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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 629/90

New Delhi this the 8th day of July, 1994

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

R. K. Kohli S/O Late Latha Mal Kohli,
B/O C-1/61, Budh Vihar,
Delhi - 83 and working as
Section Officer (A/S), Northern
Railway, Baroda House,
New Delhi.

... Applicant

By Advocate Shri P. L. Mimroth

Versus

1. General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Financial Adviser & Chief
Accounts Officer, Northern
Railway, Baroda House,
New Delhi.
3. Chief Vigilance Officer,
Northern Railway,
Baroda House, New Delhi.

... Respondents

By Advocate Shri Ramesh Gautam

O R D E R (CRAL)

Sjri J. P. Sharma, M(J) -

The applicant was working as Section Officer (A/S) at Jharipani, Mussoorie, in the Oak Grove School under the Northern Railway. There was certain discrepancy found in the submission of bills by the Contractor supplying various eatable items to the said Institution which is a residential Institution, and a fraud was detected whereby an FIR was lodged on 28.5.1986 naming the applicant as one of the accused along with Rajesh Gupta, contractor. On the basis of this FIR, CBI

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inquiry commenced in the case F.I.R. No. 13/86 and CBI No. 43/87, a copy of which has been filed as Annexure R-1 to the counter. However, in the meantime, the respondents have issued an order of promotion dated 2.11.1987 for promotion to the post of Senior Section Officer (A/Cs) in the scale of Rs.2000-3200. A list of promotees has been filed by the applicant as Annexure A-1 to the O.A. The applicant though was considered for promotion, there is a note at the bottom of the said panel at sl. No.4 at page No.7 thereof to the effect that the persons named therein including the applicant can be promoted only after clearance from the vigilance cell. The applicant made representation and as he was not promoted and juniors were given promotion, he filed the present application in July, 1990 praying for the grant of relief that a direction be issued to the respondents to promote the applicant to the post of Senior Section Officer (A/S) w.e.f. 1.4.1987 from which date his junior has been promoted and that he be assigned correct seniority.

2. The respondents have contested this application and in paras 4.2 and 4.3 of their reply have stated that a vigilance case has been pending against the applicant and by virtue of Railway Board's confidential letter dated 21.1.1977 which provides that in case of promotion of such employees whose names are shown in quarterly statement of individually in vigilance or D & AR complaints issued by the vigilance branch, the controlling officer is required to obtain vigilance clearance certificate from vigilance branch. The

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name of the applicant was shown in the quarterly statement for the period ending 31.3.1986 and when clearance certificate was sought it was informed that a vigilance case is pending against the applicant. In view of this, the applicant could not be given promotion/ posting as Senior Section Officer. The applicant has also filed a rejoinder and in reply to para 4.2 and 4.3 of the reply it is averred that investigation by the CBI of the case has since been completed and a chargesheet has also been filed in the competent court at Dehradun and the name of the applicant has not been shown in the array of accused or in the list of witnesses and that there is nothing pending against the applicant and the promotion of the applicant has been wrongly withheld.

3. We have heard the learned counsel for the applicant as well as the learned counsel for the respondents. It appears from the record that the applicant has also been issued a major penalty charge sheet on 20.5.1990 and that was pending at the time this application was filed. Actual position about the departmental inquiry is not known to either of the counsel representing the parties and at this point of time we cannot say whether the inquiry has come to an end either in favour of the applicant or against him. In any case, when there is no sufficient record before us, we can only decide the matter on the basis of the material available on record.

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4. The contention of the learned counsel for the applicant that since the chargesheet was issued subsequent to holding of the DFC and drawing of the panel for promotion on 2.11.1987, the respondents cannot withhold the promotion nor can adopt the sealed cover procedure, as that will be discriminatory as juniors to the applicant have already been promoted. We have considered this matter in the light of the decision in the case of Union of India vs. Kewal Kumar reported in JT 1993 (2) SC 705 and Delhi Development Authority vs. S. C. Khurana reported in the same journal at page 695. In the case of S. C. Khurana (supra) O.M. dated 12.1.1988 issued by the Ministry of Personnel has been considered by the Supreme Court which was applicable to the petitioner of that case. This shows that promotion cannot be given in the case where a decision has been taken to initiate disciplinary proceedings against the government servant. Since the applicant was already named in the FIR in the year 1986, there was already a consideration whether to initiate proceedings against him but because of being named in the FIR no departmental action was taken against him, but subsequently when the investigation revealed that his name was omitted from the chargesheet filed by the CBI in the court, in May, 1990 the chargesheet was issued to him. Thus, in view of the aforesaid decision, as well as the decision in K. V. Jankiraman vs. Union of India reported in JT 1993 (2) 527 where a similar appeal was decided by the Supreme Court and the order of the Tribunal was set aside for opening the sealed cover

making observation that the Tribunal has mechanically applied its mind. In that case, there was a case pending against one of the promotees under consideration by the DPC and when the DPC recommended him, no chargesheet was pending against him, but still the sealed cover procedure was adopted which was interfered with by the Tribunal in the application before it, but the Supreme Court held that the pendency of the prosecution against that promotee was before the DPC and the sealed cover procedure was rightly adopted. In this case also, we find that there is FIR against the applicant much earlier to the drawing of the panel for promotion in November, 1987, FIR being of 1986, the respondents have not committed any illegality or irregularity nor their action can be said to be arbitrary in not giving promotion to the applicant, only observing in the aforesaid memo of 2.11.1987 that the promotion will be effected after the applicant is cleared from the vigilance angle.

5. We do not find, therefore, any illegality in the aforesaid order nor it is a case where the Tribunal can interfere by issuing direction to the respondents to give promotion to the applicant till such time the departmental inquiry is not finally concluded favourably to the applicant. The learned counsel for the applicant, however, desired some more time and wanted to show certain authority that if in an investigation the chapter has been closed as regards the petitioner praying for opening of sealed cover, but we find that the case is fully covered by the authorities referred to above. The applicant himself

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has not placed before us the latest position of the criminal case as well as of the departmental inquiry and any adjournment at this stage will only further delay the decision of this old case. Therefore, we do not find any reasonable cause for giving any further adjournment.

6. The application is accordingly dismissed as being totally devoid of merit. But liberty is reserved to the applicant to assail any grievance which may survive after the disposal of the departmental inquiry in the allegations on the basis of which the promotion has been withheld, in accordance with law. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

J. P. Sharma
(J. P. Sharma)
Member (J)

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