

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2297/90
T.A. No.

199

DATE OF DECISION 25.1.1991

Shri S.M. Aggarwal

~~Petitioner~~ Applicant

Shri G.D. Gupta

Advocate for the ~~Petitioner(s)~~ Applicant

Versus
Union of India through Secretary,
Ministry of Urban Development & enr.

Respondents

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D. K. CHAKRAVORTY, MEMBER(A)

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? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? */ No*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. P.K.KARTHA, VICE CHAIRMAN)

The applicant, who is a Superintending Engineer(Civil) in the Central Public Works Department (C.P.W.D) filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to declare him entitled to be promoted as Chief Engineer(Civil) from the date he became eligible for promotion to the said post on the basis of his having been selected and his name having been borne at serial No.10 in the panel prepared on the basis of the recommendations made by the D.P.C held in August 1989 with all consequential benefits;

a

- (ii) to declare that his name was not liable to be placed in the sealed cover in the D.P.C. held in July 1990 for making promotion to the post of Chief Engineer(Civil) and also to declare that his promotion was wrongly allowed to be superseded by his juniors and his name was liable to be borne in the panel prepared on the basis of the recommendations of the D.P.C. held in July, 1990;
- (iii) to direct the respondents to promote him to the post of Chief Engineer(Civil) with immediate effect from the date he became eligible for promotion to the said post on his having already been selected and his name having been borne at serial No.10 in the panel prepared on the basis of the recommendations of the D.P.C held in August 1989 with all consequential benefits; and
- (iv) to direct the respondents not to put his case in the sealed cover in the D.P.C. held in July 1990 and to issue promotion orders and also restraining the respondents from promoting any person junior to him on the basis of the panel of July 1990 without first promoting him.

2. This application was filed in the Tribunal on 5.11.1990 when/ad-interim order was passed directing the respondents to consider the case of the applicant for appointment/promotion as Chief Engineer(Civil) on the basis of the panel prepared by the D.P.C in August 1989 without taking into account investigations said to have been initiated by the CBI subsequently. The said interim order had been continued thereafter till the case was finally heard on 14.1.1991 and orders reserved thereon.

3. The facts of the case in brief are as follows. The applicant is at present employed as Superintending

Engineer(Civil) in the C.P.W.D. The admitted factual position is that two D.P.Cs had been held by the respondents for promotion to the post of Chief Engineer(Civil) — one in August 1989 and the other in July 1990. The applicant has stated that according to his understanding his suitability for promotion was also considered by the D.P.Cs but the assessment made by the D.P.Cs have been kept in sealed cover. He came to know that this had been done as a case of showing undue favour to some private contractors while he was working as Chief Engineer in the Delhi Development Authority in 1985 along with some other officers of the said authority had been entrusted to the C.B.I in November 1989 and that the C.B.I after registering the case had been investigating the same.

On the date of convening of the two D.P.Cs/^{as} mentioned above, no charge-sheet had been filed against ^{him} in the Criminal Court or ^{served on him} by the Disciplinary Authority under the provisions of the CCS(CCA) Rules, 1965.

He contended that the mere registration of a case by the C.B.I on a subsequent date would not justify the action taken by the respondents in keeping the finding of the D.P.C in a sealed cover.

4. The respondents have stated in their counter-affidavit that the applicant cannot be promoted until he is completely exonerated of the charge against him. They have stated that the C.B.I had registered a case against him regarding irregularities in the awarding of contracts while ^{was} working in the Delhi Development Authority. It was in view of this that the recommendations of the D.P.C could not be operated upon and his case was placed in the sealed cover by the

2

D.P.C. They have also relied upon the instructions contained in the Office Memorandum dated 12.1.1988 issued by the Department of Personnel, according to which a Government servant, who is recommended for promotion by the D.P.C but in whose case any of the circumstances mentioned below arise after recommendations of the D.P.C are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the D.P.C. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in the Office Memorandum will be applicable in his case also. The circumstances mentioned in the said Office Memorandum read as follows:-

- " 1. Govt. servant under suspension.
2. Government ^{/servant} in respect of whom disciplinary proceedings are pending for a decision, has been taken to initiate disciplinary proceedings.
3. Government servant in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.
4. Government servant against whom an investigation of serious allegation of corruption, bribery or similar grave misconduct is in progress either by the C.B.I or any other agency departmental or otherwise."
5. The respondents stated that ^{/as} the applicant's case falls within category 4 above, it was decided not to promote him to the grade of Chief Engineer(Civil) and the recommendations of the D.P.C were deemed to be in sealed cover.

6. We have gone through the records of the case carefully and have considered the rival contentions. 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.

7. 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 the 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 and if he was found suitable for promotion, he must be promoted with all consequential benefits.

8. 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

De

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 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".

9. In the conspectus of the facts and circumstances of the case we allow the application and order and direct as follows:-

- (1) the respondents are directed to open the sealed cover in which the recommendations of the D.P.C held in August 1989 have been kept in so far it applies to the applicant. If he has been found fit for promotion as Chief Engineer(Civil), he should be promoted immediately according to the order of merit adjudged by the D.P.C and from the date ^{immediate} his junior, if any, was promoted;
- (2) in case there is no vacancy in which the applicant can be accommodated pursuant to the recommendations made by the D.P.C held in August 1989, the respondents shall open the sealed cover containing the recommendations of the D.P.C held in July 1990 immediately and if he has been found fit for promotion as Chief Engineer(Civil), he should be promoted ^{immediate} as such from the date his junior, if any, was promoted; and
- (3) the applicant would be entitled to arrears of pay and allowances and all consequential benefits from the date of his promotion as Chief Engineer(Civil) as directed in paragraphs (1) & (2) above.

10. The respondents shall comply with the above directions within a period of one month from the date of receipt of this order. There will be no order as to costs.

D. K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER 25/1/81

P. K. Kartha
25/1/81
(P.K.KARTHA)
VICE CHAIRMAN