

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

~~CLXXXVXX~~  
T.A.No. 35 of 1989

199

DATE OF DECISION 13.2.1991.

Padmakar Misra Petitioner

Shri A.S. Divakar Advocate for the Petitioner(s)  
Versus

Union of India & others Respondent

Shri B.N. Asthana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.K. Agrawal, Judl. Member.

The Hon'ble Mr. K. Obayya, Adm. Member.

1. Whether Reporters of local papers may be allowed to see the judgment ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgment ? ✓
4. Whether to be circulated to all other Benches ? ✓

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Ghanshyam/

*Okagrand*

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

TA 35 of 1989  
(W.P. No. 4209/83)

Padmakar Misra

Petitioner

versus

Union of India & others

Opp. Parties.

Hon. Mr. D.K. Agrawal, Judl. Member.  
Hon. Mr. K. Obayya, Admn. Member.

(Hon. Mr. D.K. Agrawal, J.M.)

Writ Petition No. 4209 of 1983 filed in the High Court of Judicature at Allahabad, received on transfer to the Tribunal under section 29 of the Administrative Tribunals Act, 1985, has been registered as T.A. No. 35 of 1989, as indicated above.

2. The prayer in this writ petition is that the selection of the petitioner as Insurance Inspector be directed to be enforced with all consequential benefits.

3. Briefly, the facts are that the petitioner was employed as Upper Division Clerk in the Regional office of Employees State Insurance Corporation at Kanpur. The Insurance Inspector was one of the posts in the hierarchy of promotions in the office of the State Employees Insurance Corporation. According to the rules of recruitment, the post of Insurance Inspector was to be filled up by promotion as well as direct recruitment,  $66\frac{2}{3}\%$  by promotion and  $33\frac{1}{3}\%$  by direct recruitment. The petitioner, on merits participated in the competitive examination for direct recruit<sup>ment</sup> to the post of Insurance

*Dr. Agrawal*



Inspector. He was declared successful vide the result dated 18.11.1981. Director General, Employees State Insurance Corporation, New Delhi, accorded his approval to the posting of candidates declared successful in the examination for direct recruitment vide order dated 17.12.1981. However, the petitioner was not posted. Therefore, the present petition was filed.

4. The respondents' case is that a preliminary enquiry was conducted on the basis of some complaint report<sup>rb</sup> which was received as early as on 1.10.1981. (This fact has not been stated in the writ petition or counter affidavit but shown to us from the original record). After the report of the preliminary enquiry a decision was taken to initiate disciplinary proceedings against him but no chargesheet was served on the petitioner till 16.6.1983. The respondents' contention is that on account of the preliminary enquiry and the contemplated disciplinary action, the petitioner was not appointed on the post of Insurance Inspector. The respondents' case further is that as a result of regular enquiry on the basis of chargesheet, the petitioner was meted out the punishment of reduction of pay ~~upto stage~~ <sup>the stage of</sup> from Rs 1380 to Rs 1320.00 with effect from 1.1.1988. Although not relevant, it may be mentioned here that the petitioner was exonerated by the disciplinary authority but the above said punishment was inflicted by the reviewing authority in its discretion after suo-moto reviewing the order of the disciplinary authority. The order of punishment of reduction in pay by two stages ~~having~~ <sup>and</sup> commenced on 1.1.1988 has come to an end on 1.1.1990.

*for approval*

5. The question to be determined in this petition is as to whether the petitioner has become ineligible for promotion. The normal rule is that consideration for promotion, Selection Grade, Crossing of Efficiency Bar or higher scale of pay cannot be withheld merely on account of pendency of a disciplinary or criminal proceedings against the official. Similarly, a person is not ineligible for promotion because of the currency of punishment on the principle that it would amount to subjecting him to double punishment. It would mean that a person does not become ineligible for consideration for promotion on account of pendency of disciplinary or criminal proceedings. Similarly, a person cannot be denied promotion if he has already been considered and found fit only because the punishment is running against him. In the instant case, the situation is quite different. The petitioner succeeded in the competitive examination on his own merit at a time when no chargesheet was served on him. The result of the examination was declared before the chargesheet was actually served on the petitioner. It is not the case of either party that the petitioner was to be considered for promotion by the Departmental Promotion Committee. Even in the case of promotion, to be considered by the Departmental Promotion Committee, the rule is that a person does not become ineligible for consideration for promotion to a higher grade merely because chargesheet is contemplated to be served on him. There is yet another rule under which if a person is found fit for promotion to a higher post during the pendency of the disciplinary proceedings, the department

Dr. Agrawal

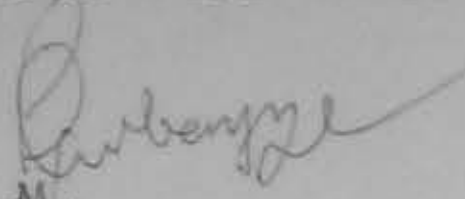


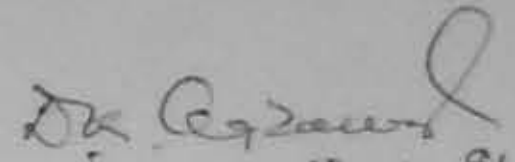
becomes entitled to keep the result of Departmental Promotion Committee in a sealed cover, as we have seen above, the instant case is one where the process of DPC was not to be undergone. The only question was as to whether the petitioner was entitled to be posted as Insurance Inspector on the basis of competitive examination held for direct recruitment to the post of Insurance Inspector. The disciplinary proceedings remained pending from 16.6.1983 to 11.1.1988. The punishment order, as shown above already came to an end on 1.1.1990. Therefore, even if there be any justification for postponing the actual posting of the petitioner on the post of Insurance Inspector upto 1.1.1990, there is absolutely no reason denying him the posting thereafter i.e. after 1.1.1990. In the circumstances, we are of the opinion that the petitioner is entitled to be posted on the post of Insurance Inspector. The only question is about the availability of vacancy. We are of the firm opinion that the vacancy on the post of Insurance Inspector as available on date or the first vacancy which occurs hereinafter <sup>should</sup> ~~shall~~ go to the petitioner. Petitioner's seniority shall be determined from the date of his joining to avoid any <sup>heart burning</sup> ~~hard burden~~ between the petitioner and those persons who have held the post prior to him.

6. In the result, we allow this petition and direct that the petitioner shall be provided with appointment on the post of Insurance Inspector against a vacancy existing on date or the first vacancy which occurs hereinafter in pursuance of the result of the examination declared on 18.11.1981 and approved by the

*DR Agrawal*

Director General of State Employees Insurance  
Corporation vide order dated 17.12.1981. The parties  
shall bear their own costs.

  
A.M.

  
J.M. 13.2.91.

Shakeel/

Allahabad Dated: February 13, 1991.