

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

~ 379/90 ~
O.A. No. ~~1252/90~~
T.A. No.

199

DATE OF DECISION 28.9.1990.

Shri M.P. Sharma	Petitioner Applicant
- Shri Mukul Talwar	Advocate for the Petitioner(s) Applicant
Versus	
Delhi Admn. & Others	Respondent
Shri M.M. Sudan	Advocate for the Respondent(s)

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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? *No*

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

The applicant, who is working in Grade II of the Delhi Administration Subordinate Service, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to promote him to Grade I w.e.f. 31.1.1990, the date when his next below junior was so promoted, and to direct them to pay arrears of salary, etc., and to fix his seniority accordingly.

2. The application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so.

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3. The facts of the case are not disputed. The applicant belongs to the Delhi Administration Subordinate Service which consists of four grades, namely, Grades I, II, III and IV. Though he is eligible for promotion from his present post in Grade II to Grade I under the relevant recruitment rules, his juniors have been promoted, ignoring his claim. This is due to the pendency of a vigilance inquiry against him. Several persons were promoted from Grade II to Grade I by order dated 31.1.1990. The respondents have stated that though his name also was considered for ad hoc promotion to Grade I, due to the pendency of the vigilance case against him, he was not promoted.

4. The vigilance inquiry relates to allocation of more wheat to Fair Price Shops in violation of the departmental instructions. A memorandum was issued to the applicant ^{on} 30.3.1989 calling for his explanation. He has ~~also~~ denied the allegations made against him. No charge-sheet has been issued to him for initiating disciplinary proceedings against him. No charge-sheet has been filed in a criminal court against him.

5. We have carefully gone through the records of the case and have considered the rival contentions. The Supreme Court has held 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 a criminal case, may be deferred till the proceedings are concluded. In the absence of a charge-sheet framed in the disciplinary proceedings or filed in the

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criminal court, it will not be proper to overlook the case of an employee for promotion (vide C.O. Arumugam & Others Vs. the State of Tamil Nadu, 1989 (2) SCALE 1041).

6. In a subsequent decision of the Supreme Court, similar observations have been made. It has been stated that if the disciplinary proceedings had not reached the stage of framing the charge after prima facie case is established, the consideration for promotion cannot be withheld merely on the ground of pendency of disciplinary proceedings (vide the State of M.P. Vs. Bani Singh & Another, 1990 (1) SCALE 675).

7. In the light of the aforesaid rulings of the Supreme Court, we hold that the applicant is entitled to succeed in the present proceedings. The mere fact that his juniors have been promoted only on an ad hoc basis, will not be relevant as several persons have been promoted on ad hoc basis by order dated 31.1.1990 because of prolonged litigation regarding seniority in the Service.

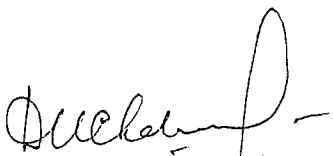
8. We, therefore, direct the respondents to consider the case of the applicant for ad hoc promotion, ignoring the fact of pendency of a vigilance case against him. In case he is found otherwise suitable for ad hoc promotion, the respondents shall promote him on an ad hoc basis as in the case of his juniors, but only prospectively. If, at a later stage, the promotion of his juniors is made on a regular basis, the applicant also should be promoted on regular basis with effect from the date his immediate junior is promoted and in that case, he will be entitled to all consequential benefits. The respondents shall comply with these directions within a


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period of two months from the date of receipt of a copy of this order.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
28/9/90


(P.K. Kartha)
Vice-Chairman (Judl.)
28/9/90