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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 240 of 2003

New Delhi, this the 25th day of November, 2003

HON'BLE MR. V.K. MAJITHRA, ~~VICE CHAIRMAN~~ (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Bani Singh
S/o Late Shri Ramlal,
Dy. Commissioner of Income Tax,
D-208 Anand Vihar,
Delhi-110 092.

...Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

1. Union of India through
Secretary to the Government of
India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
 2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi.
 3. The Director General of Income Tax
(Vigilance),
Dayal Singh Library,
New Delhi.
- ...Respondents

(By Advocate: Shri V.P. Uppal)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA as he is aggrieved of the orders dated 27.6.2001 and 11.12.2002 whereby the respondents have withheld the applicant's promotion to the post of Joint Commissioner of Income-Tax and Additional Commissioner of Income-Tax illegally and arbitrarily because on the date of promotion the applicant was neither under suspension nor any criminal charge-sheet had been served upon him. The applicant's deemed suspension had also been quashed by the this

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Tribunal on 6.2.2001 and the court has not yet framed any charge against the applicant on the CBI's report submitted under Section 173 of the Cr P.C.

2 The admitted facts of the case are that the applicant was that he was posted as Deputy Commissioner of Income Tax and on 29.8.1996 a case was registered against him by the CBI for holding assets disproportionate to his known source of income and the applicant was bailed out on 16.9.1996.

3 The applicant further submits that when his case for promotion was considered that the applicant was neither under suspension nor any criminal charge was served upon him so he was entitled for regular promotion because as per Janji Raman's case sealed cover procedure is resorted to only when charges are framed and a charge-sheet is served on the delinquent official by the court so the sealed cover procedure should have been adopted rather the applicant should have been given regular promotion.

4 The respondents are contesting the OA and submitted that the officers junior to the applicant were promoted to the grade of JCII in June, 2001 and sealed cover procedure has been adopted in his case as he was booked by the CBI authorities on the allegation for possessing disproportionate assets and since the applicant is being prosecuted in a criminal court for corruption charges, he cannot be promoted unless a final decision is taken by the criminal court so it is further submitted that under the relevant orders the charge-sheet should be framed by the court for the adoption of sealed

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cover procedure. The respondents relied upon an OM dated 14.9.92 for keeping the case under sealed cover, hence it is prayed that the OA be dismissed.

5 We have heard the learned counsel for the parties and gone through the record.

6 As per the OM dated 14.9.92 which deals with the subject of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. Paragraph 2 of the same provides that at the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specially brought to the notice of the Departmental Promotion Committee:-

(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 servant in respect of whom prosecution for a criminal charge is pending.

7. In paragraph 2.1 it is further provided that the DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution is pending. The assessment of

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the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover and then the sealed cover procedure should be adopted.

8. Shri Krishna appearing for the applicant submitted that on the date of DPC neither the applicant was under suspension nor any criminal charge-sheet was pending against him as the trial court has not yet framed the charge so the case of the applicant should not have been kept under sealed cover.

9. It was also pointed out that though the charges were framed to which the applicant had filed a review petition before the Hon'ble High Court and the charges were quashed so the applicant's case should not have been kept under sealed cover. The learned counsel for the applicant has also placed on record copy of the Hon'ble High Court's order. We have gone through the same

10. The counsel for the applicant further submitted that the trial against the accused starts after the charges have been proved and prior to that the case is on the initial stage.

11. We have considered the contentions raised by the counsel for the parties.

12. In this regard we may mention that though the charges framed by the criminal court had been quashed by the Hon'ble High Court but the Hon'ble High Court had remanded the case to the criminal court to take into consideration some documents which were submitted by the


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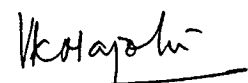
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accused and then to pass a fresh order whether the charges should be framed or not meaning thereby that the charges framed by the learned trial court had been quashed by the Hon'ble High Court but the accused (applicant) was still not discharged and the case has been remanded back to the trial court for reconsideration of the same. So now the question arises since the charges have not yet been framed whether the applicant is facing any criminal prosecution or not and whether the sealed cover procedure could be adopted or not. In this regard we may mention that the OM dated 14.9.1992 uses the words "that the sealed cover procedure could be adopted in respect of whom prosecution for a criminal charge is pending but it nowhere speaks that the charges have been framed against the applicant as required in trial of warrant case". The prosecution starts immediately after his filing of the report under Section 173 Cr.P.C. It is not denied that report under Section 173 Cr.P.C. has been filed by the CBI against the applicant and is pending for prosecution before the criminal court so we find that the department has rightly followed the procedure of sealed cover in case of the applicant as prosecution has been launched against the applicant for a criminal charges under prevention of corruption act. so no interference is called for.

13 In view of the above, OA has no merits and the same is dismissed. No costs


(KULDEEP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

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