

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(X)

O.A. No. 536/91
T.A. No.

199

DATE OF DECISION 5.4.91

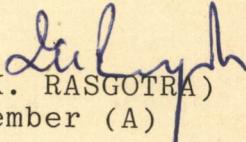
Shri <u>R.S. Bansal</u>	Petitioner
Shri A.K. Behra	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri P.H. Ramchandani, Senior</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

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?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(I.K. RASGOTRA)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(5)

OA NO. 536/91

DATE OF DECISION

5/4/1991

SHRI R.S. BANSAL APPLICANT

VERSUS

UNION OF INDIA RESPONDENTS

CORAM:

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

For the applicant Shri A.K. Behra, Counsel

For the Respondents Shri P.H. Ramchandani,
Sr. Counsel.

(Judgement of the Bench delivered by

Hon'ble Mr. I.K. Rasgotra, Member (A)

The issue raised in this O.A. for adjudication is if the respondents can deny the promotion, as due, to the applicant on the basis of contemplated disciplinary proceedings even though no charges have been framed against him.

Aggrieved by the denial of promotion Shri R.S. Bansal, working as Deputy Controller of accounts, Gr. 'A' has filed this application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) Declare that the adoption of sealed cover procedure in respect of the applicant by the DPC convened both in November, 1989 and November, 1990 is illegal and arbitrary.

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(ii) direct the respondents to immediately give effect to the recommendations of the DPCs held as above with all consequential benefits.

2. Shri A.K. Behra, the learned counsel for the applicant submitted that the case of the applicant is fully covered by the judgement of the Tribunal dated 31.8.1990 in OA No.307/90 and 314/90 in the case of Shri A.K. Singhal Vs. UOI & Anr. and Shri B.D. Bhagat Vs. UOI and anr. respectively.

3. The relevant facts of the case in brief are that the applicant was considered by the departmental promotion committee (DPC) for promotion to the rank of Deputy Controller of Accounts Gr.'A' in the month of November, 1989 but the recommendation relating to him has been kept in sealed cover. He was again considered by the next DPC in November, 1990 but the result has again been kept in the sealed cover. In the meantime persons junior to him have been promoted as Deputy Controller of Accounts Gr.'A'. He further submits that he was called upon to explain as to why disciplinary action should not be taken against him for the alleged misconduct said to have been committed by him during the period of deputation in 1986 to the Delhi Public Library vide memorandum dated 10th August, 1988. He submitted his explanation but no further action was taken against him, as no chargesheet has been served till now.

4. Shri P.H. Ramchandani, Senior Counsel appearing on behalf of the respondents fairly

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(A)

conceded that in view of the common judgement delivered by the Tribunal in OA No. 307/90 and 314/90 dated 31.8.1990 and in the case of Shri H.L. Maggo Vs. UOI & Ors. in OA No. 2320/89 on 6.4.1990 no grounds survive for contesting the case. He, therefore, submitted that the Tribunal may pass appropriate orders.

5. Relying on the Full Bench decision in the case of K.C.R. Venkata Reddy and Ors. Vs. UOI & Ors. ATR 1987 (1) CAT 547 and the judgement of the Hon'ble Supreme Court in the case of C.O. Arumugam and Ors. Vs. State of Tamil Nadu and Ors. JT (4) 1989 SC 377. In the case of A.K. Singhal and H.L. Maggo (supra) this view has been further fortified by the judgement of the Hon'ble Supreme Court delivered on 5.4.1990 in the case of State of M.P. v. Bani Singh & Anr. JT 1990 (2) SC 54 when their Lordships observed:

"Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher

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or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26.11.1980 on this ground was therefore unsupportable. In fact, even in respect of the adverse remarks which has been now quashed the respondent officer had made his own representation and the representation also was pending consideration at that time and it was disposed of only in December 1986. The remarks, therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on 26.11.1980, therefore, could not be considered as valid."

In the case under consideration the representation of the applicant against the adverse remarks communicated to him had also remained undecided. The adoption of the sealed cover procedure even on this ground was not valid, as any such adverse remark do not become final unless the representation of the applicant is finally disposed of.

The points of law discussed in the common judgement of the Tribunal in OA No. 307/90 and OA No. 314/90 delivered on 31.8.1990 and the judgement in OA No. 2320/89 delivered on 6.4.1990 are fully applicable in the present case before us.

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6. Accordingly, we order and direct that the respondents shall open the sealed cover in respect of the applicant and promote him with effect from the date his immediate junior was promoted to the rank of Deputy Controller of Accounts Grade 'A', if he has been found fit by the DPC held in November, 1989/November, 1990 with all consequential benefits. We further direct that these orders shall be implemented within 4 weeks from the date of their communication.

The OA is disposed of at the admission stage itself with no orders as to costs.

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

MEMBER (J)

I. K. Rasgotra
(I. K. RASGOTRA)

MEMBER (A)

5/4/91