

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 246/91
T.A. No.

199

DATE OF DECISION 10.1.1992

<u>Shri Jai Prakash</u>	Petitioner Applicant
<u>Shri C.P. Saxena</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India through Socy., Miny. of Defence & Others</u>	Respondent
<u>Shri K.S. Dhingra, Sr. A.O.,</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, 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? */m*
4. Whether it needs to be circulated to other Benches of the Tribunal? */m*

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

The applicant, who belongs to the Armed Forces Headquarters Civil Service (AFHQ Civil Service) filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to continue him in the Selection Grade post of Senior Civilian Staff Officer with due seniority and all incidental and consequential benefits; and
- (ii) to quash the impugned memoranda dated 4.1.1991 and 11.1.1991.

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2. The facts of the case in brief are as follows. The applicant was appointed to AFHQ Civil Service in 1977. By order dated 30.4.1990, he, along with other officers, was promoted to officiate as Selection Grade Officer upto 30.10.1990. The appointment was made under Rule 10 (2) of the AFHQ Civil Service Rules, 1968 and subject to the condition that it is made purely as a stop-gap arrangement and that it is liable to be terminated without notice for administrative reasons or on availability of regular incumbents. On 13.7.1990, it was further extended from 3.7.1990 to 31.12.1990, subject to the same conditions as mentioned above.

3. On 4.1.1991, the respondents issued a memorandum whereby he was informed that it was proposed to take action against him under Rule 16 of the C.C.S. (CCA) Rules, 1965. The statement of misconduct or misbehaviour framed against him was as follows:-

"A set of complaints was received against Dr. N.K. Dhingra, Lecturer, School of Foreign Languages under Ministry of Defence. In pursuance to the directions of the then Chief Administrative Officer & Joint Secretary, an enquiry was to be conducted immediately against Dr. N.K. Dhingra. The relevant files were transferred to SAO, CAO/Vig by SAO, CAO/P-2 in terms of Memo No. A/27220/CAO/P-2 dated 16 Feb., 88.

2. Shri Jai Prakash, who was working as SAO/Vig at the relevant time had put up a memo on 06 May 88 seeking certain directions in connection with the enquiry. While expressing his displeasure over the delay in taking up the enquiry, the then CAO & JS specifically directed Shri Jai Prakash, SAO/Vig on 13 May 88 to enquire into the whole set of complaints immediately and put up his findings within a month. Thereafter,

when the transport indent in connection with vigilanco investigation into the complaints against Dr. Dhingra was put up by Shri Jai Prakash on 18 Jul 88 for counter signature by the then CAO & JS, the latter adversely commented that it had taken a toll of two months for nothing. On this it was intimated by Shri Jai Prakash that the investigations were at the final stage. From the available records it is seen that Shri Jai Prakash did not put up the final report on various complaints against Dr. N.K. Dhingra till he relinquished the charge of SAO/Vig during May, 1990."

4. By order dated 11.1.1991, the respondents appointed some civilian staff officers as Selection Grade Officers for the period from 2.1.1991 to 30.6.1991 as a stop-gap arrangement, but the applicant's name was not included in the list of the persons so appointed.

5. The applicant has called in question the aforesaid memorandum dated 4.1.1991 and order dated 11.1.1991.

6. The respondents have stated in their counter-affidavit that the Select List for the post of Senior Civilian Staff Officer was last prepared during 1986 and thereafter, no Select List has been issued in view of the disputes in seniority and the vacancies in the grade of Senior Civilian Staff Officer are presently being filled on officiating basis in terms of sub-Rule (2) of Rule 10 of the AFHQ Civil Service Rules, 1968, for a period not exceeding six months. The applicant and other officers appointed as Senior Civilian Staff Officer under Rule 10(2) of the AFHQ Civil Service Rules, 1968 stood reverted to the post of Civilian Staff Officer with effect from 31.12.1990 (AN).

All other officers, except the applicant, were appointed as Senior Civilian Staff Officer for a period upto 30th June, 1991 vide order No.A/43791/SCSO/91/CAO/P-1 dated 11th January, 1991. The applicant could not be appointed as Senior Civilian Staff Officer, as meanwhile a disciplinary proceeding under Rule 16 of CCS (CC&A) Rules, 1965 had been initiated against him. According to them, during the pendency of disciplinary proceedings against him, the applicant could not be promoted as Senior Civilian Staff Officer.

7. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The applicant has not been continued in the post of Senior Civilian Staff Officer after 31.12.1990 and no formal orders to that effect have been issued by the respondents. This is due to the issue of charge-sheet dated 4.1.1991 whereby disciplinary proceedings under Rule 16 of the C.C.S.(CCA) Rules, 1965 have been issued against him. Consideration for promotion could be deferred in such cases during the pendency of disciplinary proceedings (vide C.O. Armugham and Others Vs. State of Tamil Nadu and Others, 1990 (1) SLJ 185 (SC); State of Madhya Pradesh Vs. Bani Singh, 1990 Supp; S.C.C. 738; Union of India Vs. K.V. Jankiraman, 1991 (2) SCALE 423).

8. As regards the disciplinary proceedings initiated against the applicant by memorandum dated 4.1.1991, we are of the opinion that the applicant has rushed to the Tribunal prematurely. The applicant will have to exhaust the remedy by way of appeal against the order to be passed by the respondents in case he is aggrieved by the same. We do not consider it appropriate to interfere with the conduct of the proceedings against the applicant at this stage.

9. In the light of the foregoing, we see no merit in the present application and the same is dismissed. There will be no order as to costs.

B.N. Dheundiyal
(B.N. Dheundiyal)
Administrative Member

amr
10/11/92
(P.K. Kartha)
Vice-Chairman(Judl.)

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