

**Central Administrative Tribunal
Principal Bench**

OA No.1872/2016

New Delhi, this the 28th day of January, 2019

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

Shri Anurag Vardhan
Aged about 47 years
S/o Sh. Harsh Vardhan
R/o Flat No.712, Tower-5
Silver City Apartment
Sector-93A, NOIDA(UP).
(Presently working as Dy. Commissioner of
Income Tax, Delhi). ... Applicant

(By Advocate: Shri S.K. Gupta)

Vs.

Union of India through

1. Secretary, Ministry of Finance
Department of Revenue
North Block, New Delhi.
2. Chairman
Central Board of Direct Taxes
Ministry of Finance
Department of Revenue
North Block, New Delhi.
3. Director General of Income Tax(Vig)
Dayal Singh Library
1, Deen Dayal Upadhyay Marg
Delhi-110002. ...Respondents

(By Advocates: Ms. Madhurima Tolia, Shri Gyayendra Singh and Shri Aamir Sheikh for Shri Hanu Bhaskar)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant is an IRS Officer of 1994 batch. By the year 2003, he was working as Deputy Commissioner Income Tax. Two criminal cases were registered against him, namely,

1) CC No.13/12 RC No.DAI-2003-A0031/CBI/ACB/New Delhi for the offences punishable u/s 120- of IPC r/w 7,8,12 and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, and

2) CC No. 04/13 RC No.RC-DAI-2003-A-0043/CBI/ACB/New Delhi for the offences punishable u/s 13(2) read with Section 13(1)(e) of Prevention of Corruption Act. Both the cases were tried by the Court of Ms. Swarana Kanta, Seacial Judge, CBI-05, Patiala House Courts, New Delhi. Through two separate judgments dated 25.11.2014 and 22.01.2015, the learned trial judge acquitted the applicant in both the cases.

2. Even while the criminal cases were pending, the respondents issued charge memo dated 07.09.2005 and 30.08.2006 respectively to the applicant. He filed OA

No.2728/2008 and 2054/2009 challenging the charge sheets. It was pleaded that the charges were not approved by the prescribed authority. Reliance was placed upon the judgment of the Hon'ble Delhi High Court in ***Union of India v B.V. Gopinath*** dated 28.07.2009. The OAs were allowed and charge sheets were set aside. Liberty was given to the respondents to issue fresh charge sheets.

3. Two fresh charge sheets were issued to the applicant on 06.01.2014 and 11.06.2014. Though the applicant filed OA Nos. 3977/2015 and OA No.4427/2015 challenging the charge sheets, they were dismissed by the Tribunal on 10.10.2018 taking note of the fact that the inquiry officer was already appointed and that the inquiry was in progress.

4. When the proceedings before the criminal court as well as in the department were pending, the respondents convened the DPC twice, in February, 2005 regarding promotions to the post of Joint Commissioner. Sealed cover procedure was adopted in the case of the applicant, since disciplinary proceedings were pending against him. Several officers, juniors to him were promoted.

5. This OA is filed challenging the action of the respondents in not opening the sealed cover. It is stated that once the criminal cases ended in acquittal and a set of charge sheets was quashed by the Tribunal, there is absolutely no basis for not opening the sealed cover. Other grounds are also pleaded.

6. Respondents filed a counter affidavit opposing the OA. It is stated that the criminal case is ended in acquittal and first set of charge sheets was set aside on technical grounds and that another set of charge sheets was issued with the permission of the court. According to the respondents, the sealed cover maintained in respect of the applicant was opened in October, 2016. It is stated that the applicant has to wait till the conclusion of the disciplinary proceedings and in case he is successful therein, he would get the promotion and other benefits.

7. We heard Shri S.K. Gupta, learned counsel for the applicant and Ms. Madhurima Tolia, Shri Gyanendra Singh and Shri Aamir Sheikh for Shri Hanu Bhaskar, learned counsel for the respondents, in detail.

8. The only relief which the applicant claimed in this OA is in the form of a direction to the respondents to open the sealed cover. In ordinary course of things, such a relief cannot be granted, as long as the disciplinary proceedings are pending. In this case, an interesting development has taken place. Without there being any interim or final order, the respondents have themselves chosen to open the sealed cover pertaining to the applicant, in October, 2016. It is not in dispute that the DPC met way back in the year 2005 and the criminal cases ended in acquittal, after a lapse of 12 years. The first set of charge sheets in the departmental proceedings were set aside and the second set is at the nascent stage. Some responsible officer in the administration may have felt that it is not in the interest of the department to permit stagnation of the matter for such a long time, and depending upon the findings of the DPC about the applicant, the benefit of promotion can be granted subject however, to the outcome of the disciplinary proceedings.

9. For the past 14 years, the applicant had to remain as a mute witness to the promotion of his juniors, initially, to the post of Joint Commissioner and thereafter to the post of Additional Commissioner. The charges are also not that serious or severe as to warrant his being kept completely outside the administration.

10. Though, we would not have been inclined to direct the respondents to open the sealed cover, we are of the view that the matter needs to be taken to a logical conclusion, once it is opened. If the applicant is not promoted, despite his having been recommended as fit by the DPC which met in 2005 the inference would be that somebody who is indisposed against the applicant wanted to peep into the cover and to ensure that even if the disciplinary proceedings ended in his favour, let a new ground be prepared to deny him the promotion for all time to come. Such tendencies would not at all be in the interest of administration and it may in fact be dangerous also. We prefer to take the positive side of the opening of the sealed cover.

11. We, therefore, allow this OA in part, directing that the applicant be promoted to the post of Joint

Commissioner on ad hoc basis with effect from the date on which his immediate junior was promoted; provided he was declared fit by the DPC which met in February, 2005. Such a measure shall be without any arrears of salary nor it shall be treated as a regular promotion. This exercise shall be completed within two months from the date of receipt of a copy of this order.

12. We make it clear that if the applicant is imposed any punishment, in the pending disciplinary proceedings, he shall not be entitled to claim any benefit whatsoever on the basis of the ad hoc promotion so made. Similarly, if he is held not guilty of any charge framed against him, he shall be entitled to be extended the benefit of regular promotion together with the difference of salary in accordance with law.

13. All pending MAs shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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