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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA No. 2942/91 .. Date of decision: 18.11.92
Sh. G.P. Singh .. Applicant
Versus
Union of India .. Respondents
For the applicant .. Sh. D.P. Malhotra, Counsel.
For the respondents .. Sh. Pawan Kumar Behl, Counsel.

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dheundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporters or not ? *Yes*

J U D G E M E N T

(Of the Bench delivered by Hon'ble Sh. B.N.
Dheundiyal, Member (A))

This OA has been filed under Section 19 of the Central Administrative Tribunals Act, 1985 by Sh. G.P. Singh Chauhan, Grade-II Inspector in the Department of Co-operative Societies, Delhi Administration against the impugned orders dated 4.5.90 imposing a penalty of stoppage of one increment for 2 years, order dated 7.10.91 rejecting his appeal and order dated 31.1.90 promoting nearly hundred persons junior to him. *by*

2. The applicant is presently working as Grade-II Inspector in the Department of Co-operative Societies, Delhi Administration in the pay-scale of Rs. 1400-2700. His basic grievance is that though he was entitled to promotion to Grade-I of the Delhi Administration Subordinate Service in the scale of Rs. 1640-2900, he was superseded by nearly hundred persons junior to him vide impugned order dated 31.1.90. On that date, no disciplinary enquiry or charge-sheet was pending against him. In order to cover the illegal denial of the promotion to him, a charge-sheet under Rule 16 of the CCS (CCA) Rules, 1965 was issued on 8.2.90 on the basis of two alleged acts of misconduct which had happened about 10 years back in 1979-80 and for which the applicant had furnished detailed explanation in 1980. The first case referred to his ^W not taking timely action in processing one case regarding the grant of loan and one memo calling for his explanation was issued to him on 20.9.80. The required explanation was furnished by the applicant on 8.10.80. Another memo calling for his explanation was issued on 30.9.80 and he submitted his detailed explanation on 18.11.80. A charge-sheet was served ^{on him} vide memo dated 8.2.90 more than 10 years after the events and on 4.5.90, the Disciplinary

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Authority issued an order inflicting the penalty of withholding one increment for 2 years. His appeal was dismissed by the Appellate Authority vide impugned order dated 7.10.91. The applicant^{ranked}/2171 in the Seniority List of the feeder cadre of Inspectors Grade-II and by the office order dated 31.1.90 promotions were given to the employees ranking upto 2278 to Grade-I of D.A.S.S. The promotions^{to} were made on ad-hoc basis without recommendations of the D.P.C. The applicant has prayed that the impugned orders dated 4.5.90 and 7.10.91 be quashed and set aside and the respondents be directed to give retrospective promotion to the applicant to Grade-I of the D.A.S.S. with effect from 31.1.90 when his juniors were promoted to that Grade. . He has also sought interest at the rate of 18% p.a. on the amount of arrears of pay and allowances.

3. The respondents have admitted that the original show-cause notices were issued in September, 1980 and the representations were received from the applicant in October/November, 1980. The applicant was placed under suspension with effect from 4.12.80 in another case of tampering with the records and while serving the charge-sheet, only this case^{to}

account
of tampering of records was taken into and the other two
charges were inadvertently omitted. After enquiry, a
penalty of removal from service was imposed on him. Later
on ⁶ appeal, this penalty was quashed and reduced to stoppage
of 2 increments with cumulative effect. At the time of issue
of two show-cause notices in September, 1980, the applicant
was working in the Directorate of Industry and later
he was transferred to Directorate of Agriculture Marketing
before joining the Cooperative Department. The transfer
of files resulted in delay in issue of memorandum of charges
which was ultimately done on 8.2.90. The question of delay
was considered but the ^{by} advice of the Directorate of Vigilance
was that departmental action on these charges could be taken as
long as Sh. G.P. Singh was in service. After considering
his representation, a minor penalty of withholding one
increment of pay for two years with effect from the date of
his next increment was imposed vide order dated 4.5.90. His
appeal was considered and rejected by the Appellate Authority
and he was informed on 7.10.91 ^{by} He could not be promoted
in view of a vigilance report against him.

4. We have gone through the facts of the case and
heard the learned counsel for both parties. The respondents

have contended that the applicant was duly considered for adhoc promotion to Grade- I of D.A.S.S. on the basis of his seniority list as Grade-II in Jan. 1990. He could not be promoted in view of the vigilance report by the office of Registrar, Cooperative Societies that disciplinary action under Rule 16 of CCS(CCA) Rules, 1965 was contemplated against him. It is stated that the Services Department was informed vide office letter dated 20.10.89 that a vigilance case was contemplated against Sh. G.P. Singh, Grade-II, although the charge-sheet was issued to the applicant vide memo dated 8.2.90. In our opinion, the mere contemplation of disciplinary proceedings is no ground to withhold promotion as held by Supreme Court in State of M.P. Vs. Bani Singh * and this Tribunal in case of S.C. Khurana Vs. Delhi Admn. 1991 (16) ATC-191. The same principle has been reiterated in case of R.S. Bansal Vs. Union of India 1991 (17) ATC- 416-PB and C.O.Arumugam & Ors. Vs. Union of India 1991 (17) ATC-402(SC). In view of this, the respondents could not have withheld his promotion.

5. The other point raised by the applicant relates to inordinate delay in issue of two memos calling for his -----
* (1990 (1) SCALE 675).

explanation in September, 1980 and issue of charge-sheet 10 years later. The respondents have explained that this delay was due to inadvertence and time taken in receipt of personal files of the applicant. Such delay has been deemed to be denial of reasonable opportunity to defend and is fatal to the disciplinary proceedings as held by the Supreme Court in Bani Singh's case mentioned above and by various Benches of this Tribunal (1990 (11) ATC-27-Jab, 1990(11) ATC-257-Hyd, 1990 (11) ATC-730- Cal.),

6. In the facts and circumstances of the case, we hold that the applicant is entitled to succeed and the application is disposed of with the following orders and directions:-

- (i) The impugned orders dated 4.5.90 and 7.10.91 are hereby quashed and set aside;
- (ii) The respondents are directed to consider the case of the applicant for promotion to Grade-I of the D.A.S.S. with effect from 31.1.90 when his juniors were promoted to that grade ignoring the pendency of the vigilance case against him. He will also be entitled to the consequential benefits of pay and allowances;

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- (iii) These orders shall be implemented expeditiously and preferably within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

B.N. Dheundiyal
(B.N. Dheundiyal)
Member (A) 15/11/92

P.K. Kartha
(P.K. Kartha)
Vice Chairman (J) 18/11/92