

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA NO. 528/92

Date of Decision: 01.05.1992.

S.K. Tyagi

...applicant

Vs

Union of Indisa

...respondents

Coram:

Hon'ble Mr. T.S. Oberoi, Member (J)

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

For the applicant

Shri P.P. Khurana, counsel

For the respondents

Shri R.S. Aggarwal, counsel

1. Whether Reporters of Local Papers may be allowed to
see the Judgement? *YS*

2. To be referred to the Reporter or not? *YS*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)

May 1, 1992.

(8)

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SHRI S.K. TYAGI

..... APPLICANT

VERSUS

UNION OF INDIA

.....RESPONDENTS

CORAM :-

HON'BLE MR T.S. OBEROI, MEMBER (J)

HON'BLE MR I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI P.P. KHURANA, counsel

FOR THE RESPONDENTS

SHRI R.S. AGGARWAL, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR I.K. RASGOTRA, MEMBER (A))

Shri S.K. Tyagi has filed this application under Section 19 of the Administrative Tribunal Act, 1985, aggrieved by the action of the respondents in placing recommendations of the Departmental Promotion Committee (D.P.C.) held in April, 1985 in respect of him in the sealed cover,

2. The necessary facts of the case are that the applicant who joined Income Tax Department as a direct recruit on 11.11.1968 was promoted as Deputy Commissioner of Income Tax in 1979. Thereafter, 119 Officers junior to the applicant including his immediate junior Shri A.C. Choudhry (SL.1452 Annex AI) were promoted to the Selection Grade (Non-functional vide Order 23.8.1990, although the applicant was also eligible for grant of selection ^{grade} of Rs.4500-5700. Thereafter, next D.P.C. was held for promotion to the post of Commissioner of Income Tax (C.I.T) in April, 1988 and consequently 18 Officers junior to the applicant were promoted to the Grade of C.I.T.

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Another batch of 13 Officers junior to him were promoted later, on 16.4.1990.

3. The case of the Applicant, in short, is that he was recommended for grant of Selection Grade & for promotion as C.I.T. by the respective D.P.Cs and placed on the Select List of C.I.T.. The latter select list was also approved by the Appointments Committee of the Cabinet (ACC), yet recommendations in respect of him were kept in the Sealed Cover. There was neither any disciplinary proceedings against him nor were any such proceedings under contemplation. The applicant, however, admits that he was placed under suspension from 24.10.88 and was thereafter served with a Memo/chargesheet on 29.11.88, which was followed by another one on 26.7.1989. The order of suspension and charge-memos are annexed as Annexures A5, A6, A7 respectively. The applicant challenged the suspension Order dated 24.10.1988 in OA No. 939/1989 filed in New Bombay Bench and prayed that the order of suspension dated 24th October, 1988 and charge Memo 29.11.88 be quashed and set-aside. OA-939/89 was not allowed by the New Bombay Bench of the Tribunal vide order dated 29.2.1990, and this led to filing of SLP by the applicant in the Hon'ble Supreme Court. It is considered appropriate and expedient to reproduce the order of their Lordships pronounced in SLP 18091/91 dated 1-8-91 for facility of disposal of the matter before us.

"After having heard Mr R.K. Garg, learned counsel for the petitioner at some length and having perused the nature of charges etc levelled against the petitioners, we enquired from counsel for the

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Union of India as to what stage the enquiry was pending. She stated that Inquiry Officer had been appointed and the matter is in progress but she was not able to pin point the exact stage of the enquiry. Be that as it may, the fact remains that the petitioner was suspended way back on 24th October, 1988 when he was on the verge of being promoted. We, therefore, feel that sufficient time has elapsed and we would have expected the authorities to have concluded the inquiry by now. We decline to interfere at this stage of the enquiry or to quash the charges levelled against the petitioner but we do feel that an officer of this rank should not be kept in suspension for long and the Inquiry Officer ought to expedite the hearing and complete the enquiry without further delay. In view of the above we think that the ends of justice would be met if a time frame for completion of the enquiry is fixed. While we agree with the Tribunal that it would not be proper to quash the chargesheet and the departmental proceedings at this stage, we direct that enquiry shall be proceeded with despatch and shall be completed preferably not later than four months from the date of receipt of this Court's order. We direct the petitioner to appear before the enquiry officer on August 12, 1991 at 11 a.m. and on his appearance the Enquiry Officer will give direction for proceeding with the enquiry so that it can be completed within four months from the date of receipt of this Court's order. We expect the petitioner to cooperate and if the petitioner asks for time on any ground that would be excluded from the period of four months allowed to the Enquiry Officer to complete the Enquiry. **If for any reason the enquiry cannot be completed within the time frame fixed hereby, the petitioner will be reinstated in service so that he may not be required to languish for an unreasonably long time. This reinstatement if required to be made will not in any manner prejudice the enquiry nor will it debar the petitioner from being allowed such benefits as are admissible to him but he will not be entitled to claim the difference in wages between the suspension allowance and actual salary till the conclusion of the enquiry since that will be a subject matter to be determined by**

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the Inquiry Officer and the Disciplinary Authority. Needless to say that our reluctance to interfere at this stage will not preclude the petitioner from raising all or any of the contentions raised in the petition at a later date, if need be. With these observations we dispose of this petition.

A copy of this order will be made available to the counsel for the respondents to enable them to inform the Inquiry Officer to proceed with the enquiry and complete it within the time frame fixed hereinabove. A copy of this order may also be given to counsel for the petitioner to enable the petitioner to appear before the Inquiry Officer on 12th August, 1991, as directed hereinabove." **(Emphasis supplied)**

4. The Learned Counsel for the applicant admits that he has been reinstated in service in accordance with the order of the Hon'ble Supreme Court, but as Deputy Commissioner of Income Tax. He contends that the order of Hon'ble Supreme Court does not debar the Petitioner **"from being allowed such benefits as are admissible to him"**. Accordingly the applicant is entitled to the benefit of promotion to the Grade of C.I.T., more so as admittedly there was no charge-memo pending against the applicant in April 1988 when the DPC met. Shri P.P. Khurana, learned counsel of the applicant also filed a copy of the C.W.P.-877 of 1991 H.C. Khurana V/s Delhi Development Authority decided on Feb. 27, 1992 in the High Court of Delhi in support of his case. We have perused the judgement in H.C. Khurana (Supra) case and are of the view that it is of no assistance to the applicant being distinguishable on facts.

We however observe that before Shri A.C. Choudhary, the immediate junior to the applicant

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was promoted as C.I.T on 16.12.1988, the applicant was placed under suspension vide order dated 24.10.1988. When he came up for promotion on 16.12.1988, he was, besides being under suspension also served first charge memo on 29.11.1988 (followed by another one on 26.10.1989). The formulation projected by the learned counsel for the applicant is that since there was no chargesheet pending on the date, the applicant was considered for promotion by the DPC^{and} recommendation in respect of him cannot be kept in the sealed cover and that he has the right to be reinstated in service not as Deputy Commissioner of Income Tax but as C.I.T. as he is in the approved select list of C.I.T. According to him, his view is in consonance with the order dated 1.8.1991 passed by the Hon'ble Supreme Court.

5. The learned counsel for the respondents, however, contested the submissions of the applicant and submitted that the applicant was reinstated in service as per the orders of the Hon'ble Supreme Court in view of the fact that the enquiry could not be completed within the time-frame laid down in the order dated 1.8.1991. The reinstatement would imply that the applicant would be placed in the position that he was holding at the time he was placed under suspension. His suspension was revoked vide Order dated January 1, 1992. The said Order reads as under :-

"Whereas an order placing Shri S.K. Tyagi, Dy Commissioner of Income Tax, Bombay under suspension

was made by this Department vide order F.N.C-14001/40/88 V&L 24.10.1988.

And whereas in deference to the directions dated 6.8.1991 of the Hon'ble Supreme Court of India in S.L.P. No. 10081 of 1990 filed by Shri S.K. Tyagi Versus UOI and another, it has been decided to reinstate Shri S.K. Tyagi in service.

Now, therefore, the President in exercise of the powers conferred by clause(c) of the Sub-rule(5) of Rule 10 of the Central Civil Service (Classification Control and Appeal) Rules 1965, hereby revoked the said order of suspension with immediate effect.

On reinstatement in service Shri S.K. Tyagi is posted as Dy Commissioner of Income Tax, in the region of Chief Commissioner of Income Tax, Bombay."

6. It is apparent from the above that the revocation of suspension order is not on the ground that the case against the applicant has been finalised leading to his being cleared of the charges. Further the applicant had never been promoted/held the post of Commissioner of Income Tax before his suspension and, therefore, the question of reinstating him as C.I.T. on the ground that he was recommended by the D.P.C. for promotion as C.I.T. and that his name figured in the Select List approved by ACC appears to be lacking conviction.

Similarly, Shri A.C. Choudhry, the next junior to the applicant, was placed in the Selection Grade (Non-functional) Rs4500-5700 with effect from 1.1.1986 vide order dated 23rd August, 1990 retrospectively. Here, again the applicant was under cloud on 23.8.1990.

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From the above appreciation of the case it is observed that although on the date the DPC was held in April 1988 no charge memo was served on the applicant and the adoption of Sealed Cover procedure was not justified under the settled law, yet he was admittedly under cloud when he came up for promotion on 16 December, 1988. The question, therefore, is not whether the respondents were right in placing recommendations of the DPC in the sealed cover in respect of the applicant. The more germane issue is whether the promotion of the applicant should have been withheld after he had been placed under suspension and served charge memo on the crucial date. In the **Full Bench Judgement in OA Zo 849/86 etc K. Ch Venkata Reddy & others V/s Union of India & others** decided on 2.3.1987, it has been held that **"withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are pending against him cannot be treated to be a penalty under Rule 11(2) of Central Civil Services (Classification Control & Appeal) Rules 1965."** The respondents, therefore, cannot be faulted for withholding promotion of the applicant on the date his next junior was promoted on 16.12.1988. Since the applicant was never promoted as C.I.T. on 16.12.1988, but was under suspension w.e.f. 24.10.1988, he cannot claim reinstatement to a post which he never held. In our opinion, he can be/and was rightly reinstated in the post of Dy C.I.T.

7. We further find that Hon'ble Supreme Court while extending the time for completing the Departmental Enquiry laid down a definite time schedule in the order dated 27.1.1992. We therefore hope that the enquiry in disciplinary proceedings should be nearing

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completion, if not already completed. At this point of time, therefore, we are not inclined to interfere in the matter.

8. In the above conspectus of the case we are of the view that the case does not merit judicial interference at this stage. Ordered accordingly. The O.A. is dismissed with no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
MEMBER (A) 1/5/1992

May 1, 1992.

T.S. Oboroi
(T.S. Oboroi)
MEMBER (J) 1.5.92