

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 448/1988.

DATE OF DECISION: 23.2.1990.

S. K. Matta Applicant.

Shri B. R. Sharma Advocate for the Applicant.

V/s.

Delhi Administration Respondent.

Shri Mukul Talwar Advocate for the Respondent.

COURT: Hon'ble Mr. G. Sreedharan Nair, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

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

(Cen)
23/2/90
(P.C. JAIN)
Member (A)

23/2
(G. SREEDHARAN NAIR)
Vice Chairman (J)

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CORAM: Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered by Hon'ble
Mr. G. Sreedharan Nair, Vice Chairman (J).)

JUDGEMENT

The applicant, while working as Assistant Superintendent (J) under the Delhi Administration, was promoted on 1.7.1987 to the post of Deputy Superintendent-II on purely temporary and ad-hoc basis, for a period of six months only or till the post is filled in on regular basis, whichever is earlier. Accordingly, the applicant assumed charge of the post of Deputy Superintendent. While so, by the order dated 11.8.87, the order of ad-hoc promotion was cancelled with immediate effect. The applicant assails the order of cancellation and prays for quashing the same as well as for a direction to the respondent to fill the vacancies in the grade of Deputy Superintendent-II in accordance with the statutory rules.

2. In the reply filed on behalf of the respondent, it is stated that when the DPC met on 3.6.1987 for assessing the suitability of the candidates for promotion to the cadre of Deputy Superintendent, due to inadvertence, the fact of pendency of a criminal case against the applicant could not be brought to its notice and, as such, the DPC considered his suitability for promotion as if no criminal case was pending against him, and when this fact came to the notice of the Administration, he was immediately reverted

to the substantive post of Assistant Superintendent.

3. From the pleadings, it is manifest that the ground for cancelling the order of ad-hoc promotion is the alleged pendency of a criminal case against the applicant at the time of meeting the DPC. In clause (iv) of paragraph 6 of the application, the applicant has specifically alleged that when the DPC met in 1987, there was no criminal case pending against him and, as such, he was correctly recommended by the DPC for promotion. It is revealed from the reply filed by the respondent that there was only a First Information Report concerning the escape of 63 JNU students, at the time when the DPC met. No material has been placed before us by the respondent to support the contention that a criminal case was actually pending against the applicant when the DPC met to warrant the ~~contention~~ ^{in plea} that the sealed cover procedure should have been adopted in the case of the applicant, in view of which the ad-hoc promotion is bad. As has been pointed out by a Full Bench of this Tribunal in Venkata Reddy's case, an officer can be said to be under investigation only when a charge-sheet is filed in a criminal court or a charge-memo under CCS (CC&A) Rules is issued to him. Reference has been made in that decision to the Government of India O.M. dated 14.7.1977 laying down that the sealed cover procedure should be followed in those cases where after investigation, the evidence collected indicates a prima-facie case against the officer concerned, and not when the preliminary investigation is pending and no conclusion is reached about the prima-facie guilt of the officer, as at that stage, there is no ground for treating the said officer as "one whose conduct is under investigation".

4. In view of what is stated above, it will follow that the premise on which the order of ad-hoc promotion was cancelled cannot be sustained in law.

5. Since the order of promotion was only for a period of six months or till the post is filled in on regular basis,

whichever is earlier, there is no scope for the issue of a direction to the respondent for restoration of the order as such. The respondent has no case that within the period of six months from the date of the promotion, the post had been filled up on regular basis. Admittedly, the applicant has worked in the post pursuant to the ad-hoc promotion till he was reverted pursuant to the order of cancellation. At this stage, by the cancellation of the order or promotion, the only benefit that can be allowed in favour of the applicant is to make him entitled to the monetary benefit ~~would have~~ ^{would have} which ever accrued to him had he not been so reverted. We direct the respondent to pay the applicant the same within a period of two months from the date of receipt of copy of this order.

6. As regards the relief claimed by the applicant for issue of a direction to the respondent to fill the vacancies in the grade of Deputy Superintendent-II in accordance with the statutory rules, in view of the statement of the respondents in their reply that on account of pendency of criminal / departmental proceedings, ^{as regards} some of the Assistant Superintendents, though their cases have been considered, the result is kept in sealed cover, we cannot issue the same.

7. The application is disposed of as above. ~~There shall be no order as to costs.~~

(C. C. C.)

(P. C. Jain) ^{23/2/90}
Member (A)

(C. S. N.)

(G. Sreedharan Nair)
Vice-Chairman (J)

23.2.1990.