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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1269/91
~~T.A. No.~~

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DATE OF DECISION 19.9.91

SHRI H.P. NAGARAJJAPPA ~~Petitioner~~ APPLICANT

SHRI R. DORAISWAMI Advocate for the ~~Petitioner(s)~~
APPLICANT

Versus

UNION OF INDIA AND ANOTHER Respondents

SHRI N.S. MEHTA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. R. VENKATESAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

(Delivered by Hon'ble Mr. R.
Venkatesan, Administrative Member)

The applicant in this case is an Assistant Director

Dr. Venkatesan

Gr.II in Dte. General of Supplies and Disposals (DGS&D). He was promoted on 15.2.1990 along with 12 others as Assistant Director Gr.I on an ad hoc basis for a period of one year, or till regular recruits join, whichever was earlier. The applicant along with certain others was reverted at the end of one year w.e.f.15.2.1991. The others who have been reverted barring the applicant, were re-promoted again on ad hoc basis as Assistant Director Gr.I w.e.f.15.3.1991 for a period of one month and thereafter for a further period of three months or till regular appointments were made.

2. The applicant has come before this Tribunal on 31.5.91 with the prayer to quash the order of 14.2.91 reverting him from the post of Assistant Director Gr.I and with the further prayer to direct the respondent no.1 to continue him in the said grade beyond 14.2.91 without break so long as the applicant's juniors continued to work/officiate as Assistant Director Gr.I.

3. The main ground put forth by the learned counsel for the applicant ^{is} centred round the contention of the respondents that re-promotion had ~~not~~ been denied to the applicant, as per ~~the~~ reply affidavit ^{of the respondents}, because as on the date of considering the proposal for his re-promotion on ad hoc basis, he was not cleared from vigilance angle. Such vigilance clearance was available earlier in February, 90 when he was appointed on ad hoc basis from 15.2.90 for a period of one year. As each spell of ad hoc appointment was treated as a fresh appointment, the aspect of availability of vigilance clearance had to be taken into account once again in February, 91 as per the respondents. The counsel referred further to the statement of the respondents in the reply that though the applicant had not been served a 'show cause' notice as on the date of the re-appointment of his juniors on ad hoc basis, "serving of a show cause notice is ⁱⁿ an advance stage ~~is~~

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in the vigilance proceeding process which in the case of the applicant is in the preliminary stage". The counsel submitted that in terms of the decision of the Supreme Court in Bani Singh Vs. State of Madhya Pradesh - 1990 Supplementary SCC 738, normally pendency^{*} or contemplated disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. If the departmental enquiries had reached the stage of framing charges after a prima facie case had been made out, the normal procedure followed was "sealed cover", but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established, the consideration for promotion to the higher grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. He, therefore, contended that the prayer of the applicant should be allowed.

4. We find from the facts and averments of this case that the respondents have been promoting, on an ad hoc basis for considerable lengths of time Assistant Directors Gr.II to Assistant Directors Gr.I pending selection of regular appointments through the U.P.S.C. From the averments, it is seen that such promotions had been made keeping in view the seniority of the persons in the lower cadre. It has not been denied that several persons junior to the applicant had been promoted on the second occasion from 15.3.91 and that the only reason why the applicant was not considered for promotion was on account of contemplated ^{/disciplinary} proceedings. The law as laid down by ^{/in Bani Singh's case (supra)} the Supreme Court [/] would normally require that the applicant cannot be denied his right to be considered for promotion, in such circumstances. Until the stage of framing of charges after the prima facie case has been made out ^{/is reached,} [/] the applicant's case for promotion should be considered along with others and

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he should have been promoted if found otherwise eligible.

5. We accordingly direct the respondents to consider the case of the applicant for promotion without regard to the clearance from the vigilance angle, as on the date when his juniors were promoted, and to promote him from the same date retrospectively if he was otherwise eligible, to the grade of Assistant Director (Supply) Gr.I on ad hoc basis.

6. The respondents shall comply with this Order within a period of two weeks from the date of receipt of this Order. There shall be no order as to costs.

R Venkatesan
(R. VENKATESAN)
MEMBER (A)

Ram Pal Singh 19.9.91
(RAM PAL SINGH)
VICE CHAIRMAN

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