

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2489/90
T.A. No.

199

DATE OF DECISION 10.5.1991.

<u>Shri M. Sankaralingam</u>	Petitioner Applicant
<u>Shri R. Doraiswamy</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Secy., Deptt. of Supply</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. Dhoundiyal, 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? */no*

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

The applicant, who is working as Director of Inspection in the Directorate General of Supplies and Disposals, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

(i) to promote him to the post of Deputy

Director (Inspection) w.e.f. 1.2.1988;

(ii) to grant him Selection Grade in the post of

Director w.e.f. 1.1.1986;

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(iii) to grant him arrears of pay and allowances due from 1.1.1986 consequent upon grant of Selection Grade and from 1.2.1988 consequent on his promotion as Deputy Director General (Inspection); and

(iv) to quash the impugned memorandum dated 23.5.1988 proposing to hold an inquiry against him under Rule 14 of the C.C.S. (CCA) Rules, 1965.

2. The applicant has stated that he has put in more than 28 years of service in the Indian Inspection Service. He has worked in the grade of Director for about 12 years and he is in the zone of consideration for promotion to the post of Deputy Director General (Inspection). The Departmental Promotion Committee constituted for this purpose, held its meeting on 28.1.1988 and recommended him for promotion to the post of Deputy Director General. A vacancy in the post of Deputy Director General arose on 1.2.1988. The applicant was not, however, promoted. The applicant has stated that the promotion has been withheld in view of the contemplation of a Departmental Inquiry against him. The applicant was issued a charge-sheet on 23.5.1988 under Rule 14 of the CCS(CCA) Rules.

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3. The applicant has also stated that he was denied Selection Grade (non-functional) which had become due to him from 1.1.1986 even though officers much junior to him have been granted the Selection Grade.

4. The respondents have stated in their counter-affidavit that the D.P.C. which met on 21.1.1988, had recommended the name of the applicant for appointment as Deputy Director General (Inspection). This was approved by the Minister of State (Commerce) on 4.2.1988. However, before the proposal could be referred to the Appointments Committee of the Cabinet, the C.B.I. sent its report on a case under investigation, recommending regular departmental action against the applicant, among others.

5. We have carefully gone through the records of the case and have considered the rival contentions. The admitted factual position is that on 21.1.1988, when the Departmental Promotion Committee considered the case of the applicant for appointment to the post of Deputy Director General (Inspection), no departmental proceedings or criminal proceedings were pending against the applicant. When the applicant was to be considered for the grant of



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non-functional Selection Grade post of Director (inspection), no departmental or criminal proceedings were pending against him. In our opinion, the deferment of the grant of non-functional Selection Grade post of Director (Inspection) and the non-appointment of the applicant to the post of Deputy Director General (Insp.) are not legally sustainable. In C.O. Arumugam & Others Vs. the State of Tamil Nadu, 1989 (2) SCALE 1041, the Supreme Court has observed that the consideration of promotion could be postponed only on reasonable grounds. The promotion of persons against whom the 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.

6. In State of M.P. Vs. Bani Singh & Another, 1990 (1) SCALE 675, the Supreme Court observed 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 for promotion. 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.

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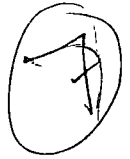
withheld merely on the ground of pendency of disciplinary proceedings.

7. The above legal position applies squarely to the facts and circumstances of the instant case. We, therefore, partly allow the application and dispose it of with the following orders and directions:-

(i) The respondents are directed to implement the recommendations of the Departmental Promotion Committee which met on 21.1.1988 to assess the merits of eligible officers for appointment as Deputy Director General (Inspection). The respondents shall give effect to the recommendations made by the D.P.C. notwithstanding the fact that a case was under investigation against the applicant at that point of time;

(ii) the respondents shall consider the question of grant of non-functional Selection Grade post of Director (Inspection) to the applicant from the due date notwithstanding the fact that a case ^{may have been} under investigation against him at the relevant time;

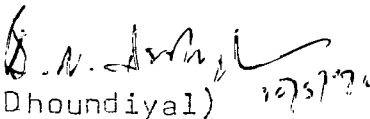
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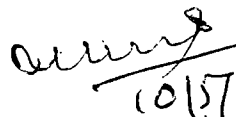


(iii) the applicant would be entitled to all consequential benefits, including the arrears of pay and allowances from the due date; and

(iv) the respondents shall give effect to the above direction within a period of two months from the date of receipt of this order.

There will be no order as to costs.


(B.N. Dhoundiyal)
Administrative Member


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