



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

O.A. No.1336/2020

This the 11th day of January, 2021

(Through Video Conferencing)

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

R. S. Rana,
S/o Sh. SPS Rana,
R/o C-54, DDA Flats,
Old Rajinder Nagar,
New Delhi – 110060.

... Applicant

(through Mr. Sahil Garg with Mr. Ankit Gupta, Advocate)

Versus

Delhi Development Authority,
Through its Vice Chairman,
VikasSadan, INA,
New Delhi – 110023.

... Respondents

(through Mr. J.P. Tiwari, Advocate)

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

The applicant was working as Stenographer in the year 2006 in the respondent authority. The next promotion is to the post of Assistant Director. It is by way of promotion, on the basis of seniority as well as the performance in the Limited Departmental Competitive Examination (LDCE). The applicant did not qualify for promotion on the basis of seniority at that time. He took part in the LDCE but was not selected.

2. He made a representation stating that the evaluation of the answers sheets was not done properly, particularly, in the answer sheets pertaining to the English language paper. The Vigilance Department did not respond positive. In the meanwhile, the applicant took part in the LDCE in the year 2008, but was not successful. It is stated that the applicant qualified the examination held in the year 2011. Thereafter, stating to be as a result of re-evaluation, the applicant was promoted to the post of Assistant Director through an order dated 15.03.2012 w.e.f. 24.01.2006.



3. The respondents issued charge memo dated 18.11.2019, alleging that the applicant was responsible for manipulation of result of the LDCE held in the year 2005. The details of the alleged manipulations were furnished in the statement of imputation. It was alleged that the applicant took advantage of his being posted in the Vigilance Department for a limited period and manipulated the record and thereby secured the promotion with retrospective effect in the year 2012 w.e.f. 24.01.2006.

4. The applicant submitted his explanation. Not satisfied with the same, the Inquiry Officer was appointed. The Inquiry Officer submitted his report holding the article of charge No.1 as not proved and charge No.2 as proved. A copy of the same was made available to the applicant and on consideration of the representation submitted by him, the disciplinary authority passed an order dated 18.11.2019, reducing the status of the applicant to the post of Stenographer for three years and fixing his pay at the level, at which it was fixed on 24.01.2006, the date with effect from which he was promoted as Assistant Director. It was further mentioned that he would regain the post of Assistant Director after the completion of three years. This OA is filed challenging the order dated 18.11.2019.



5. The applicant contends that charges framed against him are without any basis and that the report of the Inquiry Officer is also defective. He contends that the promotion w.e.f. 24.01.2006 was accorded to him only on the basis of the re-evaluation of the answer scripts and for that he cannot be held responsible.

6. Respondents filed detailed reply. It is stated that the applicant was not successful in the examination held in the year 2005 and in fact he appeared in the examination in the year 2008 and 2011. It is stated that he took advantage of his working in the Vigilance Department and became responsible for manipulation of the answer scripts.

7. We heard Shri Sahil Garg, learned counsel for applicant and Shri J.P.Tiwari, learned counsel for respondents at length.

8. The articles of charges framed against the applicant reads as under :-

“Article-1

Sh. R. S. Rana, Asstt. Director while working as Assistant Director in PB-1 during 2011-12 has been found responsible for misuse of his office position by getting his answer sheet of English paper of the test for the post of Asstt. Directors held in year 2005 re-evaluated in 2012 without any Court orders

by seeking approval from VC, DDA by misrepresentation of the facts on record.



Article -II

Sh. R. S. Rana, Asstt. Director while working as Assistant Director in PB-I during 2011-12 has also been found responsible for tempering of his answer sheet of English paper before sending the same for re-evaluation.

By his above acts, Sh. R. S. Rana, Asstt. Director DDA exhibited lack of absolute devotion to duty, lack of absolute integrity amounting to grave misconduct and acted in a manner unbecoming of a Govt. servant thereby contravened Rule 4 (1) (i) (ii) and (iii) of DDA Conduct, Disciplinary and Appeal Regulations, 1999, as made applicable to the employees of the Authority.”

9. The allegation against him is that he misused his position in getting revalued the answer sheet of English paper held in the year 2005 long thereafter in the year 2012. Another allegation is that he was responsible for tempering with the answer scripts.

10. The facts of the case speak for themselves. The examination was held in the year 2005. When the representation was made for re-evaluation of the answer scripts, the Vigilance Department replied on 21.09.2007 stating “*the matter is subjudiced. Further action will be taken as per directions/orders of the Hon’ble High Court.*” Once that observation is made, any action could have been taken only on the basis of the Hon’ble High Court. The

record does not disclose that the Hon'ble High Court issued a direction for re-evaluation of the answer sheets.

Time and again the Courts held that the re-evaluation of the answer sheets can be undertaken only in accordance with the relevant rules. Therefore, the whole exercise leading to the re-evaluation of the answer scripts of the examination held in the year 2005 is totally untenable.



Unless the rules provide for it, the re-evaluation cannot be undertaken. Added to that, the applicant cleared the examination only in the year 2011. He was not successful in the examination held in the year 2008 also.

11. This is not a case in which the general evaluation of the papers is undertaken. It is also necessary to take note of the fact that the evaluation, if at all, can be undertaken, before the next examination is held. Such an evaluation in the year 2012 after many other examinations were held for the same purpose, was totally untenable. What however becomes relevant in the instant case is that the applicant acquired eligibility in the year 2011. In his over anxiety to get promotion from an earlier date, he became responsible to bring the existence of an order dated 15.03.2012, through which he got promotion w.e.f. 24.01.2006. Even if the entire episode is

ignored, the promotion of the applicant w.e.f 15.03.2012 can be legal.



12. We are of the view that the entire issue can be closed by directing that the promotion of the applicant to the post of Assistant Director shall be prospective from 15.03.2012. Any benefit that accrued to the applicant, anterior to 15.03.2012, i.e. the one for the period between 24.01.2006 and 15.02.2012 extended to him by the respondents shall be refunded within six weeks.

13. The OA is accordingly allowed in part modifying the order of punishment to the effect that the order of promotion dated 15.03.2012 promoting the applicant from 24.01.2006 shall be prospective in operation, subject to the applicant refunding the benefit, if any, he has got on the basis of the retrospective promotion, within six weeks from the date of receipt of a copy of this order.

There shall be no orders as to costs.

**(Mohd.Jamshed)
Member (A)**

**(Justice L. Narasimha Reddy)
Chairman**

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