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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

J.A. NO. 2164/1991

DATE OF DECISION 13.11.91

SHRI DINESH KUMAR SANDILA

...APPLICANT

VS.

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SH. JAGJIT SINGH

FOR THE RESPONDENTS

...SH. R.S. ASGARWAL

1. Whether Reporters of local papers may be allowed to see the Judgement? yp

2. To be referred to the Reporter or not? yk

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant is aggrieved by non grant of D.B. which fell due on 1.2.1986 in the scale of Income Tax Officer- Rs.2,000-2,300-E.B.-75-3,200-100-3,500/-. The applicant has filed this application under Section 19 of the Administrative Tribunals Act for the relief that a direction be issued to respondents to grant E.B. w.e.f. 1.2.1986 in accordance with the recommendations of the D.P.C. held in September, 1989

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7

which has been kept in a sealed cover and also grant of all consequential benefits including arrears with costs.

2. The undisputed facts of the case are that the applicant has been working as Income Tax Officer in the Company Ward, Delhi and the next promotion post is to the grade of Assistant Commissioner. Sometimes in 1985, CBI raided the house of the applicant and nothing incriminating was found. The applicant was put under suspension w.e.f. 7.10.1985, but the case was closed against the applicant, but he was not re-instated. So the applicant moved the Central Administrative Tribunal, Principal Bench where by the order dt.1.4.1987, the order of suspension was quashed and the applicant was re-instated in the Department w.e.f. 3.4.1987. In February, 1986, the Efficiency Bar of the applicant fell due, but he was not granted the same. The DPC which considered the case of the applicant for the crossing of the EB in September, 1988 kept ^{recommendations} its in a sealed cover. However, at the relevant time when the DPC met, neither any disciplinary proceedings were pending against him nor any chargesheet etc. had been filed against him in any court of law which could stand in the way of the applicant's crossing the EB in accordance with the extant instructions. However, in May, 1989, the applicant was served with a memo by Chief Commissioner of Incometax pointing out certain alleged irregularities in the discharge of duties while the

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8

applicant was working as I.T.O., Survey Ward from July 1983 to June, 1985. Regarding alleged assessments of S/Sh. Ajay Gupta and Anil Gupta, the applicant has also submitted explanation to the said memo on 15.6.1985. The applicant stated that a DPC is likely to take place soon to consider the matter of promotion of Income Tax Officer to the next grade of Assistant Commissioner of Income Tax and then on crossing of EB will stand in the way. So the applicant has filed this application for the direction as said above.

3. The respondents have not filed any reply to the application. However, the learned counsel for the respondents, Sh.R.S. Aggarwal appeared on their behalf and pointed out that the revised instructions issued by Department of Personnel & Training dt.31.7.1991 (Annexure P-IX of the OA) covers fully the case of the applicant. The revised guidelines have been laid down in para 2(i) which is reproduced below :-

"All cases kept in sealed cover on date of this O.M. on account of conditions obtainable in para 20iv) of the O.M. dated 12.1.1988 will be opened. If the official had been found fit and recommended by DPC, he will be notionally promoted from the date his immediate junior had been promoted. The pay of the higher post would, of course, be admissible only on assumption of actual charge in view of provisions of FR 17(1). (Since only officiating arrangements could be made against the vacancies available because

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of cases of senior officials being in sealed cover, there may not be any difficulty in terminating some officiating arrangements if necessary and giving promotion in such cases)."

4. The learned counsel for the applicant also pointed out that in view of the decision of the Hon'ble Supreme Court in UOI etc. Vs. K.V. Janakiraman reported in Judgement Today 1991 (3) SC p-527 (A nnexure P-10 of the OA), it has been held that the disciplinary/criminal proceedings can be said to have commenced only when a charge memo or chargesheet is issued to the employee. Their Lordships have further held that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/chargesheet has already been issued to the employee. Since the respondents have not filed any reply, so the facts stated by the applicant in the application have to be accepted wherein he said that no chargesheet has been issued to him. Merely because a memo was issued to him in 1989 to call for some explanation, would not in any way amount to serving a chargesheet. Thus in view of the above OM issued by the Department of Personnel & Training dt. 31.7.1991 and on the basis of the ratio of Janakiraman's case (supra), the applicant is to be allowed.

16

5. The application is allowed. The respondents are directed to open the sealed cover containing the recommendations of the DPC of 1988 regarding the grant of ED to the applicant and give effect to the said recommendations forthwith. In the circumstances, the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

13.11.91

D. K. Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A)

13/11/91