

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1437 198 7
T.A. No.

DATE OF DECISION 23.5.1988

Dr. A. K. Das

Petitioner

Shri V. P. Sharma,

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondents

Shri S.N.Sikka,

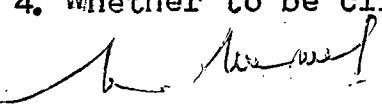
Advocate for the Respondent(s)

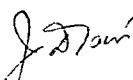
CORAM :

The Hon'ble Mr. Justice J.D.Jain, Vice Chairman

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether to be circulated to all the Benches? No


(KAUSHAL KUMAR)
MEMBER


(J. D. JAIN)
VICE CHAIRMAN

23.5.1988

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. NO. OA 1437/87

Dated: 23.5.1988

Dr. A. K. Das

..... Applicant

Vs.

Union of India & others

Respondents

Coram: Hon'ble Mr. Justice J.D.Jain, Vice Chairman

Hon'ble Mr. Kaushal Kumar, Member.

For the Applicant Shri V.P.Sharma, Counsel.

For the Respondents Shri S.N.Sikka, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. Justice J.D.Jain, Vice Chairman)

The applicant Dr.A.K.Das was promoted as Additional Divisional Medical Officer(hereinafter referred to as 'ADMO') with effect from 1.1.1973. The next higher promotional avenue in the said post is Divisional Medical Officer(hereinafter referred to as 'DMO') which carries higher scale of pay. Vide letter dated 25.9.1987, the Railway Board communicated upgradation of 208 posts of ADMOs to the senior scale (DMOs post in Northern Railway). The Railway Board further communicated that all the ADMOs who had completed 5 years' regular service in Group 'A' were eligible to be considered for promotion on the basis of seniority-cum-fitness. Accordingly a large number of ADMOs were considered by the Competent Authority for promotion to the posts of DMO. However, the applicant was not considered suitable for promotion because a vigilance case was pending against him at that time. There was an allegation of his having issued false medical

certificates without naming the diseases from which the patients mentioned therein were suffering. The decision was communicated on 29.9.1987. The names of those who were considered fit and were promoted were also forwarded to the General Manager on the same day. Consequently the applicant and some others were dropped for promotion while ^a number of others were promoted to the posts of DMO.

2. Feeling aggrieved the applicant has challenged his non-promotion to the post of DMO on the ground that no chargesheet has been framed/issued to him when he was dropped from the panel of promotees in September 1987 and as such his non promotion was violative of the principles of equity enshrined by Articles 14 & 16 of the Constitution.

3. Learned counsel for the Respondents, has however, urged that there was a vigilance case pending against the applicant at the relevant time and the Deputy Central Vigilance Officer(E) had intimated to the Competent Authority that *prima facie* a vigilance case was pending against the applicant. Be that as it may, the fact remains and the same is not disputed or controverted by the Respondents that the chargesheet was framed against the applicant as late as on 19.2.1988 and it was served on him for initiating disciplinary proceedings in March 1988. Hence the correct position as it emerges from the foregoing facts is that at that time he was passed over by his juniors for promotion to the post of DMO only because some kind of enquiry was pending against him in the Vigilance Department and nothing more. Obviously the decision, if any, taken to chargesheet him was at the time when the article of charge was actually framed against the applicant. To be more precise it was actually served on him in March 1988.

4. The Respondents rely on departmental instructions on the subject of promotion and confirmation in such cases. According to the departmental instructions the guidelines are as under:-

"Promotions confirmations, normal retirements, voluntary retirements, resignation, grant of EPR etc.

Vigilance Directorate will furnish information in regard to current vigilance cases under investigations and/or those in which disciplinary proceedings are pending against the officers.

The extant rules and instructions which adequately cover these types of cases may be followed by the Competent Authority.

It is, however, clarified that promotions or confirmations should not be withheld merely because a regular case has been registered by the Central Bureau of Investigation against a gazetted officer or that complaints against him/her are being looked into by departmental agency. Promotions or confirmations should be withheld if the Competent Authority on consideration of the result of the investigation by departmental agency or otherwise, has formed an opinion that a chargesheet for major or minor penalty may be issued to him/her on specific imputations where departmental action is contemplated or that sanction for prosecution may be accorded where prosecution is proposed."

5. On a perusal of these instructions it would no doubt appear that the promotions or confirmations could be withheld if the Competent Authority on consideration of the result of the investigation by departmental agency or otherwise has formed an opinion that a chargesheet for major or minor penalty may be issued on specific imputations where departmental action is contemplated or that sanction for prosecution may be accorded where prosecution is proposed.

6. We have gone through the relevant file and we are unable to find any decision by the Competent Authority on 29.9.1987 when the applicant was dropped from the promotion to the effect that he was prima facie guilty of any moral turpitude/misconduct so as to warrant disciplinary proceedings/prosecution on criminal charge against him.

7. This matter came up for consideration before the Full Bench of this Tribunal in K.Ch.Vankata Reddy & Others Vs. Union of India & Others (A.T.R. 1987(1) C.A.T. 547. The Full Bench was inter alia called upon to consider the latest instructions issued by the Government on the subject in Office Memorandum dated 30.1.1982 in supersession of the earlier instructions issued in this regard from time to time. Eventually the Full Bench recorded the conclusions as under:-

- " 1. Consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
- 2. Withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are pending against him cannot be treated to be penalty under Rule 1(2) of the CCS(CCA) Rules, 1965;
- 3. The instructions issued by the Central Government embodying the sealed cover procedure do not conflict with CCS(CCA) Rules 1965, and as such it is quite valid except for the portions indicated above which have been struck down by us;
- 4. The sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before....."

8. The Full Bench also took the view that an officer can be said to be under investigation only when the chargesheet is filed in a Criminal Court or charge memorandum under the C.C.A Rules is issued. As observed by the Full Bench:-

" Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is..... and the charge sheet is filed before the court."

We are in respectful agreement with the view taken by the Full Bench and we find that only because a prima facie vigilance case was pending investigation against the applicant herein his promotion could not be withheld. The chargesheet was framed much later and was served on him. In the circumstances, the action of the Respondents in withholding his promotion 4 or 5 months prior to the framing of the chargesheet was totally unwarranted by law and sense of fairness/justice. It cannot, therefore, be sustained.

9. To sum up, therefore, we allow this application and direct that the applicant shall be deemed to have been promoted to the post of DMO from the date his juniors were promoted to the said post and he shall be entitled to all consequential benefits. However, we may clarify that it will be open to the Respondents to proceed with the disciplinary proceedings against the applicant and if he is found guilty to punish him in accordance with law.

10. In the circumstances we make no order as to costs.

In view of
(KAUSHAL KUMAR)
MEMBER

J. D. Jain
(J. D. JAIN)
VICE CHAIRMAN