

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 996/1991

(15)

New Delhi this the 21st Day of April 1995

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

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

Ms. K. Mythili Rani,
Assistant Commissioner,
Income Tax, Circle III,
Central Revenue Building,
Bunder Road, Vijayawara-520 002,
Andhra Pradesh State.

.. 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)

J U D G E M E N T

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

The applicant seeks to direct the respondents to issue the promotion order of the applicant to the rank of Deputy Commissioner with effect from the date of his junior was promoted and to grant the consequential benefits and reliefs.

2. According to the petitioner, the petitioner joined the Income Tax Department as Income Tax Officer Group 'A' now designated as Assistant Commissioner of Income Tax as a direct recruit on 29.11.1979. In the year 1988 he was within the zone of consideration for promotion to the rank of Deputy Commissioner of Income Tax and the Departmental Promotion Committee to recommend persons for promotion to the post of Deputy Commissioner of Income Tax met three

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times namely 1988, March 1989 and December 1989. On each of these occasions the Committee considered the suitability of the applicant for promotion to the post of Deputy Commissioner of Income Tax but put the assessment in sealed cover. The applicant sought an interim order to open the sealed cover and to promote according to the DPC's recommendations. The applicant further challenged that the sealed cover procedure ought not to have adopted ~~the sealed cover procedure~~ in her case since neither any charge memo has been issued against her nor any disciplinary proceedings were pending against the applicant at the time of meeting of the D.P.C.

2. When the applicant approached this Tribunal by way of present Original Application sought an interim order and the Interim Order also was granted by this Tribunal with the direction to the respondents to open the sealed cover immediately and give effect to the recommendations made by the DPC in regard to the suitability of the applicant in their promotion within a period of one month from the date of receipt of the order. This order was passed on 26.4.1994. The applicant also relied upon the judgements rendered in C.O. Arumugam & Ors. 1990(1) SLR 288 and Bani Singh AIR 1990 SC 1308.

3. The respondents opposed the application and in the reply statement stated that as against the applicant an FIR had been lodged by the CBI, Hyderabad on 15.3.1988. Further stated that since minor penalty proceeding had been initiated against the applicant with the approval of the competent authority, the procedure that has been adopted by the DPC is valid.

4. It has been brought to our notice that in pursuance of the Interim direction the promotion that is due to ~~have~~ ^{be} has been given to the applicant, and further under the



proceedings dated 14.1.1994 even the disciplinary proceeding taken against her was dropped. In the light of the judgement rendered by the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman AIR 1991 SC 2010 wherein it has been stated that

"It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to the stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. The plea that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., would not be tenable. The preliminary investigations taken an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits to resort to the sealed cover procedure. The authorities thus are not without a remedy.

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."

5. In view of the fact that the disciplinary proceedings has been dropped as against the applicant and since the applicant was already promoted in accordance with the Tribunal's Interim Order dated 26.4.1991, this Original Application succeeds and is allowed to the extent that Interim Orders

by

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are made as such. No order as to costs.

P. Suryaprakasam
(P. Suryaprakasam)
M(J)

B.K. Singh
(B.K. Singh)
Member (A)

Mittal