

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.879/90

New Delhi, this the 11th day of August 1994.

HON'BLE SHRI J.P.SHARMA MEMBER(B)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri S.P.Joshi son of Shri JR Joshi
r/o H.No.524/IB Gali No.2
Vikas Nagar, Shahdara Delhi.
Presently posted
Assistant, Land & Building Deptt.
Vikas Bhawan, New Delhi.

..Applicant

(By Advocate Shri S.C Jain)

Vs.

1. Chief Secretary,
Delhi Administration, Delhi.
2. Secretary (Medical)
Delhi Administration, Delhi.
3. Director of Health Services,
Saraswati Bhawan, New Delhi.
4. Secretary,
Land & Building Department,
Delhi Administration, Delhi
5. Secretary(Services),
Delhi Administration,
Delhi.

..Respondents

(By Advocate Mrs.Avnish Ahlawat)

ORDER(ORAL)

HON'BLE SHRI J.P.SHARMA MEMBER(J)

At the time of the filing this O.A. the applicant was posted as Assistant, Land & Building Department of Delhi Administration. He filed this application in May 90. He has since retired from service in May 1993. The fact leading to the present state of affairs is the grant of LTC advance to the applicant some times in the year 1983. The applicant was also conveyed adverse remarks for the year ending 1983, because of that LTC advance which according to the respondents was not duly explained by him and the adjustment bills submitted were not found to be genuine. From the office record it was found vide letter dated 3-12-85 that the name of Shri S.P.Joshi

and his family members did not appear in the passenger list along with permit No.8758 covered by the Vehicle No.DLP 5855; The case was referred to vigilance through Department of Anti Corruption. Thereafter, the applicant was transferred to Drug Control Deptt on 7.1.1984. His pay could not be released as the leave mentioned in the service book was tampered^{with} and the service book and leave of the applicant sent to Joint Director for further reference to vigilance. The bonus and arrears could not be paid to the applicant as he had taken an advance of Rs.6000/-.

2. The applicant in this application has referred to a number of grievances and prayed for the grant of number of reliefs in para 8 of the OA. They are as follows:

- (a) To grant additional HRA and CCA and to credit the same into applicant GPF.
- (b) To grant salary of the period of September 1983 October, 1983 to November 1983.
- (c) Bonus for the year 1982-83.
- (d) To grant annual increments from October 1983 to till date.
- (e) C R Folder be traced out.
- (f) To promote the applicant immediately to grade I post.
- (g) Any other relief this Hon'ble Court deems fit under the circumstances of the case.

3. A notice was issued to the respondents to contest this application and in the counter reply to various averments made by the applicant, the respondents gave their version stating reasons thereof. The applicant has also filed rejoinder which has been taken on record.

4. We heard the learned counsel for the applicant Shri K C Jain who gave a statment at the bar that he is not pressing the reliefs prayed for in para 8 except

the relief (f) which is reproduced below :

"(f) To promote the applicant immediately to grade I post."

Thus the application with regard to the rest of the reliefs has become either infructuous or the applicant do not want to get a judicial decision for the grant of all those reliefs. The application with reference to those reliefs is dismissed.

5. Regarding the relief the applicant should be promoted to the grade ^{/I} ~~/of~~ DASS, it is a selection post. The contention of the applicant is that juniors to him have been promoted in Jan 1990 and the panel consisted of 544 persons. In the panel the names ^{are} ~~included~~ of the Assistants whose serial number ~~is~~ much lower than the applicant meaning thereby those who were juniors to the applicant have been considered and promoted to the Grade I post of DASS. The learned counsel for the applicant has been arguing that since the applicant has been exonerated and during the service career he was never served with a chargesheet nor any departmental enquiry was held against him, he should be given due benefit which should be available to him during his active service before retirement in May 1993. Prima facie this argument is somewhat convincing ~~one~~ but when it is scrutinised we find that the applicant was under a cloud at the relevant point of time and the Department has written to the N D Joshi Hospital that the applicant is facing a vigilance enquiry.

6. The learned counsel for the applicant has placed reliance in the case of UDI Vs K V Janikiraman reported in AIR 1991 SC page 2010. The learned counsel argued that since no chargesheet was served on the applicant at the relevant point of time his promotion cannot be

denied nor a sealed cover procedure can be adopted. In fact the Hon'ble Supreme Court has considered a number of civil appeals together while deciding the aforesaid case. In that case also a similar case of LTC advance came before Hon'ble Supreme Court where though the chargesheet was issued subsequently but the matter was reported to vigilance earlier. On the basis of the report to the vigilance a criminal case was filed. But that criminal case ended in a discharge because of certain compromise arrived at by depositing the LTC advance by that person. Aggrieved person of that case came before the Tribunal for grant of the promotional benefit awarded to juniors and the Tribunal granted the relief. The Hon'ble Supreme Court has held (para 14 to 17 of the above referred case) that the Tribunal has applied its mind mechanically as there was sufficient evidence against that person that a decision has been taken for a vigilance enquiry. In the present case also before the DPC have considered the candidates for promotions to Grade I post of DASS the case of the applicant was under reference to Vigilance. Though the applicant was not informed about this, but there was ample record to show that the applicant is under cloud. A person who is under cloud cannot be rewarded and given promotion during that period. It is though on record that the applicant has been successfully exonerated but till the date of retirement in May 93 he has not been favoured by such an order.

7. In view of the above facts and circumstances the application is totally devoid of merit for the relief pressed by the learned counsel for the applicant in para 8(f) ^{cannot be granted} Therefore the application is dismissed. No costs.

P. T. Thiruvengadam
(P. T. THIRUVENGADAM)
Member(A)

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

LCP