



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2224/2020

This the 07th day of January, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

A. V. Prem Nath,
(Aged about 49 years),
S/o Late Sh. A. Venkat Rayalu,
R/o 64, Delhi Govt. Officers Flats,
G.K. -I, New Delhi - 110048.

Serving as Joint Secretary, Group 'A',
Department of Urban Development,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi - 110002.

... Applicant

(through Mr. M. K. Bhardwaj, Advocate)

Versus

Union of India & Ors.

1. Ministry of Home Affairs,
Through its Secretary,
North Block, New Delhi - 110001.
2. Additional Secretary (U.T.),
Ministry of Home Affairs,
North Block, New Delhi - 110001.
3. Govt. of NCT of Delhi,
Through Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi - 110002.

... Respondents

(through Mr. R. K. Jain and Ms. Esha Mazumdar, Advocate)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

The applicant is a 1997 batch DANICS Officer. He was granted selection grade on ad hoc basis in the year 2006. His batch mates were granted the Junior Administrative Grade-II in the year 2012. The applicant was denied the same. He made representations in this behalf complaining that no action has been taken thereon. He filed OA No.1407/2020. This OA was disposed of on 29.09.2020 directing the respondents to decide the pending representations. In compliance with the same, the Ministry of Home Affairs, Government of India, passed an order dated 23.11.2020 informing the applicant that his case cannot be considered for promotion in view of the fact that an FIR registered against him under Section 13 of the Prevention of Corruption Act is pending. It is also stated that the procedure stipulated under the DoP&T's OMs dated 14.09.1992, 25.10.2004 and 02.11.2012 was strictly followed. The said order is challenged in this OA.

2. The applicant contends that though it is a fact that an FIR is pending against him since 2002, there was no progress in it. He contends that the action to deny

consideration for promotion or further steps on account of pendency of a criminal case would arise only when a charge sheet is filed and mere registration of an FIR is not a ground either to deny consideration or deny appointment for promotion.



3. We heard Shri M. K. Bhardwaj, learned counsel for the applicant and Ms. Esha Mazumdar, learned counsel for the respondents at length at the state of admission itself.

4. This is the second round of litigation initiated by the applicant in the context of denial of promotion to him to JAG-II. It is not in dispute that the batch mates of the applicant were extended that benefit in the year 2012 itself. In compliance with the direction issued in OA No.1407/2020, Ministry of Home Affairs passed a detailed order. It is stated that FIR No.34/2002 was registered against the applicant on 12.07.2002 under Section 13 of the Prevention of Corruption Act read with various provisions of IPC. It is also stated that the Ministry accorded sanction for prosecution of the applicant way back in 09.01.2011 and since all these factors existed by the time the DPC met on 01.08.2011 his case was kept in the sealed cover. It is stated that on account of certain legal issues, fresh sanction for prosecution had to be

granted on 13.10.2019. It is also mentioned in the said order that allegations of corruption were investigated by the ACP against the applicant, and sanction was accorded for prosecution. Ultimately, it is stated that once the sealed cover procedure is adopted, no occasion arises for promoting the applicant till the criminal case is decided.



5. In ***Union of India etc. etc. vs. K. V. Jankiraman etc. etc.*** 1991 AIR 2010, the Hon'ble Supreme Court indicated the circumstances under which the sealed cover procedure can be adopted. The pendency of a criminal case is one such factor once the FIR was registered against the applicant alleging serious criminal case. Though it is strongly urged by the learned counsel that a criminal case is said to be pending, only when the charge sheet is filed therein, the filing of an FIR and sanction to prosecute would certainly be a factor which comes in the way of granting vigilance clearance. Even if the sealed cover is to be opened and it is assumed that the applicant is otherwise fit by the DPC, the question of his being promoted does not arise once the sanction was accorded for his prosecution and vigilance clearance is not even a remote possibility. The applicant has to wait till the conclusion of the criminal proceedings.

6. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman



Pj/sunil/vb/ankit/