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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1128/90
T.A. No.

199

DATE OF DECISION 24.8.1990.

<u>Shri S.C. Khurana & Another</u>	<u>Petitioner</u> <u>Applicants</u>
<u>Shri D.P. Malhotra,</u>	<u>Advocate for the Petitioner(s)</u> <u>Applicant</u>
<u>Lt. Governor, Delhi through Chief Secy., Delhi Admin.</u>	<u>Respondent</u>
<u>Shri M.M. Sudan</u>	<u>Advocate for the Respondent(s)</u>

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

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? Yes
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?

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

The question whether the promotion of an employee could be cancelled on the ground of pendency of a vigilance case under investigation against him, has been raised in this application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. There is no dispute regarding the facts of the case. Both the applicants belong to the Delhi Administration Subordinate Service, Grade II. By an order dated 31.1.1990, they were appointed to the post of Grade I of Delhi Administration Subordinate Service on an ad hoc basis for a period of six months in the first instance or till regular promotions are made on the recommendations of the Departmental Promotion

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Committee, whichever is earlier. The Food and Supply Department had given the requisite vigilance clearance on 26.10.1989. On the next day, the said department informed that during the course of investigation in a complaint regarding demand and acceptance of illegal gratification against the applicants, it had been revealed that the allegations were substantiated. Commissioner (F&S) had ordered to initiate disciplinary proceedings against them. In view of the said report, the respondents issued the impugned order dated 16.4.1990 whereby the ad hoc promotion ordered on 31.1.1990 was cancelled.

3. On 3.5.1990, the vigilance case, which was pending against the applicants, was finalised and a simple non-recordable warning was issued to them.

4. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the applicants has relied upon numerous rulings in support of his contention that the impugned order dated 16.4.1990 is not legally sustainable.* He also submitted that many persons junior to the applicants were not similarly reverted from the promotional post.

5. In C.O. Arumugam and Others Vs. the State of Tamil Nadu & Others, 1989 (2) SCALE 1041, the Supreme Court has observed that 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

* Cases cited by the learned counsel for the applicants:

Sunderlal Vs. Union of India, 1989 (10) ATC 337; Dr. (Mrs.) Prem Lata Choudhry & Ors. Vs. ESIC, ATR 1988 (1) CAT 196; Prem Singh Vs. Union of India, 1989(9) A.T.C. 52; Rattan Lal Vs. State of Haryana, 1985 SCC(L&S) 938; Ram Parkash Vs. Secretary, Planning Commission, 1988 Lab. I.C. 1165; State of M.P. Vs. Bani Singh & Anr., 1990 SCALE 675. Q

the proceedings are concluded.

6. In State of M.P. Vs. Bani Singh, 1990 (1) SCALE 675, the Supreme Court observed that "Normally, pendency or contemplated action of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental inquiry 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 Tribunal was 'sealed cover' procedure, but if the disciplinary proceedings had not reached that stage of framing of 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 such disciplinary proceedings."

7. In Roop Narain Vs. Union of India & Others (OA-86/87), this Tribunal has held in its judgement dated 27.10.1989 that reversion in such circumstances, as in the instant case, is not legally sustainable.

8. We, therefore, admit the present application. We hold that the respondents shall not give effect to the impugned order of reversion dated 16.4.1990. The interim order passed by the Tribunal on 1.6.1990 staying the impugned order dated 16.4.1990, is hereby made absolute.

There will be no order as to costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member

24/8/90

P. K. Kartha
24/8/90
(P. K. Kartha)
Vice-Chairman (Judl.)