

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

O.A.No.1029/2015

Wednesday, this the 18th day of July, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Inspector Rajbir Sharma, Aged 57 years
S/o Sh. R D Sharma
Posted in Central Police Control Room
Police Head Quarter, IP Estate, New Delhi
r/o H.No.18, Kasturba Apartment, Pitampura
New Delhi

(Mr. Piyush Kaushik, Advocate)

..Applicant

Versus

1. Union of India through the Secretary
Govt. of India, Ministry of Home Affairs
North Block, New Delhi
2. Govt. of NCT of Delhi through
The Chief Secretary
New Sectt. New Delhi
3. The Commissioner of Police
Delhi Police, Police Headquarters,
IP Estate, New Delhi

..Respondents

(Ms. Neetu Mishra, Advocate for Mrs. Rashmi Chopra, Advocate)

O R D E R (ORAL)

Justice Dinesh Gupta:

Heard Mr. Piyush Kaushik, learned counsel for applicant and Ms. Neetu Mishra, appearing as proxy for Mrs. Rashmi Chopra, learned counsel for respondents.

2. Learned counsel for applicant submitted that the applicant was initially appointed as Sub Inspector in Delhi Police on 22.10.1982. His case

for promotion as look after charge for the post of Assistant Commissioner of Police (ACP) and entry into the entry grade of DANIPS was not considered for the reason that the criminal case was instituted against him, in which the Department has already submitted a final report and as a member of the Bar, the learned counsel submitted that the final report (FR) has already been accepted by the Magistrate on 29.06.2016. He also submitted that as per the Office Memorandum dated 02.11.2012 issued by the Department of Personnel & Training, 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.”

3. So far as the ground (iii) above, i.e., ‘Government servants in respect of whom prosecution for a criminal charge is pending’ is concerned, it has been elaborated in the said Office Memorandum as under:-

“8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6) (b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under:-

“(b) judicial proceedings shall be deemed to be instituted –

- (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made”.

4. Learned counsel for applicant also relied upon the two judgments of this Tribunal in **Ajay Kumar Sharma v. Commissioner of Police &**

others (O.A. No.1049/2015 with O.A. No.1015/2015) pronounced on 02.11.2015 and submitted that as per the judgment of this Tribunal and the O.M., there is no impediment in consideration of the case of the applicant for promotion and entry into the grade of DANIPS.

5. On the other hand, learned proxy counsel for respondents submitted that it is admitted that an FR has been filed by the Department, but she is not aware whether the same has been accepted or not. She further submitted that the applicant was considered by the Screening Committee to assign the look after charge for the post of ACP and for entry into the grade of DANIPS, but due to pendency of a criminal case instituted against him, he was not assigned the look after charge.

6. Since the matter hinges only on the fact that whether an FR has been accepted by the Magistrate or not, the respondents are directed to get the status of the FR from the concerned Court and then on the basis of the said status, take up the case of the applicant for look after charge for the post of ACP and entry into the grade of DANIPS in accordance with the rules and regulations prevalent at the relevant time. This exercise shall be completed within six weeks from the date of receipt of a copy of this order.

7. With this, O.A. stands disposed of. No costs.

8. In view of this, all ancillary Applications shall stand disposed of.

(Nita Chowdhury)
Member (A)

July 18, 2018
/sunil/

(Justice Dinesh Gupta)
Member (J)