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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1347/93

Date of Decision: 29.10.93

- Shri R.R. Sharma

... Petitioner

Vs

The Administrator & Ors
Union Territory of Delhi

... Respondents

Coram:

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

For the applicants

Sh. Swatantra Kumar, Counsel

For the respondent

Sh. V.K. Mehta, Assistant
Govt. of N.C.T. for
Respondents

JUDGEMENT

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

The applicant was working as Assistant Housing Commissioner, Labour Department, Delhi Administration and was relieved from that post with effect from 5.3.1992. He has been served with the chargesheet dated 19.9.1992. While the applicant was working as Stenographer Gr. I, he was served with the Memo of chargesheet dated 14.9.1988. Ultimately an order of punishment dated 13.12.1988 imposing upon him the penalty with-holding of three increments without cumulative effect with immediate effect. The applicant departmentally ^{filed} an Appeal to the Chief Secretary Services, Delhi Administration which was decided by the order dated 16.4.1992 quashing the Impugned Order of Punishment dated 13.12.1988 and at the same time ordering that fresh chargesheet may be issued to the applicant. As a result of the Punishment Order, of with-holding of increments dated 13.12.1988, the three increments which fell due to the applicant in February 1989, February 1990 and February 1991 were with-held. In pursuance to the

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Appellate Order, a fresh chargesheet was served upon the applicant. However, in the meantime, by the order dated 22.1.1990, the applicant was appointed to DANI Civil Service on adhoc basis for a period of six months or till further orders whichever was earlier. By the Order dated 21.2.1992, he was reverted from his adhoc appointment. The applicant grievance is that when the Punishment Order of December, 1988 has already been given effect to and his three increments were with-held in the year 1989, 1990 and 1991 he cannot be punished twice and cannot be ignored for promotion to DANI Civil Service as persons junior to him have already been promoted.

The applicant has prayed for the grant of the relief that the chargesheet dated 19.9.1992 be quashed and the respondents be directed to consider the application for promotion to DANI Civil Service in accordance with the seniority and be given all salary benefits in that post. He has further prayed for the grant of increment due to him right from the beginning from the year 1987 till today and he only prays the relief that the respondents be directed to consider and permit the applicant to DANI Civil Service in accordance with the seniority.

The respondents contested the application and filed the reply opposing the grant of relief prayed for on the grounds that the applicant is under the shadow of chargesheet since June 1988. He was punished in the departmental enquiry by the disciplinary authority in December 1988 but that order was quashed in the Appeal by the Chief Secretary, Delhi Administration by the order dated 16.4.1992 ordering the issue of further chargesheet

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on the same grounds and in pursuance to that the fresh chargesheet has been issued in September, 1992. The applicant, therefore, cannot claim any promotion since the departmental enquiry proceedings are pending against him. It is further stated that the Order of adhoc promotion to DANI Civil Service was issued inadvertently to the applicant dated 22.1.1990 in total ignorance of the fact by the services department about the pendency of the departmental penalty against the applicant. It is further stated that the applicant has also filed OA No. 530/92 against the order of reversion dated 21.2.1992 but no relief was granted to him. As regards the payment of with-holding of three increments of the applicant, it is stated in para 3 of the counter that necessary instructions to be issued to the concerned department to consider his case for grant of increment due to him. Since the departmental enquiry is pending against the applicant, he cannot be ~~permitted~~ ^{promoted} to DANI Civil Service.

We have heard the learned counsel of both the parties at length and also further perused the rejoinder filed by the applicant to the counter reply. We have also perused the DANI Civil Rules 1971 (hereinafter called the "Rules").

The only relief prayed by the applicant is for consideration for the post of DANI Civil Service in his turn. Rule 5 of the said service relates to the method of recruitment 50% by Direct Recruitment and 50% by promotion by method of selection in the manner specified in Para V of the Rules. In the case of Union of India and ors. Vs. K.V. Jankiraman 1991 (2) SCALE P 423 it has been held that

promotion cannot be withheld merely because some disciplinary/criminal proceedings are contemplated against the employee. To deny the ~~permission~~ ^{promotion &} there must be at the relevant time charge memo/chargesheet. Where an employee has been exonerated he has to be given the benefit of the salary of the higher post from the date of which he would have been normally promoted but for the disciplinary/criminal proceedings. The applicant, therefore, cannot claim ~~permission~~ ^{promotion} as of right during the pendency of the departmental enquiry against him. However, if any selection is held he has to be considered in his turn on merits and the case of the applicant will be placed before the Selection Committee in a sealed cover with its recommendations. After the departmental enquiry proceedings are over, the applicant's case will be opened from the sealed cover and if he is exonerated in the said enquiry the same has been given effect to his benefit. The learned counsel for the respondents Ms. Ashoka Jain could not produce any substantive arguments against the above proposition.

In view of the above facts and circumstances, the present application is partly allowed. The relief prayed in Para 8 (A) and (C) of the OA are disallowed. As regards relief (B) of Para (8) the case of the applicant shall be considered by the respondents in the selection process in his own turn according to DANI Civil Service Rule 1971 and the recommendations of the Selection Committee shall be kept in a sealed cover which shall be given effect to after the departmental enquiry proceedings are over.

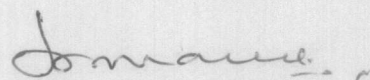
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In the circumstances parties to bear their own costs.



(B.K. Singh)

Member(A)



(J.P. Sharma)

29.10.93

Member(J)

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