

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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O.A. No. 980/1991

New Delhi this the 5th Day of April 1995

Hon'ble Shri B.K. Singh, Member (A), (J)

Hon'ble Shri P. Suryaprakasam, Member (J)

Shri Shivanandan Prasad,
S/o Shri Shanker Sah,
R/o Deputy Director, Director of
Management Services (I.T. Deptt.),
Aiwani Ghalib, Mata Sundari Lane,
New Delhi.

... Applicant

(By Advocate: Shri P.P.Khurana)

Vs.

1. Union of India,
(Through the Secretary),
Dept. of Revenue,
Ministry of Finance,
North Block, New Delhi.

2. Central Board of Direct Taxes,
(Through its Chairman),
North Block,
New Delhi.

... Respondents

(By Advocate: None)

ORDER

Hon'ble Shri P. Suryaprakasam, Member (J)

The application has been presented by the applicant for a direction against the action of the respondents in putting the case of the applicant for promotion to the Grade of Commissioner of Income Tax in a sealed cover in the D.P.C. which was held on 20/21.9.1990.

2. The applicant's case is that he belongs to 1967 batch of Indian Revenue Service (IF) and joined the service as a direct recruit as Income Tax Officer which is now re-designated as Assistant Commissioner of Income Tax on 14.11.1969. Later he was promoted as Assistant Commissioner in 1979. The applicant is eligible for

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promotion to the grade of Commissioner of Income Tax alongwith his batch mates. The D.P.C. which sat for 1988 superseded him and he was not given any promotion at all. The next D.P.C. for promotion to the Grade of Commissioner of Income Tax took place on 20/21-9-1990 to fill up a yearwise vacancy. It has also considered the applicant's case alongwith others and the recommendations of the D.P.C. with regard to the applicant has been kept in a sealed cover for the reasons that some memo has been issued and the enquiry was contemplated against him.

3. The applicant submitted that at the time when the D.P.C. was constituted or when the applicant alongwith others were considered for promotion in September 1990 no disciplinary proceedings were pending against the applicant nor any chargesheet etc., had been filed against him in any court of law. Only a simple memo emanating from the office of the Chief Commissioner of Income Tax Patiala in April 1990 was issued to him pointing out certain alleged irregularities while the applicant was working in Dhanbad Range (Bihar) during 82-83. Therefore, relying on the case of C.C. Arumugham & ors. Vs. the State of Tamil Nadu and Ors. 1990(1) SLR 288 and the other State of M.P. vs. Bani Singh AIR 1990 1308 submitted that procedure of sealed cover adopted by the D.P.C. in respect of the applicant's case is null and void and the sealed cover must be opened and whatever the direction that has been given by the DPC has to be obeyed.

4. As a matter of fact the applicant stated that by an order dated 2.12.1994 issued by the Government of India

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the minor penalty proceedings initiated against the applicant as the then Deputy Commissioner of Income Tax presently posted as Commissioner of Income Tax IT(A) were dropped and he stands exonerated of the charges.

5. The respondents submitted that the sealed cover procedure that has been adopted by the D.P.C. is correct since contemplated action against the applicant for the various acts of commissions and omissions were pending and in fact later on action has been taken against him under Section 16 of the CCS(CCA) Rules and proceedings were initiated against the applicant and therefore the action of the Government in not giving promotion is in conformity with the recommendation of which the D.P.C. met on 20/21.9.1990 and the procedure adopted is correct and as such the application is to be dismissed.

6. On the consideration of the facts and circumstances of the case, we are of the opinion that in these types of cases the law has been laid down clearly by the Apex Court, in K.v. Jankiraman's case AIR 1991 SC 2010 which is reproduced below:

"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/charge-sheet has already been issued to the employee."

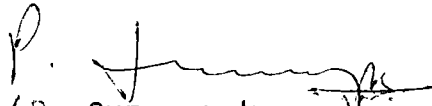
However, in this case the minor penalty proceedings initiated against the applicant also have been dropped and he has been exonerated of the charges.

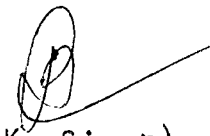
7. We have been told by the respondent's counsel also that as a consequence of the same the promotion also

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has been given to the applicant.

8. Under the circumstances we allow the application without any order as to costs.


(P. Suryaprakasam)
Member (J)


(B.K. Singh)
Member(A)

Mittal