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**Central Administrative Tribunal
Principal Bench**

OA No. 537/2004

New Delhi, this the 20th day of September, 2005

**Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mr. M.K. Misra, Member (A)**

Dr. L.K. Baruah,
S/o late C.K. Baruah,
R/o Pragjyotishpur Apartment,
Sector 10, Plot No. 7, Dwarka,
New Delhi – 110 045. ...Applicant

(By Advocate: Shri Manoj Chatterjee with Ms. K. Iyer)

-versus-

Union of India through

1. Secretary,
Health & Family Welfare,
Nirman Bhawan, New Delhi.
2. Secretary (Medical & Public Health)
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi – 110 054.
3. Medical Superintendent,
Deen Dayal Upadhyaya Hospital,
New Delhi.
4. Medical Superintendent,
Civil Hospital
(Aruna Asaf Ali Hospital),
5-Rajpura Road, Delhi – 110 054.Respondents

(By Advocate: Sh. V.S.R. Krishna for R-1 and
Shri Ram Kawar for R-2 to R-4)

O R D E R (ORAL)

By Justice B. Panigrahi, Chairman:

In this Original Application the applicant has challenged the initiation of departmental proceedings and, therefore, prayed to conclude the same within a reasonable time. In the same case, he has also claimed promotion to the post of C.M.O. (NFSG) after

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opening the sealed cover whereby his case was considered for promotion.

2. The brief facts of the case are that the applicant was appointed as Civil Assistant Surgeon Grade-I on 14.12.1972. In course of his service, he was promoted to the post of Senior Medical Officer in the year 1982. After serving in Arunachal Pradesh, he was transferred to Delhi Administration. It has transpired from the record that the applicant along with one Dr. L.T. Ramni conducted postmortem examination over the body of deceased Madan Lal in November, 1993. Subsequently, he was summoned by Mr. R.C. Chopra, Additional District Judge in the year 1994 for recording his statement relating to the postmortem examination conducted over the deceased Madan Lal. Central Bureau of Investigation (for short, CBI) was also handed over the investigation in 1994 with regard to the death of Madan Lal at the instance of National Human Rights Commission.

3. It is alleged by the applicant that the CBI conducted the enquiry one sided with partisan attitude and, therefore, recommended for taking appropriate disciplinary action against him. Applicant claims that at that juncture, he was entitled to be considered for promotion to the post of C.M.O. (NFSG) by the DPC. The DPC, however, considered his case but the same was kept in sealed cover on account of pendency of CBI enquiry and the disciplinary proceedings. Although the disciplinary proceedings were initiated against the applicant sometimes in 1997 but till the date of filing of the present case, it was not concluded. Thus, he has prayed

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for a direction to conclude the disciplinary proceedings and also to give him promotion to the post of C.M.O. (NFSG).

4. The official respondents, in their reply, have alleged that the postmortem report was manipulated and purged. Since it was a case of custodial death, as has been revealed from the investigation conducted by the CBI, the respondent authorities had no other option but to initiate disciplinary proceedings as suggested by the CBI authorities. As the disciplinary authority was to conclude the departmental proceedings in consultation with the Union Public Service Commission (for short, UPSC), they had sent the matter to the UPSC on 7.6.2004 for their advice and final order was awaited at that time expecting the reply from UPSC. The applicant cannot claim due promotion to the post of C.M.O. (NFSG) unless and until he is exonerated from the charges levelled against him. Thus, this application is premature, as the disciplinary proceedings have not been culminated till the date of filing of this application.

5. At the outset, before hearing of this case, Mr. V.S.R. Krishna learned counsel appearing for the respondents has brought to our notice that in the meanwhile the disciplinary proceedings have been terminated by imposition of a penalty of reduction at three stages in the time scale of pay till retirement of the applicant. Since the respondent authorities have already imposed the penalty on the applicant, no further direction is required to be passed against the respondents. It is, however, open for the applicant, if he is so aggrieved, to appropriately question the said order before the concerned authority.



6. In so far as the claim of promotion made by the applicant to the post of C.M.O. (NFSG) is concerned, it is true that the sealed cover procedure was followed. Since there were disciplinary proceedings pending against the delinquent, Mr. Krishna has very much relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Union of India vs. K.V. Janakiraman**, reported in AIR 1991(SC) page 2010.

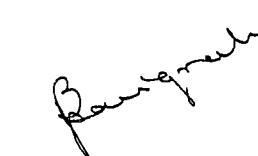
7. We have carefully gone through the said judgment passed by the Hon'ble Supreme Court and find that nowhere it has been laid down that the authorities are forbidden to open the sealed cover after termination of the disciplinary authorities. The applicant must know the result of the DPC proceedings whether he has been given promotion or has been denied such privilege.

8. In that view of the matter, we direct the respondents to open the sealed cover and let the applicant know the decision of the DPC's recommendations within a period of four months from the date of receipt of this order. It is open to either party to resort to their legal remedies, after opening the sealed cover, as regard to the promotion claimed by the applicant.

9. With the above directions, the Original Application is accordingly disposed of.



(M.K.Misra)
Member (A)



(B.Panigrahi)
Chairman

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