

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.3206/2013
MA No.202/2017**

This the 10th day of April, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Umesh Kumar Sharma S/o late Rama Kant Sharma,
R/o C-5-D/3-B, Janakpuri,
New Delhi-110058. ... Applicant

(By Ms. Srija Choudhury for Ms. Madhumita Bhattacharjee,
Advocate)

Versus

1. Delhi Development Authority
through its Vice Chairman,
Vikas Sadan, New Delhi.
2. Shri Mahipal Singh,
Deputy Director (PR).
3. Shri Rajpal Singh (Retired),
Deputy Director (LM),
R/o C-7/216, DDA Staff Qtrs.,
Safdarjung Development Area,
New Delhi-110016.
4. Shri Dharmender Sharma,
Deputy Director (PB).
5. Smt. Neeru Bhasin,
Deputy Director (Housing).
6. Shri Tej Pal Singh,
Deputy Director (Vigilance).

7. Smt. Lalita Kumari,
Deputy Director (Personnel).
 8. Shri Gurcharan Singh,
Deputy Director (Personnel).
 9. Smt. Mahesh Prabha,
Deputy Director (Housing).
 10. Smt. Sarla Rani Batra,
Deputy Director (LM).
 11. Shri Kali Charan (Retired),
Deputy Director (Horticulture),
R/o F-100, Naya Gaon,
Usman Pur, Gali No.12,
Delhi-110053.
 12. Shri Om Prakash,
Deputy Director (Housing).
 13. Shri Pradeep Kumar,
Deputy Director (LM),
East Zone, DDA,
R/o A-2/166-13, DDA Staff Quarters,
Lawrance Road, New Delhi-110053.
 14. Shri Maha Singh Aggarwal,
Deputy Director (Com-cum-Secretary Office).
 15. Shri G. D. Panwar,
Deputy Director (Land Disposal).
 16. Shri Tej Pal Singh,
Deputy Director (Vigilance).
 17. Shri Om Singh,
Deputy Director (Land Dispsal).
 18. Mr. Flebia Ekka,
Deputy Director (LM).
All working at Vikas Sadan,
INA, New Delhi.
- ... Respondents

(By Mr. Arun Birbal, Mr. Manish Garg, and Mr. Vijay Saini
Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant, who is working as Assistant Director (Ministerial) in the Delhi Development Authority, the first respondent herein, was entrusted with the duty of Invigilator in the departmental examination conducted for selection of candidates to the post of Lower Division Clerks on 27.01.2013 at Kendriya Vidyalaya, INA Colony, New Delhi. Stating that disciplinary proceedings are contemplated against the applicant, the appointing authority passed an order dated 15.02.2013, placing him under suspension. He was served with a memorandum dated 04.04.2013 alleging his involvement in the change of coding slips in the departmental examination held on 27.01.2013. The applicant submitted his explanation on 08.04.2013 stating that he has no role to play in handling the coding slips. Taking the same into account, the appointing authority revoked the order of suspension on 19.06.2013.

2. While the applicant was under suspension, the DPC for promotion to the post of Deputy Director (Ministerial) met, and on the basis of recommendations made therein, the orders of promotion were issued on 29.05.2013. It is stated that the

sealed cover procedure was adopted in case of the applicant. This OA is filed challenging the action of the respondents in not promoting the applicant to the post of Deputy Director (Ministerial).

3. It is stated that there was absolutely no basis to adopt the sealed cover procedure in respect of the applicant, since no charge memorandum was issued to him. It is further pleaded that even an Assistant Director, who was facing the criminal charges, was promoted on *ad hoc* basis, whereas the applicant was totally denied the benefit of promotion.

4. The respondents filed a counter-affidavit opposing the OA. According to them, the sealed cover procedure was adopted since the applicant was placed under suspension. It is stated that a note was already initiated for commencement of penalty proceedings against the applicant, and that the applicant has no right to be promoted. It is also stated that the prescribed procedure was followed in the context of effecting promotion to the post of Deputy Director.

5. We heard Ms. Srija Choudhury for Ms. Madhumita Bhattacharjee, learned counsel for the applicant, and Shri Arun

Birbal, Shri Manish Garg and Shri Vijay Saini, learned counsel for the respondents.

6. The applicant is holding the post of Assistant Director (Ministerial). Promotion from that is to the post of Deputy Director (Ministerial). It is not in dispute that the applicant is in the zone of consideration. However, in his case, the sealed cover procedure was adopted.

7. The applicant was placed under suspension on 15.02.2013, on the ground that he failed to discharge his duties properly as an Invigilator. Though the suspension order was issued in contemplation of the disciplinary proceedings, it was revoked on 19.06.2013. Even by the time the DPC was convened or the promotions were made, the applicant was not issued any charge memorandum.

8. The steps for promotion to the post of Deputy Director were, no doubt, initiated at a time when the applicant was under suspension. In view of the judgment of the Hon'ble Supreme Court in *Union of India v K. V. Jankiraman & others* [(1991) 4 SCC 109], the sealed cover procedure was adopted in case of the applicant, because he was under suspension. However, once the suspension was revoked on 19.06.2013, and

there did not exist a charge memorandum, the respondents were under an obligation to open the sealed cover and extend the benefit of promotion to the applicant, depending upon the recommendations of the DPC.

9. We, therefore, allow the OA and direct the respondents to open the sealed cover adopted in case of the applicant in the context of promotion to the post of Deputy Director (Ministerial), and take further steps in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. In the event of the applicant being promoted, the authority shall decide whether he is entitled to be paid any arrears. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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