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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2784/2003

New Delhi, this the 10th day of November, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

Rai Singh Dabas
S/o Late Sh. Dhir Singh
R/o RZ 108, Lokesh Park
Nazafgarh
Delhi - 43. ... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India
Through Secretary, MHA
North Block
New Delhi.
2. Commissioner of Police
Police Headquarters
New Delhi.
3. Addl. Comm. of Police
[PCR and commn.]
PHQ, IP Estate
New Delhi.
4. Jt. Comm. of Police (HQ)
PHQ, I.P.Estate
New Delhi.
5. Addl. Deputy Commissioner of Police
PCR, Police Complex
Model Town
Delhi.
6. Sh. P.S.Bhushan
Addl. DCP (Land And Building)
PHQ, IP Estate
New Delhi. Respondents

(By Advocate: Sh. Vijay Pandita)

ORDER

By Mr. Justice V.S.Aggarwal:

Delay in filing of the present application is condoned.



2. Applicant (Raj Singh Dabas) by virtue of the present application seeks setting aside of the order of 30.10.2002 to the extent that "the recommendations of the DPC are for admission of name if Promotion List F w.e.f. 15.1.86 is deemed to have been in sealed cover,". He further seeks that the sealed cover may be directed to be opened and the applicant, who is found fit, be declared as promoted to the post of Inspector from 17.2.1986 with all consequential benefits. The applicant should be further considered and promoted as Assistant Commissioner of Police from the year 2000 or in the alternative to conduct a fresh Departmental Promotion Committee/review DPC for considering the name of the applicant for promotion to the post of Assistant Commissioner of Police.

3. The facts of the present case are not disputed. The applicant joined the Border Security Force as Sub-Inspector on 19.1.1970. He was confirmed against the said post in the Border Security Force in the year 1973. On 9.6.1984, the applicant joined the Delhi Police on deputation as Sub Inspector. He was permanently absorbed as such in Delhi Police on 9.6.1986. On 1.10.1987, the applicant was promoted as Inspector after the Judgment of this Tribunal in OA 856/1990. He was confirmed as such on 1.10.1989.

4. In the matter of **Sub-Inspector Roop Lal & Anr. v. Lt. Governor through Chief Secretary, Delhi & Ors.**, Civil Appeal Nos.5363-64 of 1997, decided by the Supreme Court on 14.12.1999, benefit of seniority was granted to the applicant and another similarly situated person. The Ministry of Home Affairs



circulated the Judgment of the Supreme Court referred to above for compliance.

5. The precise grievance of the applicant is that after revision of the seniority of the applicant and others in the rank of Sub-Inspector, the applicant and others became entitled for their promotion to the rank of Inspector from 17.2.1986 instead of 1.10.1987. A review Departmental Promotion Committee (for short 'DPC') meeting was held. It is not in dispute that the DPC met on 6.8.2001 and recommended the names of both the officers including the applicant for admission to Promotion List 'F' (Ministerial). In order to give effect to the findings of the review DPC, various notifications regarding seniority and promotion were cancelled. In the meantime, the applicant was placed under suspension from 1.8.2001 by the disciplinary authority. Having regard to the fact that applicant has been placed under suspension he was not promoted to the rank of Inspector. Later on, it transpires that the notification with regard to the promotion of the applicant to the rank of Inspector from 1.10.1987 was cancelled inadvertently. The mistake of having cancelled the earlier promotion orders was rectified by issuing an order of 25.10.2002. However, keeping in view that the applicant had been suspended, the findings of the review DPC were kept in a sealed cover.

6. It is not in dispute that subsequently as a result of the departmental proceedings that were initiated, the applicant's name was removed from service. Certain other departmental inquiries, that were pending against the applicant, have been kept in abeyance.



7. It is on these admitted facts that the learned counsel for the applicant urged that the name of the applicant had to be considered for promotion with effect from 15.1.1986. On that date, there was precious little against the applicant. Therefore, the orders passed of keeping the name of the applicant in a sealed cover cannot stand scrutiny. It has been vehemently argued that material upto 1986 could only be taken into consideration and consequently neither the suspension order issued in the year 2001 could be considered nor the subsequent order removing the applicant from the service can be take note of.

8. As against this, respondents' arguments were that the Departmental Promotion Committee had to see the record on the date when they met. Since the applicant has been removed from service, he cannot get any benefit till that order of removing the applicant from service is set aside.

9. In order to appreciate the relevant contentions, we deem it necessary to mention that the Departmental Promotion Committee meeting took place on 6.8.2001. The applicant had placed under suspension from 1.8.2001. The order for departmental action and appointment of Inquiry Officer along with the summary of allegations is dated 6.8.2001. Copy of the order is Annexure R-4.

10. We know from the decision in the case of **UNION OF INDIA v. K.V.JANAKIRAMAN**, AIR 1991 SC 2010 that promotion cannot be withheld merely some disciplinary or criminal proceedings are pending. The denial of the benefit can only be done or sealed cover procedure can be adopted if at the relevant time the charge sheet has already been served.



11. This question had been considered by the Supreme Court in the above cited case and it was held:

“6. It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point.”

In fact, the Full Bench of this Tribunal had held:

“(1) considering for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;”

The Supreme Court found that there was a contradiction between the two conclusions and wanted to be read harmoniously. The Supreme Court directed that it should be read as:

“.....The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

12. Perusal of the aforesaid clearly show that so far as the conclusion No.1 is concerned, the Supreme Court directed that at



the relevant time, such proceedings should be pending or at that time when charge sheet has already been issued to the employee.

13. To the same effect, is also the Government of India, Departmental of Personnel and Training's OM No.22011/4/91/-Estt.(A), dated 14.9.1992. It provided that "at the time of consideration of the case of a Government servant for promotion, certain particulars have to be given". This includes, if the Government servant is under suspension, etc. or not. In this regard, further instructions as reproduced in Para 17.9 in **Swamy's Establishment and Administration** (9th edition-2003 - Page 857) assumes great importance. The same reads:

"17.9 A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para. 11.1 above arises 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 part will be applicable in his case also."

14. Reading from both these Government of India's instructions together, it is obvious that when the Departmental Promotion Committee meeting took place and they recommended the name of the applicant to be placed in the Promotion List 'F' from the year 1987 referred to above, but even if the departmental proceedings had been initiated subsequently after the recommendations and before he is promoted, his case could be kept in a sealed cover.

15. These instructions are neither subject matter of any controversy nor they are being assailed in the present application.



Resultantly, taking note of the aforesaid, it is obvious that the DPC meeting took place on the same date, i.e., the date when the summary of allegations were served to the applicant. The applicant had been placed under suspension on an earlier date. Obviously, before he could be actually promoted, the departmental proceedings had been started and in face of the above said instructions, the claim could be kept in a sealed cover. Resultantly, the application in the present circumstances must be held to be without merit.

16. We were informed that the applicant has already filed an application challenging the order removing him from service. Therefore, the application has necessarily to be disposed of in the light of the findings that may be arrived at in that Original Application.

17. For these reasons, we dismiss the present Original Application but with the rider that in case the order removing the applicant from service is set aside, necessarily benefit can accrue to the applicant.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/