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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1399/90

Date of decision: 7.8.1992

Shri H.L. Yadav Applicant

Versus

Delhi Administration Respondents
through Chief Secy.
and Others.

For the Applicant Shri B.S. Charya, Advocate

For the Respondents Smt. Avnish Ahlawat, Advocate

CORAM:

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

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

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

The short point for consideration is whether the promotion of an officer can be withheld on the ground of pendency of a vigilance case against him. The applicant was appointed as L.D.C. in 1963. He was promoted as a Steno-Typist in 1966, as Junior Stenographer in 1970, and as Senior Stenographer in 1976. The post held by him was in Grade II of the Delhi Administration Subordinate Service. His next promotion is to the post of Grade I

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of the Delhi Administration Subordinate Service. in the scale of Rs.1640-2900. On 31.1.1990, several persons were promoted to the post of Grade I on ad hoc basis but the name of the applicant was omitted in the order of promotion. He was also not allowed to cross the Efficiency Bar (E.B.) after he had reached the basic pay of Rs.1800/- in the grade of Rs.1400-40-1800-EB-

50-2300 since April, 1989. Chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued to him on 30.7.1991.

2. The case of the respondents is that the applicant was not promoted to Grade I in view of the pendency of a vigilance inquiry against him since April, 1987. He was also not allowed to cross the E.B. due to the non-availability of his C.R. folders and non-receipt of vigilance clearance.

3. We have gone through the records of the case carefully and have considered the rival contentions. At the time of the promotion of officers from Grade II to Grade I of the Delhi Administration Subordinate Service, or when the applicant was due for crossing the Efficiency Bar at the stage of Rs.1800/-, no disciplinary proceedings had been pending against him by issuing a charge-sheet to him. Similarly, there was no charge-sheet issued to him in any criminal case. No sealed cover procedure was also followed in this case. In Union of India Vs. K.V. Janakiraman, 1991 (2) SCALE 423, the Supreme Court has held that the

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promotion of an officer cannot be withheld in such circumstances. For the purpose of the 'sealed cover' procedure, the disciplinary/criminal proceedings can be said to have commenced only when a charge-memo in a disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the 'sealed cover' procedure. Promotion cannot be withheld merely because some vigilance case is pending against the employee.

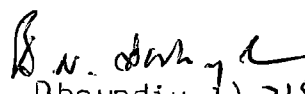
4. In the light of the foregoing, we are of the opinion that the applicant is entitled to succeed in the present proceedings. We, therefore, dispose of the present application with the following orders and directions:-


- (i) The respondents shall convene a meeting of the D.P.C. to consider the case of the applicant for promotion to the post of Grade I in the Delhi Administration Subordinate Service in the scale of Rs.1640-2900 as on 31.1.1990. The D.P.C. should take into account the confidential records of the applicant prior to 31.1.1990. In case, the applicant is found fit for promotion, he should be promoted to Grade I with effect from the date his immediate junior was so promoted.

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In that event, he would also be entitled to the arrears of pay and allowances from the due date to the date of promotion.

- (ii) The respondents shall convene a D.P.C. to consider the case of the applicant for crossing the Efficiency Bar at the stage of Rs. 1800/-, when the same was due to him in April, 1989. The D.P.C. should consider his case on the basis of his confidential reports as on April, 1989. In case, he is found fit, the respondents shall allow him to cross the Efficiency Bar from the due date.
- (iii) The respondents shall comply with the above directions as expeditiously as possible but preferably, within a period of three months from the date of receipt of this order.
- (iv) We make it clear that the respondents will be at liberty to review the case of promotion of the applicant if the same is warranted in view of the decision in any departmental inquiry initiated against him at a subsequent stage.
- (v) There will be no order as to costs.


(B.N. Dhoundiyal) 7/8/82
Administrative Member


7/8/82
(P.K. Kartha)
Vice-Chairman (Judl.)