900. He was considered for promotion in 1987 when a reference was made to the Vigilance Unit of the respondents for vigilance clearance. The vigilance clearance was not given on the ground that in 1985, he had been issued a memorandum dated 28.10.1985 calling for his explanation on certain alleged misconduct. No charge-sheet or disciplinary/judicial inquiry had been instituted against him. He has annexed to his rejoinder affidavit a copy of the memorandum issued on 8.7.1988, whereby the respondents have proposed to hold an inquiry against him under Rule 14 of the C.S.S. (CCA) Rules, 1965. Prior to the said date, there was no disciplinary or judicial inquiry against him. Several of his juniors were promoted on the recommendations of the D.P.C. held in 1987. The applicant was not, however, promoted due to the pendency of a vigilance case.

3. The respondents have stated in their counter-affidavit that the case of the applicant was considered by the D.P.C. which held its meetings on 11.5.1987, 12.5.1987 and 18.5.1987. The promotion of some officials, including the applicant, was recommended by the D.P.C. subject to vigilance clearance. As the vigilance clearance had not been given, the applicant was not promoted.

4. We have carefully gone through the records of the case and have considered the rival contentions. In our opinion, the non-promotion of the applicant on the ground of pendency of the vigilance case, is legally unsustainable in view of the recent decisions of the Supreme Court in C.O. Arumugam & Others Vs. State of Tamil Nadu, 1989 (2) SCALE 1041 and in the State of Madhya Pradesh Vs. Bani Singh & Another, 1990 (1) SCALE 675.

4. In Arumugam's case, the Supreme Court observed that the consideration of promotion could be postponed only on reasonable grounds. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. In the case of respondent No.4 before the Supreme Court, his name was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. The Supreme Court observed that "it is, therefore, not proper to have overlooked his case for promotion". The Supreme Court, therefore, directed that his case be considered for promotion on the date on which his junior was promoted and if he was found suitable for promotion he must be promoted with all consequential benefits.

5. In the same vein, the Supreme Court observed in Bani Singh's case that "normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right being considered. If 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 the stage of framing the charge after prima facie case is established, the consideration for promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of disciplinary proceedings".

6. In the light of the aforesaid rulings of the Supreme Court, the applicant is entitled to succeed in the present proceedings before us. There was no disciplinary proceeding pending against the applicant when the D.P.C. met and recommended promotion of the applicant subject to vigilance clearance in 1987. Neither the pendency of a vigilance case against the applicant nor the events and developments of subsequent dates could be taken into account for denying promotion to the applicant.

7. We, therefore, direct the respondents to consider promoting the applicant on the basis of the recommendations of the D.P.C. held in 1987, notwithstanding the fact that vigilance clearance was not given for his promotion. We further direct that he would be entitled to promotion from the date his juniors were promoted. He would also be entitled to arrears of pay and allowances and all other consequential benefits. The respondents shall comply with the above directions within a period of two months from the date of receipt of this order.

There will be no order as to costs.

Chakraborty
(D.K. Chakraborty)
Administrative Member

16/11/1990

Kartha
(P.K. Kartha)
Vice-Chairman (Judl.)

16/11/1990