

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



**O.A. No.157/2021  
MA No.183/2021  
MA No.233/2021**

Today this the 10<sup>th</sup> day of February, 2021

Through video conferencing

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Ms. Aradhana Johri, Member (A)**

Sohan Pal Singh Sharma  
Date of Birth 20.02.1961  
Son of Late ShriBrham Singh  
R/o GayatriPuram, Near ICICI Bank  
Delhi Road, Bagpat (UP) 250609  
Mobile: 9457817294.

...Applicant

(By Advocate :Ms. Ritu Jain)

Versus

1. Delhi Development Authority  
Through Vice-Chairman  
VikasSadan, INA, New Delhi.
2. Finance Member-Delhi Development Authority  
B Block, I Floor,  
VikasSadan, INA, New Delhi.

...Respondents

(By Advocate :Ms. Anupama Bansal)

## **ORDER (ORAL)**



### **Mr. Justice L. Narasimha Reddy, Chairman :**

The applicant was taken on Muster Roll basis of the Delhi Development Authority (DDA) in the year 1982. Thereafter, he was appointed as Work Charge Mate in 1983. Subsequently, he was promoted to the post of Lower Division Clerk (LDC) and by the year 1988, he was holding the post of Upper Division Clerk (UDC). The applicant was also extended the benefit of 2<sup>nd</sup> MACP when he was in the post of UDC. The next promotion is to the post of Assistant Section Officer (ASO). The DPC for promotion to the post of ASO met in the year 2012. The case of the applicant was considered and he was promoted to the post of ASO through an order dated 06.11.2012. This was followed by another promotion to the post of Assistant Director (AD), in the year 2017.

2. A criminal case was instituted against the applicant vide FIR No.RC-BD1/2006/E/0006-BS&FC/CBI/New Delhi by the CBI. Sanction for his prosecution was also accorded, by order dated 26.12.2007. However, this fact was not placed before the DPC, when it considered the case of the applicant for promotion to the post of ASO and thereafter to the post of



AD. When it was noticed at a later stage, a Show Cause Notice was issued on 11.11.2020, requiring him to explain as to why the benefits of 2<sup>nd</sup> MACP and two promotions be not withdrawn in view of the pendency of the criminal case. Reference was made to the OM dated 14.09.1992 issued by the DOP&T on the basis of the judgment of Hon'ble Supreme Court in ***Union of India Vs. K.V. Janakiraman & Ors.*** AIR 1991 SC 2010. The applicant submitted his explanation to the same. The appointing authority has passed an order dated 18.01.2021 withdrawing the MACP as well as the two promotions to the post of ASO and AD, with immediate effect. It was also observed that he shall be treated as SSA w.e.f. 11.11.2004, until further orders. This OA is filed challenging the order dated 18.01.2021.

3. The applicant contends that the DPC as well as the appointing authority are deemed to be aware of the pendency of the criminal, case when the MACP was granted as well as the promotions have taken place and that there was no basis for the respondents, to pass impugned order. It is also stated that once the regular promotion takes place, valuable right accrues to an employee and any reversion can be only the result of disciplinary proceedings, in accordance with the relevant



rules. Reliance is also placed upon the judgment of Hon'ble Delhi High Court in the case of **Ashok Kumar Singh** vs. **Union of India &Ors.** in WP(C) No. 6799/1999.

4. Ms. Ritu Jain, learned counsel for the applicant submits that the concerned authorities are deemed to be aware of the pendency of the criminal case, when the applicant was extended the benefit of MACP and promotions. She contends that according to the judgment of the Hon'ble Supreme Court in **K.V. Janakiraman** (supra), there is no prohibition against the promotion of an employee, facing criminal or disciplinary proceedings and what all was required is that, the factum must be known to the concerned authority. She contends that once the promotion is accorded, the same cannot be taken away through the disciplinary proceedings.

5. Ms. Anupama Bansal, learned counsel for the respondents on the other hand, submits that the promotions and MACP extended to the applicant was without taking into account, the pendency of the criminal case and that once it was noticed, corrective steps were taken. She placed reliance upon the judgment of the



Hon'ble Supreme Court in **S.C.Bhajan Singh Vs. State of Uttrarakhand & Ors.**, in CA No. 7706/2013 decided on 27.08.2013.

6. The applicant was extended the benefit of 2<sup>nd</sup> MACP as well as two promotions to the post of ASO and later on to the post of AD between 2006-2017. While the MACP was after assessment by the Screening Committee, the promotion was on the basis of the recommendations of the respective DPCs. There is no doubt about the eligibility or fitness of the applicant to be extended those benefits, on the basis of his service record. What however, missed the attention of the authorities, either inadvertently or otherwise is the factum of the pendency of the criminal case from the year 2006 onwards. It was instituted by the CBI, on noticing certain acts and omissions referable to the Prevention of Corruption Act, 1988. Sanction was also accorded for the prosecution of the applicant.

7. The law is fairly well settled that though an employee who is (a) placed under suspension, (b) figured as an accused in the criminal case or, (c) was facing disciplinary proceedings; cannot be denied consideration



for promotion or other benefits, the selecting agency has to keep the proceedings in respect of such employees in a sealed cover. Once the employee is reinstated, acquitted or exonerated of the proceedings, the sealed cover is required to be opened and depending upon the findings therein, he has to be extended the benefits on par with his immediate junior. The Hon'ble Supreme Court dealt with this aspect in detail in **K. V. Jankiraman's** case (supra) and the gist of judgment was incorporated in the OM dated 14.09.1992 issued by the DoP&T.

8. It is just un-understandable as to how one after the other, the benefits were extended to the applicant, in spite of the pendency of the criminal case against him. Irrespective of the reasons that lead to such a situation, corrective steps are ought to be taken once the fault is noticed. The administration at the relevant point of time has acted in a manner which is highly objectionable. As of now, merely corrective steps are taken. It is not known whether any disciplinary action is contemplated on those, who are responsible.

9. Learned counsel for the applicant placed reliance upon the judgment of the Hon'ble High Court of Delhi in



Ashok Kumar Singh's case (supra). That was a case in which the promotion was ordered even while the disciplinary proceedings were pending and when it was withdrawn without issuing notice, the concerned order was set aside, mainly on the ground of violation of principles of natural justice. It is a short judgment and we do not find anything from it, which has analysed the principles laid down by the judgement of the Hon'ble Supreme Court in **Jankiraman's** case or has provided any avenue to ignore the principles laid down therein. Be that as it may, the Hon'ble Supreme Court in **Bhajan Singh's** case (supra) held that where the promotion is ordered to an employee facing disciplinary or criminal proceedings, the same needs to be withdrawn and the concerned employee must be made to wait till the proceedings are concluded.

10. In the instant case, the respondents have issued a show cause notice to the applicant, furnishing detailed reasons and the impugned order was passed on a consideration of the explanation submitted by him. We ascertained from the learned counsel for the applicant, about the status of the criminal case and it is stated that



even now it is pending. Therefore, no exception can be taken to the impugned order.

11. In case the applicant is acquitted in the criminal case, it is needless to mention that the said fact can be taken into account by the concerned authority and the relief as provided for in the law, can be extended.

12. The OA is accordingly dismissed. There shall be no order as to costs.

Pending MAs, if any, shall stand disposed of.

**( Aradhana Johri ) ( Justice L. Narasimha Reddy )**  
**Member (A) Chairman**

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