

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CCP No.53/90 in
 O.A. No. 762/1987
~~TA~~ No.

199

DATE OF DECISION 4.9.1990.

Shri B.S. Bhatnagar	Petitioner
Dr. D.C. Vohra	Advocate for the Petitioner(s)
Versus	
Union of India & Others	Respondent
Shri N.S. Mehta, Sr. Counsel	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
 Vice Chairman(J))

This petition has been filed by one of the original petitioners in TA 129/85 which was disposed of by the Tribunal by its judgment dated 21.11.1986. The Tribunal had directed the respondents to determined the seniority of the petitioners on the basis of their total length of continuous service in Grade IV of IFS 'B'. Accordingly, the respondents had revised the seniority list which was issued on 18.5.1987. Subsequently, the same petitioners filed OA 762/87 for grant of benefits of arrears of pay and promotion consequent upon the revision of their seniority. By judgment dated 12.2.1988, the Tribunal, inter alia, directed the respondents as follows:-

"(a) The applicants should be considered for

promotion to the grade of Section Officer's from the date their juniors were so considered and if found suitable in accordance with the rules, should be given promotion w.e.f, the dates their juniors were so promoted.

- (b) The applicants, if promoted to the Grade of Section Officers, should be given arrears of pay and allowances with retrospective effect by creating supernumerary posts, if necessary".

(vide page 71 of the paper book)

2. The petitioner has stated that all the persons who benefited from the above mentioned judgments have been promoted except him. He has been ignored for promotion and for grant of consequential benefits.
3. The contention of the petitioner is that on the date of the judgment or the date of promotion of his junior, there were no enquiry proceedings against him.
4. The contention of the respondents is that the petitioner, along with others, was duly considered for promotion to the grade of Section Officer with effect from 19.11.1985 by review DPC on 9.5.1988. As Disciplinary Proceedings were instituted against him by Memorandum dated 4.2.1988, he could not be promoted as per the OM dated 12.1.1988 issued by the Department of Personnel & Training. They have further stated that disciplinary ^{action} p-roceedings are continuing in this case and that further/ can only be taken on conclusion of those proceedings.
5. In our opinion, the contention of the respondents is legally unsustainable, in view of the recent decisions of the Supreme Court in C.O. Arumugam & Others Vs. The State of Tamil Nadu, 1989(2) SCALE 1041 and in The State of M.P. Vs. Bani Singh & Another, 1990(1) SCALE 675.

6. In Arumugam's case, the Supreme Court observed that the consideration of promotion could be postponed only on reasonable grounds. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. In the case of respondent No.4 before the Supreme Court, his name was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. The Supreme Court observed that "it is, therefore, not proper to have overlooked his case for promotion". The Supreme Court, therefore, directed that his case be considered for promotion on the date on which his junior was promoted and if he was found suitable for promotion he must be promoted with all consequential benefits.

7. In the same vein, the Supreme Court observed in Bani Singh's case that "normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right being considered. If departmental enquiry had reached the stage of framing of charges after a prima facie ^{case} has been made out, the normal procedure followed as mentioned by the

On

Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached the stage of framing the charge after prima facie case is established, the consideration for promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of disciplinary proceedings".

8. In the light of the aforesaid rulings of the Supreme Court, the non-consideration of the case of the petitioner for promotion as Section Officer as on 19.11.1985 by the Review DPC is untenable. There was no disciplinary proceedings pending against the applicant on 19.11.1985.

The events and developments of subsequent dates cannot be taken into ^{account} by the Review DPC while considering his suitability for promotion as on 19.11.1985.

9. We, therefore, direct ^{the respondents} to reconvene the meeting of the Review DPC to consider the suitability for promotion of the petitioner as on 19.11.1985 when they found his ^{suitable} juniors for promotion as Section Officer. If on such consideration the Review DPC finds him fit for promotion, he should be promoted from the date his juniors were promoted. He would also be entitled to arrears of pay and allowances and all consequential benefits. We make it clear that the Review DPC shall not take into account the events and developments after 19.11.1985. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

on

24

10. The CCP is disposed of and the notice of contempt discharged with the above observations.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 4/9/1990

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J) 4/9/90