

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1109/88 198
T.A. No.

DATE OF DECISION 11.1.1990.

Shri C.P.S. Tomar

Applicant (s)

Shri B.S. Charya

Advocate for the Applicant (s)

Versus
Director of Education, Respondent (s)
Delhi Admn.

Shri B.R. Prashar

Advocate for the Respondent (s)

CORAM :

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

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. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, Vice-Chairman)

The applicant, who has been working as Vice-Principal in the various Higher Secondary Schools under the Delhi Administration since 1979, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) to quash the impugned order of promotion dated 14.3.1988 whereby several Vice-Principals have been promoted to the posts of Principal on ad hoc basis;
- (ii) to hold that he is entitled to be promoted as Principal and that adoption of 'sealed cover' procedure in his case for withholding his promotion is wholly unjust, improper,

illegal, invalid and uncalled for and to direct the respondents to immediately open the sealed cover and promote him as Principal and restore to him all the benefits in terms of pay, allowances, etc., from the date the persons immediately junior to him have been so promoted;

- (iii) to call upon the respondents to give to him all attendant benefits in terms of pay, allowances, etc., together with restoration of seniority to the post of Principal from the date his immediate juniors had been so promoted and given the said benefits; and
- (iv) to call upon the respondents not to initiate or hold any departmental proceedings on the basis of the alleged L.T.C. availed by him in June, 1979 and hold that they are debarred from holding any disciplinary proceedings under principles of estoppel, waiver, undue delay, laches, condonation, etc.

2. The facts of the case in brief are that the applicant was initially appointed as a Trained Graduate Teacher (TGT) in 1966. He belongs to the Scheduled Caste community. He has worked in various higher secondary schools in Delhi. In 1971, he was promoted as a Postgraduate Teacher (PGT) and in 1979, he was promoted as Vice-Principal.

3. According to the relevant recruitment rules, a Vice-Principal is eligible for promotion as Principal after he puts in five years' service as Vice-Principal. The promotion is on the basis of merit-cum-seniority. While several of his juniors have been promoted as Principal, he has not been so promoted. He has stated that though his case had been sent to the D.P.C. for consideration,

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the recommendations of the D.P.C. have been kept in sealed cover because of the pendency of some investigation with the Vigilance Department in connection with the L.T.C. availed by him in 1979. With regard to this incident, he has stated that he availed L.T.C. in June, 1979 and opted to go to Kanyakumari. He had applied for an advance from the school where he was working, undertook the journey and, thereafter, submitted his final bills and also received a sum of Rs.484/- by way of final adjustment. He had also submitted the requisite evidence to the effect that the vehicle in which he travelled was also prosecuted/challaned by the Traffic Police at Lalitpur (U.P.). He had made a statement to the above effect before the Inspector, Anti-Corruption Department, on 18.10.1982. Thereafter, nothing was heard from the respondents.

4. The respondents have filed a counter-affidavit in which they have not disputed the essential facts mentioned above. However, they have sought to justify the non-promotion of the applicant as Principal on the ground that persons junior to him had been promoted only on ad hoc and urgent basis. He was not promoted as a vigilance case is pending against him.

5. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The alleged misconduct on the basis of which the applicant has not been promoted as Principal took place in 1979. Neither a charge-sheet has been filed in the criminal court nor has any departmental proceeding been initiated against him under Rule 14 of the C.C.S.(CCA) Rules, 1965, so far. The respondents have annexed to their counter-affidavit a copy of the letter dated 25.8.1988 of the Additional Director of Education (Admn.), addressed to the Deputy Secretary

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(Vigilance), Delhi Administration, from which it appears that the Directorate of Education had requested the Anti-Corruption Branch, Delhi Administration, to prepare the draft charge-sheet against the applicant along with others so that departmental proceedings under Rule 14 of the C.C.S. (CCA) Rules, 1965 could be initiated against them (Annexure 'A', pages 54-56 of the paper-book). This was after the present application was filed in the Tribunal on 7th June, 1988. No proceedings - criminal or departmental - have been, or are pending against the applicant. An investigation into his alleged misconduct has been pending since 1979.

6. The question arises whether in the facts and circumstances of the present case, the applicant could be denied promotion to the post of Principal on the sole ground that a vigilance case is under investigation against him.

7. The learned counsel for the applicant has relied upon ~~numerous~~ numerous rulings in support of his contention.* As against this, the learned counsel for the respondents drew our attention to the guidelines on Departmental Promotion Committee issued by the Department of Personnel and Training on 10th April, 1989.

8. In our opinion, consideration for promotion cannot be withheld merely on the ground of pendency of a vigilance investigation ~~against~~ ⁱⁿ an official. 'Sealed Cover' procedure can be resorted to

Decisions cited by the learned counsel for the applicant:

1970 S.L.R. 284; 1973 (1) S.L.R. 979; 1974(1) S.L.R. 614; 1987 (4) A.T.C. 545; 1969 S.L.R. 363; 1971 (2) S.L.R. 41; and 1973 (2) S.L.R. 554.

only after a charge memo. is served on the concerned official or the charge-sheet filed before the criminal court and not before (vide decision of the Full Bench of this Tribunal in K. Ch. Venkata Reddy and Others Vs. Union of India & Others, 1987 (2) SLJ 117, C.A.T.).

9. In the recent case of C.O. Armugam and Others Vs. the State of Tamil Nadu and Others, J.T. 1989 (4) S.C. 377, the Supreme Court has observed that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16 (1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. In this context, the Supreme Court has laid down the following principle:-

".....The promotion of persons against whom charge has been framed in the disciplinary proceedings of charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted." (Emphasis supplied)

10. In the aforesaid case, L.V. Srinivasan, respondent No.4, 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. It was observed that it was not proper to have overlooked his case for promotion. The Court, therefore, directed that his case be considered for promotion on the date on which his junior was promoted and if he is found suitable, he must also be promoted with all consequential benefits.

11. In the light of the aforesaid pronouncement by the Supreme Court, we are of the view that the applicant is entitled to succeed in the present application as no charge has been framed in disciplinary proceedings and

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no charge-sheet has been filed in a criminal case against the applicant.

12. Accordingly, we order and direct that the respondents shall consider the suitability of the applicant for promotion to the post of Principal, notwithstanding the pendency of the vigilance case against him. If he is found otherwise suitable, he will be entitled to be promoted as Principal from the date his juniors were so promoted. He would also be entitled to all consequential benefits, including arrears of pay and allowances, from the date of promotion of his juniors. The respondents shall comply with the above directions within a period of three months from the date of communication of a copy of this order.

13. The alleged bogus L.T.C. claims had been the subject matter of investigation against 8 teachers, including the applicant and another Vice-Principal. We do not, therefore, wish to express any opinion on the merits of the alleged misconduct or whether the delay in initiating disciplinary proceedings against them is justified in the facts and circumstances.

The application is disposed of on the above lines. There will be no order as to costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

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