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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-2368/90

Date of decision: 1.4.1992

Shri D.R. Nim

.... Applicant

Versus

Chief Secretary, Delhi and Others Respondents

For the Applicant In person

For the Respondents Smt. Avnish Ahlawat, Advocate

CORAM:

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

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

The applicant, who was working as a Vice-Principal at the time of filing of this application in the Directorate of Education, Delhi Administration, has in the meanwhile, retired on 31.7.1991 on attaining the age of superannuation. The learned counsel for the respondents stated that he has been paid gratuity, pension and other

retirement benefits. In the present application, he has sought the following reliefs:-

- (i) To direct the respondents to promote him to the post of Principal from 1976, when his immediate junior was so promoted;
- (ii) to direct them to pay the difference of pay and allowances and arrears with interest consequent on such promotion;
- (iii) to initiate contempt proceedings against them for not implementing the order dated 13.7.1988 in OA-898/88;
- (iv) to quash the impugned order dated 27.6.1989 imposing the minor penalty of withholding promotion of the applicant for a period of two years; and
- (v) to quash the impugned order dated 12.9.1990 regarding recovery of amount claimed and paid to him towards L.T.C. advance.

2. We have heard the applicant in person and the learned counsel for the respondents. At the outset, it may be stated that the relief sought for initiating contempt proceedings against the respondents for not implementing the judgement or order of the Tribunal in another case, is not maintainable in law in another original application. *✓*

3. With regard to the grievance of the applicant relating to his non-promotion as Principal, the case of the respondents is that they had initiated disciplinary proceedings against the applicant and imposed on him the penalty of withholding of promotion for a period of two years by order dated 27.6.1989. During the period when the penalty was in operation, he could not be considered for promotion. He has already retired on 31.7.1991.

4. The applicant has challenged the validity of the impugned order dated 27.6.1989 whereby the penalty of withholding of promotion for a period of two years was imposed on him. We see ^{no} merit in the challenge made by him. Though the Enquiry Officer has found in his report dated 30.11.1988 that there was no documentary/oral evidence to prove mala fide intention of the applicant in relation to article of charge framed against him, the charge had been held established. The charge was that while working as Vice-Principal, he resubmitted the bill of Shri Prem Chand, T.G.T., in respect of a false L.T.C. claim. The respondents have also produced a report of the investigation conducted by the Anti-Corruption Branch, Delhi, according to which, there had been an L.T.C. racket in which even ^{the} applicant's name figured among other erring Teachers. The applicant had claimed L.T.C. advance for himself and for the members of his family to travel from

Delhi to Kanyakumari, but this was found to be bogus.

In our opinion, the imposition of the penalty of withholding of promotion for a period of two years on the applicant, cannot be faulted on any legal or constitutional ground. As the applicant was undergoing the penalty from 27.6.1989 to 27.6.1991, his promotion during the said period could not have been considered.

The respondents have stated that his promotion was withheld due to the aforesaid reason. They have not, however, stated that after the penalty period was over, his case was considered for promotion. They have ~~however~~ stated that his case was considered by the D.P.C. but he was not found fit, which is borne out by the order dated 22.11.1988 in OA-187/88 which ^Q was dismissed by the Tribunal. We, however, feel that after the penalty period was over, he was left with one month of service before his retirement and the respondents should have, in all fairness, constituted a review D.P.C. to consider his case for promotion after the penalty period was over. In case, during the penalty period any D.P.C. had met and considered the case of Vice-Principals for promotion, the assessment of such a D.P.C. was to be kept in a 'sealed cover', as per the directions given by the Tribunal in its order dated 13.7.1987 in OA-898/88.

5. Another grievance of the applicant is the decision of the respondents ~~not~~ to initiate formal disciplinary proceedings against him in view of the delay involved, ~~not~~

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to recover the amount claimed and paid to him towards L.T.C. and the imposition of the recordable warning to be kept in his annual confidential report folder. The applicant has not admitted his guilt in regard to the submission of a bogus L.T.C. claim by him in 1979, which is now sought to be recovered from him. The applicant had filed OA-898/88 in which he had challenged the order dated 8.4.1987 for recovery of the L.T.C. money drawn by him for the journeys allegedly undertaken by him in 1979. The learned counsel for the respondents had produced before the Tribunal the order of the Director of Education dated 7.7.1988 revoking the order dated 8.4.1987. The learned counsel for the respondents stated that no recovery on the basis of the impugned order had been made. In view of this, the Tribunal observed that so far as the relief claimed by the applicant in regard to the order of 8.4.1987 was concerned, nothing survived.

6. In view of the aforesaid stand taken by the respondents in OA-898/88, and in view of the fact that the applicant is not admitting his guilt in regard to bogus L.T.C. claim, we are of the view that recovery of any amount from him unilaterally, will not be legally sustainable. The recordable warning which was ordered

(a)

to be placed in his confidential reports, will have no relevance at this stage as the applicant has already retired from service.

7. In view of the foregoing discussion, the application is disposed of with the following orders and directions:-

(i) The respondents shall consider the case of the applicant for promotion as Principal by constituting a review D.P.C. In case, the review D.P.C. finds him fit for promotion, he shall be promoted from the date his immediate junior was so promoted. In that event, he will be entitled to the arrears of pay and allowances. The respondents shall comply with this direction, preferably within a period of three months from the date of communication of this order.

(ii) In case, the respondents wish to recover any amount from the applicant towards the L.T.C. claim preferred by him, it shall be done only in accordance with law, if so advised.

(iii) There will be no order as to costs.

B. N. Dholiwal
(B. N. Dholiwal)
Administrative Member

order
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(P. K. Kartha)
Vice-Chairman (Judl.)