

**Central Administrative Tribunal
Principal Bench**

OA No.1308/2019

New Delhi, this the 23rd day of July, 2019

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

Andrew WK Langstieh,
Group 'A', Aged 59 years,
(Additional Deputy CAG),
Flat No.C/2, Tower-8,
New Moti Bagh,
New Delhi-110021.

...Applicant

(By Advocate : Ms. Niyati Ramakrishnan for Shri Ashwath Sitaraman)

Versus

1. Union of India,
Secretary, Department of Expenditure,
Ministry of Finance, North Block,
New Delhi-110001.
2. Establishment Officer & Secretary,
Appointments Committee of the Cabinet,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pensions,
North Block,
New Delhi-110001.
3. Central Vigilance Commission,
Satarkta Bhawan, G.P.O. Complex,
Block-A, INA,
New Delhi-110023.
4. The Comptroller & Auditor General of India,
Pocket 9, Deen Dayal Upadhyaya Marg,
New Delhi-110124.

...Respondents

(By Advocate : Ms. Piyush Gaur, Ms. Tatini Basu and
Ms. Eshita Baruah with Ms. Priya Barua)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant is an officer of Indian Audit & Accounts Service (IA&AS), of 1982 batch. He has been promoted upto the stage of Additional Deputy Comptroller & Auditor General. The next promotion is to the post of Deputy CAG. He was sent on deputation as Chairman of Damodar Valley Corporation, under the Ministry of Power, in the year 2014 and 2018. Thereafter he was repatriated to his parent department.

2. The applicant became eligible to be considered for promotion to the post of Deputy CAG. The DPC which met on 22.01.2018, found the applicant fit to be promoted and his name was forwarded to the Ministry of Finance for further steps in the matter. The office of CAG, 4th respondent herein, received a communication from the Ministry of Finance on 28.03.2018, seeking vigilance status of the applicant. Shortly thereafter, the 4th respondent received a letter dated 12.04.2018, from the Ministry of Power, on the vigilance status of the applicant relating to the period during which, the applicant was on deputation. One week thereafter, three

complaints received in the year 2015, against the applicant were forwarded to the respondent No.4. The matter has also received attention of the Central Vigilance Commission (for short, CVC), the 3rd respondent herein. Correspondence ensued between the CVC, the 3rd respondent on the one hand and Ministry of Power, on the other.

3. Since the matter pertaining to the promotion of the applicant was delayed, he filed OA No.3342/2018. The OA was disposed of on 31.10.2018, directing the respondents to finalise the matter pertaining to the promotion of the applicant, within a period of four weeks. The orders of promotion were issued on 01.10.2018, in favour of one Shri Vijayraghavan Ravindran, a junior to the applicant, as Deputy CAG. The case of the applicant was not cleared on account of an advice given by the CVC on 29.01.2019, at the first stage. The 4th respondent, in its capacity as the disciplinary authority, however, has taken a view that there is no necessity to initiate disciplinary proceedings against the applicant. It is at that stage, that the present OA was filed, with a prayer to declare action of the respondent No.3 in withholding vigilance clearance to the applicant, as illegal and

arbitrary, and that none of the circumstances laid down in the DOP&T OM's dated 14.09.1992 and 02.11.2012, exist in the case of the applicant and thereby he is eligible to be promoted. Other ancillary reliefs are also prayed for.

4. The applicant contends that once: a) no criminal case is instituted against him, b) no departmental proceedings are initiated and c) he is not under suspension, there was no basis for withholding the vigilance clearance and denying promotion, particularly, when his junior was promoted. It is also submitted that the action of the respondents is contrary to law laid down by the Hon'ble Supreme Court in ***Union of India Vs. K.V. Janakiraman*** AIR 1991 SC 2010, and the various Office Memoranda, issued in this behalf.

5. Respondent Nos.1&2, respondent No.3 and respondent No.4 filed separate counter affidavits. In a way, the respondent No.4 supported the case of the applicant stating that it has taken a decision not to initiate any disciplinary proceedings against the applicant and that his case be considered for promotion. Respondent Nos.1&2 have filed counter affidavit stating

that respondent No.3 has differed with the advice of the 4th respondent and the matter needs to be dealt with, in accordance with law. Respondent No.3 stated in their counter affidavit that on examination of record and the material received from the concerned Ministry, it advised the initiation of disciplinary proceedings against the applicant and further steps need to be taken, in accordance with law.

6. We heard Ms. Nitya Ramakrishnan for Shri Ashwath Sitaraman, learned counsel for applicant and Shri Piyush Gaur, Ms. Tatini Basu and Ms. Eshita Baruah, learned counsel for respondents.

7. The case was heard at length on earlier occasions, in the context of granting of the interim relief. It is a matter of record that the case of the applicant was considered for promotion to the post of Deputy CAG by the DPC and the matter had also reached the ACC, the 2nd respondent. As required under the prescribed procedure, the 2nd respondent called for the vigilance clearance. At that stage, the applicant faced a stumbling block, in the form of an advice tendered by the CVC at the first stage. However, the disciplinary authority has

taken the view that there is no necessity to initiate disciplinary proceedings. In a way, there was a disagreement between respondents No.3 and 4, in this behalf.

8. In matters of this nature, the respondent No.1 i.e. DOP&T is vested with the power to resolve the conflicts. In Office Memorandum dated 28.09.1978, the course of action to be adopted in matters of this nature is indicated. Para 2 thereof reads as under:-

“2. With a view to bringing about greater uniformity in examining on behalf of the President the advice tendered by the CVC and taking decisions thereon, it has been decided that this Department should be consulted before the Ministries/ Departments finally decide to differ from/not to accept any recommendation of the Central Vigilance Commission in those cases which relate to Gazetted Officers for whom the appointing authority is the President. Such a reference to this Department in those cases should be made at the following stages :-

- (i) where the Central Vigilance Commission advises action on a complaint or an investigation report or further investigation into any allegation against an officer, but the concerned administrative Ministry/ Department proposes not to take any further action on the complaint/investigation report, and

- (ii) the concerned administrative Ministry/Department proposes not to accept the second stage advice of the CVC on (a) a report of an Inquiring Authority or (b) the explanation submitted by an officer in reply to a chargesheet in minor penalty proceedings.”

9. In the instant case, the situation contemplated in 2(i) has arisen. The disciplinary authority has disagreed with the advice tendered by the CVC. The OM is to the effect that the DOP&T has to be approached by the disciplinary authority before any final decision is taken in the context of differing with advice tendered by the CVC. For one reason or the other, respondent No.4 has straight away differed with the advice tendered by the respondent No.3 and decided not to initiate any disciplinary proceedings against the applicant. In a recent communication dated 19.07.2019, the DOP&T informed the 4th respondent as under :-

“OFFICE MEMORANDUM

Subject : Case of Promotion of Shri Andrew W.K. Langstieh (IA&AS: 1982).

The undersigned is directed to refer to Comptroller and Auditor General of India's proposal forwarded to this Department vide letter No.49-PD(P)/86-2012/Vol.V.Addl. dated 30.05.2019 to resolve the disagreement between Central Vigilance Commission (CVC) and

Disciplinary Authority (DA) Comptroller & Auditor General of India (C&AG).

2. In this regard, it is to state that on examination of the matter in this Department, it has been observed that since DA (CAG) has already taken a final decision in the matter, the disagreement cannot be resolved at this stage. Hence, the original case records are returned herewith.

3. This issues with the approval of the Competent Authority.

Encl : Original records received from C&AG).”

10. In the aforesaid communication, the DOP&T expressed its inability to resolve the disagreement, since the 4th respondent has already taken a final decision.

11. As the law stands now, the decision taken by respondent No.4, not to initiate any disciplinary proceedings cannot be found fault with, and the advice tendered by the respondent No.3 cannot come in the way of the case of the applicant being considered. It is, however, for the concerned agencies/departments to put forward their version, as regards the vigilance clearance in respect of the applicant, which in turn becomes a factor to be taken into account by the 2nd respondent.

12. We, therefore, dispose of the OA, directing that the ACC i.e. 2nd respondent, shall take into account, the letter dated 19.07.2019 addressed by the DOP&T and decide the nature of steps to be taken in the light of that, within a period of four weeks from the date of receipt of a certified copy of this order. In case any steps are required to be taken by the respondent No.4 in this behalf, they shall take them within that period.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

‘rk’