

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-435/2016

Reserved on : 02.02.2016.

Pronounced on : 04.02.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. N.H. Khan (Aged about 57 years)
Group-A
S/o (Late) Sh. A.H. Khan,
R/o 177, Sahyog Apartments,
Mayur Vihar, Phase-I,
Delhi-110091
Presently posted as Executive Engineer (HQ)
Civil Circle-10, DDA
Vikas Minar, IP Estate, New Delhi-2.

.... Applicant

(through Sh. R.A. Sharma, Advocate)

Versus

1. Delhi Development Authority
Through its Vice-Chairman,
Vikas Sadan (B-Block), 1st Floor,
Near INA, New Delhi-23.

 2. Vice-Chairman,
Delhi Development Authority,
Vikas Sadan (B-Block), 1st Floor,
Near INA, New Delhi-23.
- Respondents

O R D E R

Mr. Shekhar Agarwal, Member (A)

This O.A. has been filed seeking the following relief and interim relief:-

“Relief:-

- (i) To declare the action of respondents in initiating disciplinary proceedings and appointing I.O.&P.O. as illegal and

accordingly- quash and set aside the Charge Sheet No. F.27(06)/2013/EE (Vig.) –V/6911 dated 01.09.2015 (**Annexure A-1**) as well as orders dated 04.01.2016 [**Annexure A-2 (Colly)**] of appointing I.O. & P.O. and direct the respondents to grant all consequential benefits of service to the applicant including his promotion to the post of S.E. (Civil).

- (ii) To direct the respondents to produce the records of the case for perusal of this Hon'ble Tribunal.
- (iii) To pass other order as deemed fit and proper in the facts and circumstances of the case.
- (iv) Allow costs in favour of the applicant.

Interim Relief:-

Pending final adjudication of the O.A. it is most humbly prayed that this Hon'ble Tribunal may graciously be pleased to stay the impugned charge sheet No. F.27(06)/2013/EE (Vig.)V/6911 dated 01.09.2015 (**Annexure A-1**) as well as orders dt. 04.01.2016 [**Annexure A-2 (Colly)**] and direct the respondents not to proceed further pursuant to the impugned charge sheet and grant all the benefits w.e.f. their due dates including promotion to the applicant to the post of S.E. (Civil) as the DPC has already assessed the applicant as 'FIT' for promotion to the said post."

2. It is noticed that the applicant has approached this Tribunal seeking quashing of the charge sheet issued to him. Normally, we would not have interfered in the disciplinary proceedings at the interlocutory stage of issuance of charge sheet. However, we find that one of the grounds taken by the applicant for challenging the charge sheet is that the same has been issued with mala fide intention at such a time so as to deny promotion to him for which he had been already assessed as fit by the DPC.

3. Learned counsel for the applicant submitted that the charges levelled against the applicant pertained to the year 2011 & 2012. The applicant

submitted his explanation to the Vigilance Department on 28.08.2012. Thereafter, for three years no action was taken by the respondents. Meanwhile, a DPC meeting was held on 07.05.2015 in which the applicant was assessed by the DPC and was recommended for promotion to the post of SE. However, before his promotion orders could be issued, the respondents served him with the impugned charge sheet dated 01.09.2015. Order promoting his junior was issued on 27.11.2015. Learned counsel contended that the respondents acted with mala fide intention of solely depriving the applicant of his promotion. He has relied on the judgment of a Co-ordinate Bench of this Tribunal in OA-1044/2008 (**Amit Nigam Vs. UOI & Anr.**) dated 24.10.2008 wherein it has been held that a charge sheet issued after a delay of two years at the time when the promotion of the applicant was due was unsustainable. The applicant has also relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. V.K. Khanna & Ors.**, (2001) 2 SCC 330.

4. Issue notice to the respondents both on main relief as well as interim relief. List on 15.02.2016, on which day grant of interim relief to the applicant shall be considered.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/

