

85

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 128 of 1986
T.A. No.

DATE OF DECISION 28.10.'86

SHRI B.B.SAKARWALA Petitioner

SHRI J.J.YAGNIK Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

SHRI J.D.AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI ... Vice Chairman

The Hon'ble Mr. P. M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

O.A. No. 128/86

Per: Hon'ble Shri P. H. Trivedi, Vice Chairman

JUDGMENT

Although the applicant Shri B.B.Sakarwala claims seniority over Mrs. Jaya V.Nair, respondent no. 4, he was not selected for promotion as Licencing Assistant to which post, she was appointed by the impugned order dated 15.11.'85. The applicant has mixed up a lot of collateral issues about his transfer and about proceedings in other forums with this case. The question of his transfer has already been dealt with in our judgment in O.A. No. 6/86. The respondent's stand is that the applicant was not promoted and his junior had to be promoted because a C.B.I. investigation in a criminal complaint was pending against him. Subsequently, the respondent has stated that the C.B.I. investigation has now been closed, but two other cases have been registered in February, 1986 against the applicant under Prevention and Corruption Act, which are still pending. The applicant has stated that on the date when the impugned order was passed and his junior was promoted, no C.B.I. investigation or case was pending against him.

2. In this case, the short point is whether the pendency of a C.B.I. investigation should be a ground for debarring the petitioner from being considered for his promotion. The procedure to be adopted in the case of persons against whom such inquiries are pending has been comprehensively set out in the relevant circulars. According to them the cases of the officers who are suspended or on whom disciplinary proceedings are pending

have not to be denied consideration on their merits and have to be examined by the competent authorities or the D.P.C. Their findings are to be kept in sealed covers. In this case, the applicant has not been suspended and no decision on his disciplinary proceedings has been taken up on the date of promotion. Therefore, there is no alternative except taking him into consideration, even if a regular promotion were to be made. The considerations for adhoc promotion cannot be more rigorous. The applicant has cited Romesh Chander vs. G.O.C. Northern Command and Ors. (1977 L.I.C. 1432), in which following cases have been referred to:

- (1) (1973) 2 SLR 131 (Andh Pra)
- (2) AIR 1970 SC 150
- (3) 1969 SLR 445
- (4) (1970) LIC 945
- (5) 1970 SLR 284 &
- (6) AIR 1967 SC 1269.

The conclusion in that case is that the mere pendency of a case or investigation does not justify withholding of promotion. The impugned order in which the junior of the applicant has been promoted is therefore, obviously bad.

3. We therefore, find that the application has merit and quash and set aside the impugned orders, and direct that the case of the applicant should be taken into consideration while making any selection for promotion. We make no order as to costs.

Dhruv
(P. H. TRIVEDI)
Vice Chairman

Joshi
(P. M. JOSHI)
Judicial Member