
(2009) 12 DEL CK 0027
In the Delhi High Court
Case No : Writ Petition (C) 575 of 2009

D.N. Tanty

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0027

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rekha Palli and Poonam Singh, for the Appellant; Jyoti Singh and Ankur Chhiber, for the Respondent

Judgement

Pradeep Nandrajog, J.

CM No. 1276/2009

Allowed subject to just exceptions.

CM No. 1275/2009

1. Vide afore-noted application the delay in filing the writ petition is prayed to be condoned.

2. Needless to state, issue of delay and laches has to be considered while deciding on the relief prayed in the writ petition.

3. The application stands disposed of clarifying that the issue of delay and laches would be considered at the time of hearing of the writ petition and for said purpose the facts pleaded in the instant application would be considered.

W.P.(C) 575/2009

1. Three persons; namely, Sh. R.S. Sharma, Sh. I.A. Khan and the petitioner Sh. D.N. Tanty sailed in the same boat but have reached different destinations.

2. Whereas R.S. Sharma reached his destination without any turbulence and

earned promotion to the post of Deputy Commandant, I.A. Khan had to piggy ride on a writ petition filed and got relief from this Court. He earned promotion to the post of Deputy Commandant. The petitioner who was already working as a Deputy Commandant when all the three commenced their journey sought his destination i.e. promotion to the post of 2-IC (2nd in Command) when he filed the writ petition.

3. In the year 2005, there being vacancies to the post of Deputy Commandant and 2-IC under CRPF, the process to fill up the vacancies was commenced by short listing the eligible candidates and obtaining vigilance clearance for all to ensure that none was facing a departmental inquiry or was otherwise debarred to earn further promotion.

4. The Personnel Department of CRPF gave vigilance clearance in favour of all three. Qua the petitioner, vigilance clearance was granted on 29.1.2005.

5. The exact date on which the Departmental Promotion Committee met to empanel the eligible candidates for further promotion, is not on record since neither party has disclosed the same, but counsel concede that the Departmental Promotion Committee meetings were held somewhere between the month of August 2005 and October 2005.

6. It is not in dispute that as on the date when Departmental Promotion Committee meetings were held to consider the eligible Assistant Commandants for promotion to the post of Deputy Commandant as also when the DPC meeting was held to consider the eligible Deputy Commandant for promotion to the post of 2-IC, neither the petitioner nor Sh. R.S. Sharma nor Sh. I.A. Khan were issued any charge memo nor was any decision taken to initiate departmental proceedings against the three.

7. But, a report had been received by the department from the CBI on 9.12.2004 in respect of an inquiry conducted by CBI pertaining to examination conducted for the recruitment of constables (GD) in Bihar Centre. The report was to the effect that there were cuttings, over- writings and double markings in respect of the centre where I.A. Khan was posted and pertaining to the centre where the petitioner was posted the report was of marking by pencil. Qua R.S. Sharma the report stated that in the Centre in which he was posted it was found that markings by pencil was resorted to. It may be noted that the petitioner and R.S. Sharma were at the same centre.

8. It is apparent that the petitioner, Sh. I.A. Khan as well as Sh. R.S. Sharma were at par when the DPCs were held inasmuch as neither was issued any charge memo nor was a decision taken qua anyone of them to initiate departmental proceedings and all three were equally indicted in the report submitted by CBI.

9. Notwithstanding as aforementioned, R.S. Sharma was empanelled for promotion to the post of Deputy Commandant and was promoted in the year 2005 itself. But,

the recommendation pertaining to the petitioner and I.A. Khan were kept in a sealed cover on the ground that the CBI had indicted the two and the department was considering the report submitted by CBI for further action.

10. The three were later on issued a charge memo dated 6.1.2006 for a minor penalty and rejecting the response submitted by the three, all three were awarded the penalty of censure.

11. It is apparent that the penalty imposed upon all the three related to a charge memo issued much after the dates when the DPC meetings were held. The result was that the penalty did not have any effect whatsoever on R.S. Sharma. The petitioner and I.A. Khan suffered the effect of the penalty for the reason the sealed cover in which recommendations of the DPC Committee were kept qua them were not opened.

12. I.A. Khan filed a writ petition registered as W.P.(C) No. 20/2007 alleging that neither a charge memo being issued to him nor a decision taken in the file to initiate any departmental inquiry against him when the DPC met to consider the eligible Assistant Commandants for promotion to the post of Deputy Commandants, the respondents could not place recommendations qua him in the sealed cover. He pleaded parity with Sh. R.S. Sharma.

13. The writ petition filed by I.A. Khan succeeded vide judgment and order dated 1.2.2008 passed by a co-ordinate Division Bench of this Court. With reference to the decisions of the Supreme Court reported as Union of India Vs. K.V. Jankiraman, etc. etc., and Union of India (UOI) and Others Vs. Sangram Keshari Nayak, it was held that law was clear: if on the date when the DPC met neither was a charge memo issued nor was a decision taken on the file to initiate departmental action against an eligible candidate, sealed cover procedure could not be resorted to. The Division Bench noted a decision of the Supreme Court reported as JT 2000 (4) SC 649 UOI v. R.S. Sharma wherein the Supreme Court had held that notwithstanding the candidate being neither issued a charge memo nor a decision taken to initiate departmental action against him when the DPC met, but before the recommendations of the DPC are implemented, the candidate comes under a cloud for a serious offence, in such circumstance the recommendations of the DPC can be deferred till the inquiry is completed with reference to the offence noted. Thus, the Division Bench considered the seriousness of the charge against I.A. Khan and held that the CBI report did not indict him of an offence which could cast the shadow of dark clouds over him. Thus, a mandamus was issued to give effect to the recommendations of the DPC qua I.A. Khan. It may be noted that the Division Bench noted that by the time I.A. Khan had filed the writ petition, the charge memo had been issued against him for a minor penalty. Notwithstanding said fact, the mandamus was issued.

14. The respondents accepted the decision of the Division Bench of this Court in favour of I.A. Khan and opened the sealed cover in which recommendations of the DPC qua I.A. Khan were kept and since he was empanelled for promotion by

the DPC, the same has been given effect to.

15. The petitioner continued to make representations that even he be treated at par with R.S. Sharma and I.A. Khan. But getting no response was constrained to file the instant writ petition.

16. We note that during the pendency of the writ petition, pursuant to recommendations of a DPC meeting held in the year 2009, the petitioner has been promoted to the post of 2-IC, but claims entitlement to have the sealed cover opened qua him. The reason is obvious. If empanelled by the DPC, the petitioner would earn promotion from the date the person immediately junior to him was promoted.

17. To the reader of this decision it would be obvious by now that the petitioner claims the benefit of the same legal reasoning which has been adopted by the Division Bench of this Court in favour of I.A. Khan. The respondents opposed the same by urging that since penalty of censure was imposed upon the petitioner, he cannot be promoted on the basis of the recommendations of the DPC held in the year 2005, if favourable to him.

18. We need not reiterate the legal principles and the reason behind them, which have been culled out by a Co- ordinate Division Bench of this Court in the decision dated 1.2.2008 allowing W.P.(C) No. 20/2007 filed by I.A. Khan. We need to note the same in brevity and apply the same in the facts of the instant case to reach the logical conclusion.

19. But before that, the plea of delay and laches may be dealt with.

20. In CM No. 1275/2009 the petitioner has highlighted that his grievance surfaced when R.S. Sharma was promoted about which he learnt in the year 2007 and he made a representation thereafter. The petitioner further explains that soon thereafter the decision of the Division Bench came in favour of I.A. Khan and he made further representations and on getting no relief has approached the Court.

21. We are satisfied with the time spent by the petitioner with the department for the reason to take a contra view would mean that Courts would not encourage persons to seek departmental redressal and would compel them to rush to Court at the first moment of discord. Such a pedantic view would overburden the already over stretched judicial system.

22. Reverting to the merits, it is clear from the decision in I.A. Khans case, where the law laid down by the Supreme Court in three decisions i.e. in K.V. Jankiramans case, R.S. Sharmas case and Sangram Kesrais case was considered that the legal position is that recommendations of the DPC cannot be kept in a sealed cover if on the day the DPC met, the candidate was not issued a charge sheet nor was a decision taken to initiate a departmental action subject to one exception; being that, if subsequently the candidate concerned came under a cloud of a serious offence before the promotion order could be issued, in said

exceptional circumstance, the recommendations of the DPC could be kept in a sealed cover.

23. The Division Bench deciding I.A. Khans case (supra) has noted that the allegations against I.A. Khan did not pertain to a serious offence and hence directed that the recommendations of the DPC qua I.A. Khan be implemented.

24. We have noted hereinabove that the charge/offence against the petitioner is similar as that of I.A. Khan, and same as that of R.S. Sharma.

25. Thus, on the ratio of law laid down in I.A. Khans case (supra) we hold that the writ petitioner is entitled to the same relief.

26. The writ petition is disposed of with a direction to the respondents to open the sealed cover in which the recommendations of the DPC qua the petitioner have been sealed and if the petitioner has been found suitable for promotion to the post of 2-IC, the findings be given effect to with effect from the date the person immediately junior to the petitioner was promoted. The petitioner would be entitled to all consequential benefits of seniority and continuity/length of service except that for purposes of pay in the grade of 2-IC, the Competent Authority would take a decision as per the fundamental rule applicable. We clarify that if the Competent Authority holds that he has not worked as 2-IC and hence should not be paid the salary for said post, for purposes of fixation of pay notional pay fixation and increment benefit would be granted.

27. Since the issue at hand was not free from doubt, we refrain from imposing any cost.