

Central Administrative Tribunal**Principal Bench, New Delhi****OA No.1543/2020**Today this the 14th day of October, 2020Through video conferencing**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Pawan Kaul

...Applicant

(By Advocate : Mr. Mohit Siwach)

VersusDelhi Development
Authority Delhi

...Respondents

(By Advocate : Mr. Arun Birbal)



Order (Oral)

Justice L. Narasimha Reddy, Chairman

The applicant is an employee of the Delhi Development Authority, the respondent herein. He was holding the post of Junior Secretarial Assistant (JSA). For promotion to the post of Senior Secretarial Assistant (SSA), there exists a facility of Limited Departmental Competitive Examination (LDCE). The applicant took part in the same on 28.05.2019 and 09.06.2019. On the basis of the performance in the examination he was also promoted to the post of SSA on 24.06.2019.

2. The respondents received a complaint to the effect that the applicant was facing criminal case at the relevant point of time and the promotion was not proper. The respondents issued a notice to the applicant requesting him to explain his version. In reply, the applicant stated that his wife lodged FIR No.183/2016 under Section 498 A and the charge sheet was also filed before the MMMahila Court 01 on 24.08.2018. He further stated that he filed a divorce petition against his wife. Taking these aspects into account, the respondents passed an order dated 05.10.2020 withdrawing the promotion of the applicant and reverting him to the post of JSA. This OA is filed challenging the impugned order dated 05.10.2020.





3. We heard Sh. Mohit Siwach, learned counsel for the applicant and Sh. Arun Birbal, learned counsel for the respondents in detail at the stage of admission.

4. It is a matter of record that the applicant took part in the LDCE and on the basis of the performance in the examination, he was promoted to the post of SSA through order dated 24.06.2019.

5. A complaint was received to the effect that the applicant was figured as accused in a criminal case and despite that he was promoted. Fairly enough, the respondents issued a notice to the applicant as required under law. The applicant has admitted that FIR No.193/2016 was filed against him under Section 498 A of IPC and a criminal case is also pending against him. Once that is the undisputed fact, the judgement of the Hon'ble Supreme Court in Janakiraman's case and the corresponding OM issued by the DOPT get attracted. It was categorically held that if an employee who

- (a) faces departmental proceedings;
- (b) figured as accused in a criminal case; and
- (c) is detained in a criminal case,

is not entitled to be promoted. In such cases sealed cover procedure needs to be adopted.



6. Whether it was on account of the failure on the part of the applicant to inform the respondents about the pendency of the criminal case or on account of any inadvertent mistake or omission on the part of the respondents, the applicant was promoted, even while the criminal case filed against him was pending. The only course open to the respondents was to withdraw the promotion and the same was done through the impugned order.

7. We do not find any merit in the OA and accordingly dismissed. It is, however, directed that the case of the applicant shall be treated as the one in the sealed cover and in the event of his acquittal in the criminal case, the promotion shall be restored to him. There shall be no order as to costs.

(Aradhana Johri)
Member (Admn.)

(Justice L.Narasimha Reddy)
Chairman

Sd/pinky/06/11