
(2002) 04 DEL CK 0049

In the Delhi High Court

Case No : CW No. 3505/94 and CMs. 6075/95 and 1301 of 1999

S.K. Verma

APPELLANT

Vs

Chairman, International Airport Authority

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Citation : (2002) 7 AD 237 : (2002) 98 DLT 199 : (2002) 63 DRJ 477

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

Bench : Single Bench

Advocate : S.C. Luthra, for the Appellant; Rajan Sabharwal, for the Respondent

Final Decision : Allowed

Judgement

Vijender Jain, J.—This petition can be disposed of at this stage. In view of the order passed by this Court on 10.8.2000 when the Court directed respondent de hors the argument of the petitioner that the result of the Departmental Promotion Committee (DPC) could not have been put in the sealed cover, to open the sealed cover and intimate the result of the DPC as far as the petitioner was concerned. The petitioner had obtained 54.8 marks out of 85 marks and he was found entitled for promotion. However, promotion has not been given to the petitioner from the date the petitioner was eligible for promotion on the basis of the DPC held on 19.4.1993.

2. It is contended by Mr. Sabharwal, learned counsel for the respondent that as an inquiry was to be conducted with regard to the petitioner, the petitioner could not have been granted promotion. The charge-sheet in this case was issued to the petitioner on 25.11.1994 whereas DPC met on 19.4.1993.

3. On the other hand, Mr. Luthra, learned counsel for the petitioner has contended that Government of India vide its Office Memorandum dated 14.9.1992 following the dicta laid down by the Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., laid down the following guide-lines.

"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 specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge pending."

4. On the basis of the aforesaid guide-lines it has been contended before me that the petitioner was neither under suspension nor a charge-sheet was issued to him nor any disciplinary proceedings were pending against him in 1993. He has also contended that no prosecution for a criminal charge was pending against the petitioner on 19.4.1993 when the DPC met. Therefore, there was no legal justification for the respondent not to give promotion to the petitioner from 1993 after the result of the DPC which was kept in sealed cover was opened pursuant to the directions by this Court.

5. On the other hand, Mr. Sabharwal has based his arguments on the judgment of Supreme Court in the case of Union of India Vs. Kewal Kumar, and has contended that a Government servant against whom an inquiry was contemplated or a decision was taken to initiate some disciplinary proceedings, the sealed cover principle was applicable in cases of such employees and petitioner cannot be given promotion from 1993.

6. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. The respondent as a matter of fact has not taken care of Office Memorandum dated 14.9.1992 issued by Ministry of Personnel, Public Grievances & Pensions, which was in supersession of the earlier instructions issued on 12.1.1988 which, inter alia, contemplated a situation that at the time of consideration of cases of Government servant for promotion even likelihood of or decision taken to initiate disciplinary proceedings ought to have been brought to the notice of the DPC and result of the DPC with regard to such Government servant could have been put in sealed cover. But after supersession of the said Office Memorandum of 1988, there was no justification for the respondent to carry on with the sealed cover before the DPC in terms of the guide-lines of 1992, none of the conditions were available for keeping the result of the Government servant in sealed cover who is falling in the consideration zone for promotion. The respondent has been given promotion in the year 2000 although that order does not state as to on what basis and from which date the petitioner stands promoted. As the respondent has wrongfully applied the OM issued by the Government of India on 14.9.1992, admittedly the petitioner was neither under suspension nor facing any charge nor was any criminal prosecution pending, there was no justification for the respondent to keep the result of the

DPC in the sealed cover even in 1993.

7. I quash the order of the respondent to keep the result of the DPC held in 1993 in sealed cover. In the consequences, writ petition is allowed. Petitioner is entitled to promotion from 1993 on the basis of the result of the DPC which met on 19.4.1993. Petitioner is also entitled to cost of the petition.

8. Petition stands disposed of.