

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3624/2014

Order Reserved on:23.12.2015

Pronounced on: 02.03.2016.

HON'BLE MR. A.K. BHARDWAJ, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

A.K. Srivastava,
S/o Shri T.C. Srivastava,
Aged 56,
Under Secretary,
Department of Economic Affairs,
Ministry of Finance, North Block,
New Delhi.

-Applicant

(Applicant in person)

VERSUS

1. Secretary,
Ministry of Minority Affairs,
11th Floor, Paryavaran Bhavan,
CGO Complex, New Delhi.
2. Secretary,
Department of Economic Affairs,
Ministry of Finance,
North Block,
New Delhi.
3. Union of India
Through the Secretary,

M/o Personnel, P.G. & Pensions,
D/o Personnel & Training,
North Block, New Delhi.

-Respondents

(By Advocate: Mr. Ashok Kumar)

ORDER

MR. K.N. SHRIVASTAVA, MEMBER (A):

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985. The main prayer in this OA is to direct the respondents to close the vigilance case against the applicant.

2. The brief facts of the case are as under.

The applicant belongs to Central Secretariat Service (CSS) whose Cadre Controlling Authority (CCA) is Department of Personnel & Training (DoP&T). He is an Under Secretary of 2005 Select List and is presently posted as Deputy Secretary, Department of Economic Affairs (DEA). In July, 2006, when he was posted as Under Secretary in the Ministry of Minority Affairs (MoMA), a sexual harassment complaint was made against him and a few others by one Smt. Priti Kumar, who was then working as

Assistant Director in the MoMA. In terms of **Vishakha's** guidelines, the complaint was referred to Internal Complaint Committee (ICC), who after conducting due inquiry, did not find any substance in the said complaint. The report of the ICC has not been placed on record before this Tribunal. The DoP&T vide their order No.4/3/2013-CS-I(D) dated 03.02.2014 promoted 19 Under Secretaries to the post of Deputy Secretary but the applicant was not considered for promotion, whereas his immediate junior Shri Vinod Kumar Nayyar was promoted. The DoP&T informed the applicant in their reply to an RTI application of the applicant that the Screening Committee has assessed the applicant to be fit for promotion, subject to vigilance clearance. The applicant approached this Tribunal in OA-1381/2014 in which, *inter alia*, a direction was sought from this Tribunal to the respondents to close the vigilance case on the grounds mentioned in the said OA. The respondents No.1&2 of the instant OA were also respondents in OA-1381/2014. Respondent No.3 in the instant OA, however,

was not a party in OA-1381/2014. The Tribunal vide its order dated 25.04.2014 disposed of OA-1381/2014 with the following directions:

“5. We notice that six months have already passed since the communication was issued and there is no progress in the matter. It would, therefore, be appropriate that respondent nos.1 and 2 be directed to ensure that the vigilance clearance of the applicant be sent to the Cadre Controlling Authority so that the applicants case for promotion to the post of Deputy Secretary can be considered in the light of the recommendations of the DPC, which is already prima facie in favour of the applicant. This exercise will be done within a period of 8 weeks from the date of receipt of a copy of this order. Decision taken as per above shall be communicated to the applicant through a reasoned order within the period specified above.”

The applicant was promoted to the post of Deputy Secretary on 08.05.2014. His grievance is that the vigilance case has not yet been issued closed and also wants that he should be promoted as Deputy Secretary w.e.f. 03.02.2014 when his immediate junior Shri Vinod Kumar Nayyar was promoted as Deputy Secretary along with 18 others.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant also filed his rejoinder. The case was taken up for final hearing on 23.12.2015. The applicant as a party in person and Shri Ashok Kumar, learned counsel for the respondents argued the case.

4. The issue lies in a very narrow compass. Closure of the vigilance case and issues appurtenant to that are to be adjudicated. The DoP&T's OM No.22034/4/2012-Estt.(D) dated 02.11.2012 on the basis of the procedure laid down by the Hon'ble Apex Court in the case of **K.V. Jankiraman** (AIR 1991 SC 2011) stipulates that vigilance clearance for promotion may be denied only in the following three circumstances:

- “(i) Government servants under suspension;*
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and*
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.”*

5. In the present case after the order of this Tribunal in OA-1381/2014 dated 25.04.2014, the respondents have promoted the applicant as Deputy Secretary w.e.f. 08.05.2014. The Tribunal had only given a direction to the respondents (present respondents 1&2) to ensure that the vigilance clearance is sent to the CCA-DoP&T (respondent No.3), so that applicant could be considered for promotion to the post of Deputy Secretary, in the light of the DPC recommendations. The very fact that the respondents have promoted the applicant to the post of Deputy Secretary on 08.05.2014, goes to indicate that the vigilance clearance has already been issued or else the applicant could not have been promoted. Such being the position, it is hard to believe as to why respondent No.3, who is the CCA of the applicant is reticent to act on the report of the ICC and pass a final order as to the closure of the vigilance case against the applicant. It is pertinent to mention that the ICC gave its report way back in 2011 but the respondents have not taken a final decision with regard to the closure of the vigilance case

against the applicant vis-a-vis the said report. Under the circumstances, we think it appropriate that a direction is required to be issued to respondent No.3, who is the CCA of the applicant to take a decision in the matter in a time bound manner.

6. In view of the above discussion, we direct the respondent No.3 to take a decision with regard to the closure of the vigilance case against the applicant in view of the ICC report, within a period of 08 weeks from the date of receipt of a certified copy of this order and pass a speaking order to that effect. Needless to mention that a copy of such order passed by respondent No.3, shall be communicated to the applicant immediately thereafter.

7. With the above direction, the OA is disposed of.

8. No order as to costs.

(K.N. Srivastava)
Member (A)

(A.K.Bhardwaj)
Member (J)

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