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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 56 OF 1986
~~Tax No.~~

DATE OF DECISION March 7, 1986

Shri O.P. Khumra Petitioner

Shri Kapil Sibbal, Sr. Advocate
with Shri K.K. Lahiri, Advocate for the Petitioner(s)
Advocate

Versus

Central Water Commission & Ors. Respondent

Smt. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Member

The Hon'ble Mr. H.P. Bagchi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

The petitioner, Shri O.P. Kumra who is at present functioning as Chief Engineer (Level II) in the scale of Rs. 2250-2500 in the office of Central Water Commission has come up under Section 19

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of the Central Administrative Tribunals Act, 1985 against his not being promoted as Chief Engineer (Level I) in the scale of Rs. 2500-2750 even though six officers who were empanelled along with him but placed below him by the Departmental Promotion Committee which met in March, 1985 have been promoted. Since the panel has been exhausted he apprehends that the next Departmental Promotion Committee will be convened shortly to fill up other vacancies and his promotion will be relegated and be in jeopardy still further. He has prayed that the respondents may be directed to promote him to the post of Chief Engineer (Level I) with effect from 3rd October, 1983 and restrained from convening/ constituting another Departmental Promotion Committee before promoting the applicant from the existing panel. Ad-interim ex-parte order was issued on 5.2.1986 directing that the respondents might convene the meeting of the Departmental Promotion Committee but the empanelment to be made by the Committee should not be given effect to till further orders. The interim orders lapsed on 19.2.1986. The respondents have opposed the application indicating that the applicant is not entitled to promotion as Chief Engineer (Level I) with effect from 3.10.1983, that a CBI investigation is going on against the petitioner. It has further been stated that respondent no.2, i.e. the Ministry of Water Resources recommended the names of first six officers including the petitioner's from the panel prepared by the Departmental Promotion Committee on 18.3.1985 and that the petitioner was number one in the panel for appointment as Chief Engineer (Level I) in the six available vacancies. ^{however} ~~But~~ The Department of Personnel & Training conveyed the approval of the Government to the appointment of all officers except the petitioner's on the ground that the CBI was looking into some

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complaints against the petitioner while he was on deputation in Delhi Administration and that his case should be referred to the Department of Personnel & Training for reconsideration in the light of information gathered from the CBI. It has been stated further than after gathering the information from the CBI, the case has been referred to the Department of Personnel and Training.

2. A brief chronological resume of the facts of the case as admitted by both the parties will be useful. The petitioner joined service as Assistant Engineer in the Central Water and Power Commission on 17.1.1953 by selection through the UPSC and got promotion through various stages till his appointment as Chief Engineer (Level II) Delhi in the scale of Rs. 2250-2500 on 27.5.1981. In this capacity he was on deputation with Delhi Administration from the Central Water Commission from 27.5.1981 to 27.8.1985. During his deputation to Delhi Administration, he earned repeated encomiums and commendations notably in flood control and making arrangements for the funeral of the late Prime Minister, Smt. Indira Gandhi. The petitioner has appended photostat copies of the commendatory letters at Annexures A, B, C, D and E ^{to his petition.} He got commendations from various personalities including the Chief Executive Councillor, the Lieutenant Governor, Delhi and through the latter from the Prime Minister's Office. On the 3rd October, 1983, the then Ministry of Irrigation wrote a letter to the Chairman, Central Water Commission promoting the petitioner from the rank of Chief Engineer (Level II) to that of Chief Engineer (Level I) in the Central Water Engineering Service with effect from the date of his taking over charge on reversion from deputation with the Delhi Administration and appointing him as Member, Ganga Flood Control Commission, Patna. The petitioner could not take over the charge as he was not released by the Delhi Administration with whom he stayed on extended deputation till

27.8.1985 as Chief Engineer(Level II). He ultimately joined his parent Department of the Central Water Commission on 4.12.1985 as Chief Engineer(Level II). In the meantime, the Departmental Promotion Committee had met in March, 1985 and prepared a panel of ten officers amongst whom the applicant was placed at the top. The Ministry of Water Resources sent the names of the petitioner and the next five officers in the panel to the Department of Personnel & Training for promotion as Chief Engineer(Level I) but as indicated above that Department did not agree to the promotion of the petitioner while approving the promotion of five other officers below him in the panel on the ground that a CBI investigation was going on against the petitioner. A copy of the report of the CBI has been appended by the petitioner as enclosure to Annexure ^M M to the petition the contents of which have been repeated even by the respondents in the counter affidavit, as follows:-

"A regular case No.1/85-CIU(F) was registered by the CBI on 8.4.1985 against Shri O.P. Kumra, who was then working as Chief Engineer(Irrigation and Flood Control), Delhi Administration and others under Section 120-B Indian Penal Code read with Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act and taken up for investigation.

"It is alleged in the FIR that during the months of November, 1983 to February, 1984, Shro O.P. Kumra, Chief Engineer, Irrigation and Flood Control, Delhi Administration with other Public servants of Flood Control Department, Delhi Administration and Central Water Commission, New Delhi, in pursuance of a Criminal Conspiracy between themselves and a private contractor obtained undue pecuniary advantage for himself and for the said private contractor in the matter of award of earth work in Najafgarh Drain at an exorbitant rate.

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It has also been alleged that Shri O.P. Kumra had accepted Rs.10 lakhs as bribe from private contractor for favour shown to him in the matter of award of the said work.


"Other persons alleged to be involved are Shri M.S. Hussain, Director(UT), Central Water Commission, New Delhi, R.P. Seth, Surveyor of Works, Irrigation and Flood Control Department, Delhi Administration, Delhi and Sohan Lal Saini, the contractor.

"The search of residential premises and office chamber of Shri O.P. Kumra, Chief Engineer was conducted by the CBI immediately after registration of the instant case. Nothing incriminating was found during the search of the house or office chamber of Shri O.P. Kumra.

"The search of the residential-cum-office premises of the contractor Shri Sohan Lal Saini, who is another suspect in the case, was also conducted and his books of account seized. During the scrutiny of books of account of the contractor Shri Sohan Lal Saini, certain entries showing expenditure towards this work awarded to the contractor have been noted down even before the award of actual contract to the contractor.

These entries are quite suspicious and are being probed."

3. The report of the CBI has been sent by respondent no.2 to the Department of Personnel and Training whose further direction is being awaited. It has also been confirmed by the respondents in the counter affidavit that all officers except the petitioner included in the panel prepared in March, 1985, have already been appointed/given proforma promotion or retired from Government service and that there are a few vacancies in the grade of Chief Engineer(Level I) in the Central Water Engineering Group(A) Service and that there is a need for convening a fresh



DPC shortly.

4. We have gone through the documents of the case carefully and considered the arguments advanced by the learned counsel for both the parties. From the admitted facts, as summarised above, it is clear that the petitioner has been giving very good performance as Chief Engineer in Delhi and all his superiors were extremely satisfied with his work. Unfortunately, but not unusually he attracted some motivated elements against him whereby he came under anonymous and pseudonymous complaints which were thoroughly investigated during 1983-84. These complaints were found to be motivated and the matter was reported to have been closed with the approval of the then Home Minister. In this connection, paras 4 and 5 of the letter dated 15.3.1984 (Annexure J to the petition) written by Shri S.C. Vajpaeyi, the then Secretary (Irrigation & Flood), Delhi Administration to Shri P.C. Jain, Deputy Secretary, Ministry of Irrigation may be quoted as follows:

"It must however be placed on record that due to the action taken by the Flood Control Department during the last two years, i.e. 1982-83 and 1983-84 there was no damage to life or property by flood in Delhi despite difficult conditions in the neighbouring States. The work done by Flood Department headed by Shri G.P. Kumra, Chief Engineer (I&F), was widely appreciated by the local MPs, Members of Metropolitan Council, Members of MCD and also by L.G., Executive Councillor (Dev.), Delhi and Chief Executive Councillor, Delhi and local bodies. In the context of such good work having been done such motivated complaints and even Parliament Questions do have certain demoralising effect on the department.

"Substance of the points made in the two complaints and our comments thereon are indicated in the enclosed note. As such the motivation of the two complaints is obvious. A copy of the information furnished to the Lok Sabha Secretariat may also be endorsed to us for record."

Further para 3 of the note dated 14.3.1984 (Annexure L to the petition) recorded by the Director of the Home Ministry and addressed to the Ministry of Irrigation would also be relevant:-

"A detailed report was received from the Vigilance Department of Delhi Administration which shows that the complaint is motivated and without basis. It has also been mentioned that the complaint is pseudonymous. It was felt that there is no substance in the allegations. In view of this it was decided at Home Minister's level to treat this matter as closed."

5. The fact that the petitioner was not only retained by the Delhi Administration at the level of Chief Engineer (Level II) and the Lieutenant Governor himself wrote demi-officially to the Ministry for extended deputation of the petitioner on 18th July, 1985 vide Annexure 'F' to the petition, shows that the Delhi Administration till July 1985 was thoroughly satisfied with petitioner's work and integrity despite the complaints against him. This is further supported by the fact that the Departmental Promotion Committee which met in March, 1985 for preparing a panel of names for promotion as Chief Engineer (Level I) placed the petitioner's name at the top of the panel of ten officers.

6. One after another all the available officers below the petitioner in the panel were promoted while the petitioner in spite of his being at the top remains unpromoted. This has generated a sense of genuine grievance in the mind of the petitioner.

7. The reason given for the petitioner's non-promotion is nothing else but the investigation going on in the CBI. It is not clear whether the matter under investigation is the same which had been inquired into earlier and closed with the approval of the Home Minister, or something else. Be it as it may, the only report available to us from the CBI in the counter affidavit and with Annexure M to the ^{petition} ~~petition~~, and quoted earlier in this

judgement indicates that nothing incriminating was found during the search of the house or office chamber of Shri Kumra though some entries showing expenditure towards the work awarded to the contractor had been noted and are being probed. The investigation has been going on since 8.4.1985 but till now no specific conclusion or chargesheet or decision to prosecute the petitioner has crystallised.

7. The short point is whether the petitioner can be deprived of the promotion to which he is entitled by virtue of his performance and inclusion at the top of the panel prepared in March 1985, indefinitely, merely because an investigation howsoever warranted is going on in the CBI. Doubtless, such a contingency must have happened not for the first time in this case, as specific instructions to cover such a contingency had been issued by the Department of Personnel & A.R. in their O.M. of the 14th July, 1977 which is appended with the petition immediately above Annexure 'D'. It will be useful to quote para.3 of the O.M. No.F.22011/3/77-Estt.(A) of the 14th July, 1977 as follows:-

"In the light of the above decision, it is clarified that in respect of officers whose conduct is under investigation the sealed cover procedure as prescribed in the Ministry of Home Affairs Office Memorandum No. 39/3/59-Estt. dated the 31st August, 1960 should be followed only after the conclusion of the investigation and when the competent authority on consideration of the results of the investigation either by Central Bureau of Investigation or any other agency, departmental or otherwise has formed the opinion that charge-sheet may be issued to him on specific imputations where departmental action is contemplated, or that sanction for prosecution may be accorded where prosecution is proposed. Until the competent authority arrives at such a

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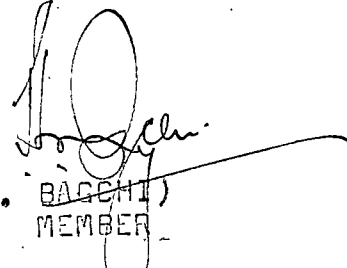
conclusion, the officer may be treated on a par with others in the matter of promotion, confirmation etc."
(emphasis added)

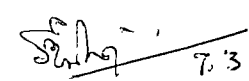
8. The aforesaid clarification should clinch the issue insofar as the present case is concerned. Justice, fair play and maintenance of the morale of civil services demand nothing less than what has been indicated in the aforesaid quotation. Mere investigation of a case unless concrete evidence is found against the officer should not be any reason to deprive him of his legitimate rights. In the present case, since the CBI has not yet concluded its investigation ~~for any offence~~ ^{it} ~~has not been filed, as admitted by the concerned official~~ ^{for the respondents before us} nor there is any averment that any departmental or other proceedings or chargesheet is contemplated against the petitioner, we feel that petitioner's promotion cannot and should not be withheld further. The Ministry of Water Resources had recommended petitioner's name along with five other names in the panel for promotion to the Department of Personnel and Training. If the provisions of the aforesaid O.M. of the 14th July, 1977 issued by the Department of Personnel & A.R. themselves had been brought to their notice, we are sure the promotion of the petitioner would not have been deferred.
9. We are supremely conscious of the need to maintain absolute integrity and honesty in the public services especially at the higher levels. However, as the O.M. of 14th July, 1977 issued by the Department of Personnel & A.R. itself shows, the process of visiting erring officers with condign punishment should not be overstretched so as to ~~cost~~ ^{cause} loss, agony and humiliation to officers before any prima facie case is brought out against them. Punishment must follow the crime as the night follows the day but not otherwise. By punishing the innocent or by premature punishment even before a prima-facie case is made out we might throw the baby with the bath water and do irreparable damage to the

morale of the civil services. At the higher levels, the need to make the punishment exemplary is as pressing as the need to ensure that the prescribed process and procedure prescribed is wanting, the same should be changed and revised rather than violated in ^{some} individual cases and followed in others. This may give rise to violation of Articles 14 and 16 of the Constitution of India. What we seek to emphasise is strict compliance and adherence to the aforesaid O.M. of 14th July 1977 by the concerned authorities. In the circumstances of the case we are fully convinced that the petitioner has been unduly deprived of his legitimate right of promotion as Chief Engineer (Level I) by virtue of his being placed at the top of the panel prepared by the Departmental Promotion Committee in March, 1985 and that in his case the letter and the spirit of the Office Memorandum of the Department of Personnel & A.R. of July, 1977 have been violated.

10. In the light of the above discussion, we therefore direct that the recommendation of the D.P.C. for filling up the posts of Chief Engineer Level I, made on 18.3.1985 should be implemented qua the petitioner by treating him at par (vide the aforesaid O.M. of 14.7.1977) with his juniors in the panel prepared in March, 1985 and as recommended originally by the Ministry of Water Resources. We are however not able to support any further retrospectivity to the petitioner's promotion as the petitioner himself appears to have given up his promotion as Member, Ganga Flood Control Commission, Patna in 1983. The promotion of the petitioner Shri Kumra as Chief Engineer (Level I) on the basis of implementing the recommendations of the Departmental Promotion Committee ⁱⁿ March, 1985 and in compliance of the provisions of para 3 of the Department of Personnel & A.R.'s O.M. of the 14th July, 1977 will, however, be without prejudice

to such action as the Government may take under the Rules on the basis of the investigation report of the CBI. The application is disposed of accordingly. In the circumstances of the case, there is no order as to costs.


(H.P. BAGCHI)
MEMBER

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(S.P. MUKERJI)
MEMBER