

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

O.A No. 4511/2014

Reserved on: 20.02.2019
Pronounced on: 22.05.2019

**Hon'ble Sh. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Sh. Chander Dev
Retired School Inspector,
S/o late Sh. Makkhan Singh,
R/o House No.E-6/128,
Sangam Vihar,
New Delhi-110 080. ...Applicant

(By Advocate: Sh. S.N. Kaul with Sh. R.S. Kaushik)

Versus

1. North Delhi Municipal Corporation
through its Commissioner,
Dr. S.P.M. Civic Centre,
Minto Road, New Delhi-110 002.
2. The Assistant Commissioner,
Central Establishment Department,
North Delhi Municipal Corporation,
Dr. S.P.M. Civil Centre, Minto Road,
New Delhi. ...Respondents

(By Advocate: Sh. Amit Sinha with Sh. R.V. Sinha)

O R D E R

By Hon'ble Ms. Aradhana Johri, Member (A):

The applicant Chander Dev was appointed as School Inspector on 07.01.1983 under ST category on direct recruitment basis in Education Department of MCD. The next promotional post was that of Senior School Inspector (SSI)/Assistant Education Officer (AEO)/Assistant

Education Officer (General) as per the notified Recruitment Rules prevailing at that point of time.

2. On receipt of a Complaint from Central Vigilance Commission (CVC) dated 18.06.1989 on the allegation that the applicant got the job on the basis of a bogus ST certificate, the matter was investigated and he was placed under suspension vide order dated 06.01.1994. An FIR No.299/1994 dated 25.05.1994 was lodged against him under Sections 420/468/471/120-B IPC. Letters were also issued by the Vigilance Department to the District Magistrate, Dausa to withdraw/cancel ST certificate issued in favour of the applicant. The applicant was reinstated on 22.11.1995.

3. Subsequently, the applicant was convicted by the Metropolitan Magistrate, Tis Hazari Court vide order dated 13.04.2009 and was sentenced to undergo Rigorous Imprisonment (RI) for three years for the offence committed under Section 420 IPC. Consequently, a decision proposing to impose penalty of dismissal from service on the applicant was taken by Additional Commissioner (Education) vide orders dated 15.10.2009. Accordingly, a show cause notice was issued to the applicant vide order dated 05.11.2009, to which he filed his reply dated 23.11.2009 stating therein

that he had already filed an appeal before Sessions Court. In the meantime, the Sessions Court suspended the operation of the judgment, vide order dated 11.05.2009, and the applicant requested to keep further proceedings in abeyance till the disposal of his appeal.

4. On 15.01.2010, the disciplinary authority confirmed the proposed punishment of dismissal from service, which will ordinarily be a disqualification for future employment. However, he made a mention of the representation received from the applicant enclosing therewith a copy of Additional Sessions Judge order setting aside the order of Metropolitan Magistrate. After verification, order of dismissal of the applicant was revoked by the Additional Commissioner (Education), vide order dated 22.06.2010 consequent upon his acquittal in FIR No.299/1994, and the Vigilance Department was directed to re-examine the issue and conduct necessary investigation. The matter was also referred to the SC/ST Commission for verification/ seeking their opinion.

5. Subsequently, an FIR No.377/2005 dated 09.07.2005 was lodged against for issuing fake/bogus appointment letters for Class-IV employees in Education Department of South Zone, without any authority, and he was arrested on

09.07.2005 itself. Consequently, the applicant was placed under suspension vide order dated 17.08.2005. He was, however, reinstated pending outcome of the court case vide order dated 07.03.2007. The Commissioner-NDMC vide order dated 19.10.2012 allowed the applicant to draw full pay & allowances for the suspension period treating the same as having been spent on duty. The said Criminal Case is pending trial before the Chief Metropolitan Magistrate and two RDA cases for major penalty proceedings were also pending against the applicant.

6. The case in hand has a history of litigation as several OAs on various aspects have been filed before the Tribunal as well as Writ Petitions before the Hon'ble High Court.

7. It is the contention of the applicant that he was entitled for promotion to the post of AEO on 07.01.1993 after completing 10 years of service in the grade of School Inspector and no RDA/Criminal Case was pending against him at that point of time. The applicant has placed reliance on the decision of the Hon'ble Supreme Court in ***Delhi Jal Board vs. Mahinder Singh*** [JT 2000 (10) SC 158] to buttress his contention that he is entitled to notional promotion and consequential benefits as he was not under suspension and no disciplinary/criminal proceedings were

pending against him at the relevant point of time. In the said case, it is also held that subsequent disciplinary and criminal proceedings would not be a deterrent for issuing the order of promotion.

8. It is seen that in an earlier OA No.1184/2010 filed by the applicant, this Tribunal vide order dated 05.07.2011, taking into consideration the decision in ***Delhi Jal Board*** (supra) directed the respondents to consider the applicant for promotion as AEO/SSI in the year 1993 and, if found fit, promote him to the above post with effect from the date of his eligibility for promotion as ST category candidate. He would also be eligible for consequential benefits, that is, subsequent promotions, subject to the condition that no disciplinary/criminal proceedings were pending against him on the date of consideration for subsequent promotions. In case the respondents consider him to be ineligible for subsequent promotions, a speaking order shall be passed giving reasons for not considering the applicant for promotion. Though promotion would be notional, but would count for calculation of increments and for the purpose of seniority for subsequent promotions. If the applicant is promoted to various posts, his pension and other post-retirement benefits would be re-calculated.

9. The applicant has challenged the order dated 04.08.2014 by which his case for promotion to the post of AEO/SSI in the year 1993 was rejected. He has prayed for the following reliefs:-

- “8.1 To set aside and quash the impugned order dated 14-08-2014;*
- 8.2 To direct the respondents to grant all the due promotions for the post of Assistant Education Officer, Deputy Education Officer and Additional Director Education on 07-01-1993, 07-01-1996 & 07-01-1998 with all consequential benefits.*
- 8.3 To direct the respondents to grant all consequential benefits accrued due to promotions;*
- 8.4 To direct the respondents to revise all retiral benefits i.e. pension, leave encashment, gratuity etc.*
- 8.5 Any other relief deems fit and proper may also be granted.*
- 8.6 Award cost.”*

10. The respondents have denied the claim of the applicant and contended that as per the report of the District Magistrate, Dausa, it was found that the applicant had given wrong information and obtained ST certificate by adopting dishonest and fraudulent means. It is further stated that the applicant was neither Meena nor resident of (Rajasthan) but he was Maina (Thakur) of District Bulandshahr (UP). His promotion was not done due to pendency of criminal case in RDA regarding his bogus ST certificate. They have further contended that on the charge

of giving wrong information and obtaining ST certificate by adopting dishonest and fraudulent means, an FIR was registered against the applicant. He was convicted by Metropolitan Magistrate, but this order was set aside by the higher Court due to improper prosecution and non-production of key witnesses etc. Further, while working as SI (General) in South Zone, without any authority, the applicant issued fake/bogus appointment letters for Class-IV employees in Education Department for which an FIR No.377/2005 was lodged at PS Hauz Khas, Delhi in which he was arrested and also remained under suspension w.e.f. 17.08.2005 to 07.03.2007. The said criminal case is still pending trial. In view of this, regular departmental action for major penalty proceedings has been initiated against the applicant in RDA Case No.01/60/2004.

11. The respondents have also averred that in compliance with the directions of the Court, a DPC was held on 10.04.2015 for regular promotion for year-wise vacancies for the years 1987-88 to 2005-06 i.e. 31.12.2005 to the post of AEO wherein the case of applicant was considered for the promotion to the post of AEO along with other eligible candidates but since he was involved in FIR No.377/2005, P.S. Hauz Khas as well as facing

departmental proceedings, as reported by the Vigilance Department wherein charge sheets had been filed/issued, his case was kept in sealed cover as per DOP&T OM dated 14.09.1992. The applicant has since retired from service.

12. Heard Sh. S.N. Kaul with Sh. R.S. Kaushik, learned counsel for the applicant and Sh. Amit Sinha with Sh. R.V. Sinha, learned counsel for the respondents.

13. The fact that the applicant was eligible for promotion after ten years of regular service i.e. in 1993 is an admitted one. In compliance with the Court's order, the respondents held DPC on 10.04.2015 in which they considered eligible candidates, including the applicant, for promotion to the post of AEO for the years 1987-88 to 2005-06. Since there was a criminal case for which an FIR had been lodged and is pending trial, and he was facing departmental enquiry, his case was kept in sealed cover. Though it is the right of an employee to be considered for promotion but he does not have any right to be promoted.

14. Para no.7 of DOP&T OM No.22011/4/91-Estt.(A) dated 14.09.1192 reads as follows:-

"7. A Government servant, who is recommended by promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted,

will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in this case also.”

15 The three conditions mentioned in para 2 are the following:-

- “i) Government servant 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 criminal charge is pending.”*

16. In the light of the facts of this case, when the DPC was held on 10.04.2015 there was criminal case against the applicant which is pending trial and major penalty proceedings have been initiated in RDA Case No.01/60/2004, therefore, it is squarely covered by para 7 of the said Office Memorandum of 14.09.1992. The DPC held on 10.04.2015 viewing the gravity of charges against the applicant has kept his case in a sealed cover. Since this action of the respondents is in light of the OM dated 14.09.1992, we find no reason to interfere with it.

17. In view of the above discussion, the OA is dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)