
(2002) 08 DEL CK 0057

In the Delhi High Court

Case No : CW 1051/99

Shri Jaivir Singh Dheeman

APPELLANT

Vs

Airports Authority of India

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Citation : (2002) 99 DLT 553

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Vinod Kumar, for the Appellant; Aruneshwar Gupta, for the Respondent

Judgement

Vijender Jain, J.—Rule .

2. Petitioner has challenged the memorandum passed by the respondent on January 29, 1999. It is the case of the petitioner that the petitioner was not promoted to the post of Superintending Engineer re-designated as DGM-Engg. (Civil). It is the case of the petitioner that on 5.10.1995 the Departmental Promotion Committee for promotion of Executive Engineers to the post of Superintending Engineer was held and the name of the petitioner was also considered. However, a charge-sheet dated 27.12.1995 was issued by the respondent which was prepared by the Executive Director (Vigilance) of the respondent the same was received by the petitioner in the first week of January, 1996.

3. Mr. Vinod Kumar, learned counsel for the petitioner has contended that the petitioner had moved this Court by filing a writ petition (CWP No. 3440/96) and the petitioner was informed by the respondent that the case of promotion of petitioner was kept in a sealed cover till the pendency of disciplinary proceedings against him. The Court disposed of the said petition by an order to the following effect :

"The learned counsel for the respondent Mr. Chandhiok states that the sealed

cover would be opened and the respondent will pass appropriate orders.

The respondent shall open the sealed cover and pass appropriate orders as on the date of the DPC reckoning the date in the DPC. The respondent shall be at liberty to take into account punishment Imposed subsequently. Such order shall be passed on or before 31.1.1999. Petitioner shall be at liberty to challenge the same."

4. The outcome of the said order was the impugned order passed by the respondent on 29.1.1999. It is a short order which is reproduced below

"In compliance of the Hon"ble Delhi High Court's Order dated 14.12.1998, sealed cover of the DPC proceedings held on 05.10.1995 in respect of Sh. J.S. Dheeman for promotion to the post of Superintending Engineer has been opened. It is seen that the name of Shri J.S. Dheeman is appearing in the list for promotion to the post of Superintending Engineer [re-designated as DGM-Engg. (Civil)] However, since a penalty of stoppage of two increments with cumulative effect has been imposed upon Shri J.S. Dheeman vide Order No. Pers/IR/1102/13/95-JSD/580-583 dated 27.04.1998, he is not eligible for promotion during the currency of the penalty in accordance with the existing rules and guidelines of the Authority.

2. This issues with approval of the Competent Authority."

5. Mr. Kumar has contended that the impugned order was wholly illegal and contrary to the law as on the date of holding DPC no charge-sheet was served, no inquiry was pending and Therefore, the impugned order suffers from patent illegality. In support of his contention, learned counsel for the respondent has cited Union of India Vs. K.V. Jankiraman, etc. etc., , New Bank of India Vs. N.P. Sehgal and Another, and Union of India v. Dr. (Smt.) Sudha Salhan 1998 II AD (SC) 306.

6. On the other hand, learned counsel for the respondent has contended that although on 5.10.1995 the DPC was held but no promotion was given pursuant to the said DPC as a new DPC was held in the year 1996, he has further contended that an inquiry was contemplated against the petitioner even at the date of first DPC i.e. on 5.10.1995. He has contended that once an inquiry is contemplated in terms of the regulations, office memorandum dated 14.9.1992 issued by the Ministry of Personnel regarding adoption of sealed cover procedure which was made applicable on the petitioner, there was no infirmity in the impugned order. He has placed reliance on Union of India Vs. Kewal Kumar, .

7. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. There is an obvious fallacy in the argument of learned counsel for the respondent. From the bare perusal of the impugned order, non-promotion pursuant to the sealed cover to be opened on 5.10.1995 is not on account of any contemplated inquiry prior to that date. The order passed on January 29, 1999 makes it manifestly clear that petitioner was not given

promotion because penalty of stoppage of two increments with cumulative effect was imposed upon him from 27.4.1998, That date is subsequent to the date when DPC was held on 5.10.1995. Even otherwise no record have been produced by the respondent to substantiate what has been stated in the counter affidavit. That inquiry against the petitioner was contemplated prior to 5.10.1995. In order to bring action of the respondent within the parameters of Rule 2.2 as has been contended before me by the learned counsel for the respondent no material has been placed before this Court. Supreme Court in Union of India v. Dr. Sudha Salhan (supra) while considering the law in this subject as enunciated in Janakiraman"s case held:

"The question, however, stands concluded by a Three Judge decision of this Court in Union of India Vs. K.V. Jankiraman, etc. etc., in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

8. Following the ratio of Dr. Sudha Salhan"s case (supra) I quash the impugned order dated 29.1.1999. The petitioner would be entitled for promotion from the date when DPC was held on 5.10.1995. Rule is made absolute.

9. Petition stands disposed of.