Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No.489/88

New Delhi this the 10th Day of June, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Mahabir Singh, Asstt. Supdt.
B-14, Officers Quaerters,
Central Jail, Tihar,
New Delhi-110 064. ...Applicant

(By Advocate Sh. Jog Singh)

Versus

1. Chief Secretary,
Delhi Administration,
5, Sham Nath Marg,
Delhi-110 006.

2. Inspector General (Prisons)
Central Jail, Tihar,
New Delhi-110 064. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

OA No.663/92

Mahabir Singh, Asstt. Supdt.,
B-14, Officers Quarters,
Central Jail, Tihar,
New Delhi-110 064. ...Applicant

(By Advocate Sh. Jog Singh)

Versus

1. Delhi Administration through
Inspector General of Prison,
Central Jail, New Delhi.

2. Mr. Akash Mohapotra,
Enquiry Officer, through
Supdt. Central Jail No.3,
Tihar, New Delhi. ...Respondents

(By Advocate Mrs. Avnish Ahlawat)

ORDER(ORAL)

Mr. N.V. Krishnan:-

These two cases are being disposed of by this common order. In OA-663/92 the applicant has prayed for the following reliefs: -

"(1) quash the alleged Departmental Enquiries pending since 1982 and 1983 against the applicant;

(2) To quash the charge-sheets dated 18.9.87 and 13.10.1987."

2. It is the admitted position that two departmental enquiries were instituted against the applicant in 1982 and 1983. It was discovered at a fairly late stage that these departmental enquiries have been initiated by the authorities not competent to do so. Accordingly the memorandum of charges issued in these two cases were quashed by the competent authority and identical charges were again issued by the memoranda dated 18.9.87 and 13.10.87. The applicant has prayed that these chargesheets should be quashed.

3. In pursuance of a direction we gave yesterday the learned counsel for the respondents has filed a statement in which it is stated that OA-663/92 has become infructuous as both the chargesheets stand decided in favour of the applicant. In other words, the applicant has been acquitted of the charges framed against him. Accordingly, OA-663/92 is dismissed, as having become infructuous.

4. The applicant has filed OA-489/88, seeking the following reliefs: -

i) To promote the applicant to the post of Deputy Supdt.II from the date when he became eligible for the said post in May 1986 and to grant him consequential benefits.

ii) To quash the departmental enquiries pending against him since 1982.

5. As a matter of fact, OA-663/92 was intended to be an amendment of the OA filed in OA-489/88 but it was registered separately. As already mentioned, departmental enquiries of 1982, 1983 and 1987 have all ended in the applicant's favour.

6. The only question is about the consideration of the applicant for promotion to the post of Deputy Superintendent-II.

7. On an earlier date, we had seen the recommendation of the DPC which was placed in a sealed cover and it was brought for our perusal on our direction vide order dated 25.1.94. The learned counsel for the respondents has produced for our perusal today a copy of the minutes of the said DPC meeting which took place on 3.6.87. The applicant has been graded as 'Good' and he has been recommended fit for promotion to the post of Deputy Superintendent Grade-II.

8. Now that the departmental enquiries are over the applicant would normally have been promoted on the basis of this recommendation of the DPC.

9. However, it is stated in the statement filed by the respondents today that two further enquiries have been initiated against the applicant, one on 17.3.92 and the other on 14.12.92. The former, however, has come to a close and the applicant has been acquitted therein on 27.5.94. Thus, one disciplinary proceeding initiated on 14.12.92 is pending at present. The learned counsel for the respondents submits that the standing instructions are that even if an official is recommended for promotion by the DPC, yet, if before ~~his~~ he is actually ordered to be promoted, a disciplinary proceeding is initiated, it is to be considered as if his case has again been placed in a sealed cover by the DPC. He shall not, in such circumstances, be promoted until he is completely exonerated of the charges levelled against him. These instructions are contained in the Department of Personnel OM dated 14.9.92 referred to in the Government of India's instructions at serial No.7 at page 217 of the Swamy's Compilation of CCS (CCA) Rules (20th Edition). The learned counsel for the respondents, therefore, submits that it would not be proper to promote the applicant at present. She further states that the disciplinary proceeding now pending against him is being carried out on a day-to-day basis.

10. The learned counsel for the applicant, however, states that this OM does not apply to the instant case, as the promotion was due in 1987 and the OM is issued only in 1992.

11. We are unable to agree. In our view, as at the time of promotion this OM is in existence, it has to be taken into account.

12. We have carefully considered these circumstances. We are of the view that this is an unfortunate case where due to the mistake of the department in not initiating the DE by the competent authority, four to five years were wasted in initiating the proceedings which were quashed later on. The subsequent proceedings initiated in 1987 have come to a close only recently, i.e., after about 6-7 years. Out of the two new proceedings, admittedly, in one the applicant has been acquitted. It is in these circumstances that we have to consider whether effect should be given to the D.O.P. OM dated 14.9.92 or we should direct that an ad hoc promotion should be given to the applicant, as provided for in similar instructions at page 216 of the above Compilation.

13. We are of the view that in the special circumstances of the case, justice demands that the applicant be given his due, at least on a provisional basis with immediate effect. Accordingly, we direct that the applicant shall be promoted provisionally with effect from the date from which any person junior to him was promoted on the recommendation of the DPC meeting held on 3.6.87 by which he was cleared. In so far as the pay and allowances

and such promotion are concerned, it shall be regulated by the direction given by the Supreme Court in K.V. Jankiraman's case reported in AIR 1991 (2) SC 2010. We make it clear that this promotion would be provisional and in case the applicant is punished in the D.E. initiated on 14.12.92 now pending, this promotion is liable to be reviewed prospectively and if the applicant is exonerated, his promotion as Deputy Superintendent-II shall be regularised from the date of promotion and he shall also be considered for further promotion, in accordance with law, as and when it was due. We further direct that the Department should take expeditious steps to dispose of the pending D.E.

14. The OAs are disposed of, as above, with no order as to costs.

15. A copy of this order be placed in both the files.

10.6.94

(C.J. Roy)
Member(J)

10/6/94

(N.V. Krishnan)
Vice-Chairman(A)

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