

(1996) 09 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 4349 of 1995

S.P. Agarwal

APPELLANT

Vs

Delhi Municipal Corporation and Others

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 98

Citation : (1996) 64 DLT 198 : (1997) 1 LLJ 285 : (1996) RLR 483

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : P.Bhushan, S.K.Singhia, A.M.Singhvi, Jayanth Nath, Geeta Luthra, A.S. Chandhiok and Sarika Gandhi, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against the respondents, Delhi Electric Supply Undertaking (for short "D.E.S.U.") for issuance of a writ of mandamus to promote the petitioner to the post of Additional General Manager with effect from August 31, 1994 and quash the promotion of respondent No. 5 to the same post.

(2) The petitioner is a Chief Engineer (Electrical) with D.E.S.U. having joined as Assistant Engineer in the year 1962. The petitioner was thereafter promoted to the post of Executive Engineer in 1970, Superintending Engineer in 1981, Additional Chief Engineer in 1988 and Chief Engineer on regular basis in 1991. The organisation D.E.S.U. is headed by General Manager and has two Additional General Managers i.e. Additional General Manager (Technical-Distribution) and Additional General Manager (Technical-Generation) besides Administration. It is alleged that in August, 1994 there occurred a vacancy in Desu to the post of Additional General Manager (T-D). Since this post is a promotion post, it is required to be filled by holding a regular Dpc and after obtaining Vigilance and Disciplinary clearances of the candidates as per the rules. The petitioner, it is argued, was given Vigilance and Disciplinary clearance in August, 1994 and was eligible for being promoted to the above said post, the Vigilance clearance could

not be given to respondent No. 5, Shri Y.P. Singh who was also the Chief Engineer at that time, on account of Central Vigilance Commission having already recommended the initiation of Disciplinary proceedings for the imposition of a major and minor penalty against him in two separate cases. The said Commission had recommended the initiation of proceedings as far back as in December, 1991 in respect of the irregularities committed by respondent No. 5 in 1989 for the purchase of low tension Pvc armoured cables worth Rs. 84,15,750.00 The following facts and procedure for initiation of disciplinary proceedings as referred to in the writ petition may be reproduced as under : "(a) Any complaint against an Officer is first investigated by the Vigilance Department of Desu and if it is prima fade of the view that the complaint calls for initiation of disciplinary proceedings, it forwards the case to the Central Vigilance Commission which after its own investigation makes a recommendation as to whether the case calls for initiation of disciplinary/ vigilance proceedings for imposition of major/minor penalty against him. It is on this recommendation of the Cvc that a charge sheet is issued/not issued to the concerned Officer by Desu and thereafter if a charge sheet is issued a regular enquiry is 200 held at the conclusion of which, if the Officer is found guilty the Appointing Authority decides the punishment that should be imposed on the Officer. (b) In the above vigilance case against respondent No. 5 the Cvc had recommended the initiation of proceedings for imposing a major penalty against respondent No. 5 in December, 1991 (copy enclosed as Annexure A) after the case had been referred to it by the Vigilance Department of DESU. However, despite this recommendation Desu sat over the matter for the next two years. (c) In October, 1993 the General Manager, Desu wrote to the Cvc asking it to reconsider its advice for initiating proceedings against respondent No. 5. Copy of this letter is annexed hereto as Annexure B. In response to this the Cvc wrote back to Desu and severely criticised Desu for having sat on its recommendations for two years and observed that the delay seems to be intentional. The Cvc wrote that "the Commission considers that the delay was intentional. The Cvc would Therefore advice the General Manager, Desu who is functioning as Chief Vigilance Officer to explain the reasons for the delay that has occurred in this case." Further the Cvc reiterated its advice to initiate proceedings for major penalty against respondent No. 5 in this case. A copy of the CVC's letter dated 1st March, 1994 is annexed as Annexure C."

(3) The learned Counsel for the petitioner contends that Desu was bound to accept the advice of Central Vigilance Commission (for short CVC) and it was severely criticised for having held the charge sheet against respondent No. 5 in abeyance as it should have been processed as per the advice of the Commission. Instead when the vacancy for Additional General Manager (T-D) arose on August 31,1994, Desu issued an office order appointing respondent No. 5 to this post and tried to justify the action by terming it as a stop-gap arrangement which would not confer any financial benefits to the said respondent. The petitioner made several representations to Desu for filing up the post on regular basis and

copies of these representations dated November 14, 1994, December 15, 1994, February 10, 1995 and April 7, 1995 are filed as Annexures E-1 to E-4. The meeting of the Dpc was held by Desu for filling up the post of Additional General Manager on May 2, 1995 despite the fact that the charge sheet could have been issued against respondent No. 5 on the recommendation of the Cvc which was made as far back as in December, 1991 and reiterated on March 1, 1994. Therefore, respondent No. 5 was not eligible for being promoted. In the same Dpc the case of the petitioner for promotion to the post of Additional General Manager was also recommended. The minutes of the Dpc dated May 2, 1995, filed as Annexure "F" may be reproduced as follows : "Minutes of the meeting of the Dpc held on for making adhoc promotion to the grade of Addl. General Manager (Tech.) in the scale of pay of Rs. 5900-6700. present : 1. Shri Satish Chandra General Manager (E) Chairman 201 2. Shri M.K. Panda, Member Addl. General Manager (A) Agenda .Filling up of posts of Addl. General Manager (Tech.) on ad-hoc basis. The Dpc was informed that one post of Addl. General Manager (Tech.) is lying vacant consequent on superannuation of Sh. O.P. Anand from 31.8.94 (A.N.). The post is presently being looked after by Sh. Y.P. Singh, Senior-most Chief Engineer. One more post of Agm (T) will become available on 1.7.95 consequent on retirement of Sh. A.K. Bhargava, Agm (T) from 30.6.95. According to the notified R&P Regulations, the post of AGM(T) is required to be filled up by promotion, failing which by transfer-on-deputation (including short-term contract) and failing both by direct recruitment. Promotion is required to be made from amongst Chief Engineers (Elect./Mech.) with two years of regular service, in consultation with the UPSC. The Dpc was informed that in accordance with the directions given by the Hon. Delhi High Court in the Cwp No. 2908/91 and Cm No. 2978/93 filed by Sh. O.P. Anand since retired, the Undertaking is restrained from filling up the post of Addl. General Manager (Tech.) on a regular basis as the Court has allowed to fill the post on ad-hoc basis only. The Dpc was informed that Shri Y.P. Singh and Shri S.P. Aggarwal, Chief Engineers who are the senior-most officers available in the feeder grade have completed the requisite two years of regular service and are eligible for being considered for promotion to the post of Addl. General Manager (Tech.). The Dpc was informed that there is no disciplinary case pending against Sh. Y.P. Singh. As regards vigilance in one case, (VC/196-200/91-467-468/92) presently pending against him charge-sheet has not been issued. The Dpc was also informed that no charge-sheet has been issued against Sh. S.P. Aggarwal in any vigilance/discip. case so far. The Dpc accordingly considered the senior-most eligible officers S/Sh. Y.P. Singh and S.P. Aggarwal and recommended Shri Y.P. Singh for adhoc promotion to the post of Addl. General Manager (Tech.) against the vacancy lying vacant vice Sh. O.P. Anand, Retd. Sh. S.P. Aggarwal has been recommended for adhoc promotion in the vacancy to arise on 1.7.95 consequent on the retirement of Sh. A.K. Bhargava. Since the petition filed by Sh. O.P. Anand in the Court is still pending, their adhoc appointment shall be subject to any further directions from the Court in the matter. The Special Officer exercising the powers of Desc / Corporation, is requested to approve the minutes of the Dpc enclosed and the adhoc

appointment of S/ Sh. Y.P. Singh and S.P. Aggarwal, Chief Engineers as Addl. G.M. (Tech.) for a period up to 31.3.96 or till further orders or till such time the posts are filled on regular basis whichever is earlier subject to any further directions of the Court in the case filed by Sh. O.P. Anand. Sh. S.P. Aggarwal will however be actually promoted after 30.6.95 when the vacancy becomes available subject to VC/DC if necessary. This issues with the approval of G.M.(E). 202 sd/- (M.K. Parida) ADDL. General Manager (ADMN.)"

(4) The above said recommendations of the Dpc were approved by the Special Officer exercising the power of Delhi Electric Supply Committee. It is further alleged that in the note put up by the Additional General Manager (Administration) to the Special Officer after the Dpc meeting seeks to equate the vigilance status of the petitioner and respondent No. 5 by pointing out that there is one vigilance case pending against both the petitioner and respondent No. 5 and in both these cases, charge sheets have not been issued. The said respondent No. 5 was given adhoc promotion as Additional General Manager (Technical) vide Office Order dated May 4, 1995. In June, 1995, another vacancy arose to the post of Additional General Manager (T-G) and as per the earlier approval of the petitioner's promotion to the said post, a proposal was put up before the Special Officer exercising the power of Delhi Electric Supply Committee and was approved by him on June 28, 1995. Copy of the minutes filed as Annexure "J" to the writ petition read as follows : "MUNICIPAL Corporation Of Delhi Minutes of the decision dated 28.6.1995 of the Special Officer vested with the powers of Corporation. Item No. 4529: (Confidential) Place on Table) Decision No. 4687/ GW/Corp dt.28.6.95 As proposed by the GM(E) in his letter No. 1.6(1)/A&G/Tech./91/Mtg-4228 dated 28.6.1995, approval to the minutes of the Dpc as per Annexure to the letter aforesaid and to the adhoc promotion of Shri S.P. Aggarwal to the post of Addl. General Manager (Tech) in the pay-scale of Rs. 5900-6700 for a period up to 31.3.1996 or till further orders or till such time the post is filled up on regular basis, whichever is earlier, is accorded subject to any further direction of the Court in the case filed by Shri O.P. Anand."

(5) However, the orders of promotion of the petitioner were not issued and the same were kept in abeyance. The following office order dated June 29, 1995 was issued by the Special Officer. The same reads as follows : "Dated the 29th June, 1995 Decision No. 4687/CW/Corp. dated 28.6.1995 on Item No. 4529 regarding adhoc promotion of Shri S.P. Aggarwal to the post of AGM(T) in Desu be withheld and should not be issued till further orders. sd/- (Jagdish Sagar) Special Officer exercising power of the DESC/Corporation 29.6.1995 Municipal Secretary M.C.D." 203

(6) The learned Counsel for the petitioner has raised the following contentions:
(a) The petitioner and respondent No. 5 were the two Senior Chief Engineers in Desu on August 31, 1994 when a vacancy for the post of Additional general Manager (T-D) arose. On this date, respondent No. 5 had already been issued charge sheet on July 20, 1994 which was pending and it was only by an order

dated November 7, 1994 that these proceedings culminated in a penalty of Censure against the said respondent. Apart from this there was another vigilance case pending in which Cvc had as far back as on December 16, 1991, recommended the initiation of major penalty proceedings against him. The Desu sat on this matter for almost two years and on October 1, 1993 asked the Cvc to reconsider its decision which, however, was reiterated and plea of Desu was rejected and severe strictures were passed for deliberately delaying the issuance of charge sheet. Therefore, respondent No. 5 was not eligible to be considered for promotion on August 31, 1994. (b) Desu did not held any Dpc when vacancy arose on August 31, 1994 and gave a stop-gap promotion to respondent No. 5 with full powers of Additional General Manager and the advice of Cvc was not heeded and the matter was kept in abeyance. Thereafter on May 2, 1995 the Dpc proceeded to promote both the petitioner and respondent No. 5 on one vacant post and on another post falling vacant on June 30, 1995. This was illegal as respondent No. 5 had no right to be promoted in view of the severe charges pending against him. The petitioner was only entitled to promotion with effect from August 31, 1994. (c) The petitioner was subsequently granted adhoc promotion on the basis of recommendation of Dpc dated May 2, 1995 and an order was passed in this regard on June 28, 1995. The same was withheld on the specific intervention of the then Chief Minister of Delhi who was alleged to have exercised unwarranted interference in the matter. The malafide and arbitrary denial of promotion to the petitioner and the promotion of respondent No. 5 who was not eligible at the relevant time, cannot be sustained. The decision of Desu not to charge sheet respondent No. 5 for major penalty proceedings as recommended by Cvc was clearly malafide and the said respondent could not be promoted ahead of the petitioner. The withholding of the petitioner's promotion on June 29, 1995 which had been ordered a day earlier was malafide and inspired by the intervention of the then Chief Minister who had a grouse and animus against the petitioner.

(7) The learned Counsel for respondent Desu has contended that : (a) the settled position of law is that the advice of Cvc is not binding on the Disciplinary Authority. In fact, Desu (DMC) Service Regulations, 1981, which were enacted u/s 98 of the Dmc Act, 1957, deal with the disciplinary proceedings and are completely silent about seeking the advice of CVC. The Disciplinary Authority is entitled to take action on its own appreciation of facts as available with the advice of Cvc being one of the factors which has to be considered by the Disciplinary Authority. Service Regulations clearly stipulate that it is for the Disciplinary Authority to frame the charge-sheet. The acceptance of advice of Cvc as sole criteria for initiating disciplinary proceedings will vitiate such proceedings. The Authority has to apply its own mind whether to issue charge sheet or not. Reliance is placed on the judgments as reported in Sunil Kumar Banerjee Vs. State of West Bengal and Others, and Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, . Therefore, it cannot be argued that non-following of the advice of Cvc by Disciplinary Authority in the case of respondent

No. 5 was malafide or improper as has been falsely alleged. (b) the post of Additional General Manager (T-D) is the selection post and the settled position of law is that the petitioner has only a right to be considered for promotion and has no right to be promoted. Reference is made to the judgments as reported in State Bank of India and others Vs. Mohd. Mynuddin, and Union of India Vs. K.V. Jankiraman, etc. etc., . (c) A perusal of the record will show that the Appointing Authority withheld the promotion of the petitioner only on account of pending investigation in a vigilance case .which could not be properly processed as the Director, Vigilance, Desu had been sitting on the file and at the relevant time had locked it up in his custody and proceeded on leave. The promotion was not denied to the petitioner, it was merely withheld. (d) The Appointing Authority while considering the promotion to a selection post has to take into account various factors as available in the file. Pendency of some allegations and its non-investigation for some reasons is definitely one of the criteria that can be considered by the Appointing Authority. It does not mean that in every case where the investigations are pending, promotion has to be denied. In the present case there are material differences in the pending investigations in disciplinary proceedings in the case of respondent No. 5 and the petitioner. In the case of respondent No. 5, the Disciplinary Authority at no stage decided to initiate disciplinary proceedings. In fact three recommendations had been sent to Cvc to reconsider its advice for initiating disciplinary proceedings. On the other hand, in the case of the petitioner, investigations were stalled in the pending disciplinary case due to the conduct of Director (Vigilance) who sat on the file. Clearly promoting of respondent No. 5, despite pendency of investigations in a disciplinary case, while temporarily withholding promotion of petitioner due to pendency of investigations in a disciplinary case cannot be termed arbitrary. There are material and cogent grounds which distinguish the case of the petitioner and respondent No. 5. Contention of discrimination is not valid in these circumstances.

(8) I may now examine as to whether the advice of Cvc is binding on the Disciplinary Authority. The Supreme Court in Sunil Kumar Banerjee (supra) has 205 clearly defined the role of Vigilance Commission and the Disciplinary Authority. Paragraph 4 of this judgment reads as under : "4. We do not also think that the Disciplinary Authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the Disciplinary Authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Enquiry Officer in support of the charges, and the defense of the delinquent officer. In fact the final conclusions of the Disciplinary Authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the Disciplinary Authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the Disciplinary Authority arrived at its own conclusion on the material available to it, its findings

and decision cannot be said to be tainted with any illegality merely because the Disciplinary Authority consulted the Vigilance Commissioner and obtained his views on the very same material. One of the submissions of the appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the appellant to the Disciplinary Authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the Disciplinary Authority which were communicated to the appellant there was no reference to the views of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the Disciplinary Authority and it was wholly unnecessary for the Disciplinary Authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the Disciplinary Authority and not of the Vigilance Commission. That the preliminary findings of the Disciplinary Authority happened to coincide with the views of the Vigilance Commission is neither here nor there."

(9) Similar view was expressed by the Supreme Court in the case of Nagaraj Shivarao Karjagi (supra). Paragraph 19 of the judgment can be reproduced in this regard: "19. The corresponding new bank referred to in Section 8 has been defined u/s 2(f) of the Act to mean a banking company specified in Column I of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission 206 or the Central Government could dictate the Disciplinary Authority or the Appellate Authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's Judicial Review of Administrative Action, 4th edn" p.309). The impugned directive of the Ministry of Finance, is Therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

(10) The law is, Therefore, well settled that the advice of the Cvc is not binding on the Disciplinary Authority. It may, however, be desirable to abide by the said advice though statutory rules may not provide for the same and take it as one of the criteria to assess the case of the delinquent officer. The Disciplinary Authority, in any case, is supposed to make up its own mind by appreciation of facts and evidence on record which may be co-related to the advice of Cvc In the present case, the respondent Desu seems to have used dilatory tactics by

repeatedly ignoring the advice of Cvc and at the same time did not apply its mind or return a categorical finding in this regard. The legal position is not in doubt but once the advice of Cvc is obtained that recommends disciplinary proceedings the matter must be dealt with expeditiously and with utmost speed so that the action of the Disciplinary Authority may not be termed as tainted and malafide. The Disciplinary Authority has certainly to apply its own mind and arrive at independent conclusions. The subsequent adhoc promotion has since been granted to the petitioner as well as to respondent No. 5 on the basis of their eligibility and seniority in service. The action of the respondents, Therefore, though may not be based on total good faith, cannot be the subject matter of decision at this stage as respondent No. 5 has since been cleared by the Disciplinary Authority and there is no challenge to this finding in the present proceedings.

(11) The other plea which has been raised by learned Counsel for the petitioner is with regard to the adhoc promotion to the post of Additional General Manager as granted in the meeting of the Dpc held on May 2, 1995. The decision was taken in favor of the petitioner on June 28, 1995 when the petitioner was promoted on adhoc basis for a period up to March 31, 1996 or till further orders etc. This decision was withheld and the promotion of the petitioner to the post of Additional General Manager (T) was kept in abeyance. The petitioner has felt aggrieved by the same. While dealing with the case of respondent No. 5 against whom Cvc recommended disciplinary proceedings for imposition of major penalty, the learned Counsel for Desu adopted the argument that his promotion could not be withheld as no charge sheet had been framed against him on the basis of the judgment of the Supreme Court as reported in Union of India etc. v. K. V. Jankiraman etc. (supra) whereas contrary submission was made in the case of the petitioner that his promotion could be withheld though admittedly no charge sheet was issued to him as well.

(12) The Supreme Court in the above case has clearly held that it is only when a charge memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to an employee, it can be said that the departmental proceedings/criminal prosecution are initiated against the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the Authorities to adopt the sealed cover procedure or to withhold the promotion of the employee. 207

(13) Paragraph 6 of this judgment reads as follows : "6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that 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. The contention advanced by the learned Counsel for the appellant-authorities that when there are serious allegations and it takes times to collect necessary evidence to prepare and issue charge-memo/charge sheet, it Would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows : "(1) consideration 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; (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;" There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. 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." 208

(14) The learned Counsel for the respondents has relied upon this judgment to support the case of respondent No. 5 on the ground that as no charge memo was framed against him he could be granted promotion and there was no infirmity in the order of his promotion. However, a contrary stand as stated earlier is taken though the charges were more serious against respondent No. 5 in comparison to the case of the petitioner. It is contended that the case of the petitioner is different from the case of respondent No. 5. The following plea makes the interesting reading: "The Appointing Authority while considering the promotion to a selection post has to take into account various factors, as available in the file. Pendency of some allegations and its non-investigation for some reasons is definitely one of the criteria that can be considered by the Appointing Authority.

It does not mean that in every case where investigations are pending, promotion has to be denied. Merely because in one case due to pendency of investigation promotion is withheld and in another case during the pendency of the investigation promotion is granted, such a situation cannot attract the argument or contention of arbitrariness."

(15) This argument is totally fallacious. Respondent No. 5 was repeatedly recommended to be proceeded against by the Cvc The advice was totally ignored and he has now been subsequently exonerated. It can be said as stated earlier that the advice of Cvc may not be binding on the Disciplinary Authority and on its own application of mind, the said Authority has now found no basis in the allegations against respondent No. 5. However, same yardstick is not being applied to the case of the petitioner on irrational and baseless grounds. This attitude is certainly arbitrary and vocative of the rule of law. The malafide is writ large as subsequent to the filing of the present petition, respondent Desu woke up from its slumber and started proceeding against the petitioner by seeking the advice of CVC. This advice which was urgently sought by Desu is now received vide communication dated April 8, 1996 wherein the Commission advised Desu to initiate minor penalty proceedings against the petitioner and others. It is understood a formal charge sheet for minor penalty proceedings has been issued only against the petitioner but not against the other three officers against whom the same recommendation is made by the CVC. It will not be necessary to make any further reference as the validity of issuance of charge sheet and subsequent proceedings are not the subject matter of decision in the present writ petition. The petitioner was granted adhoc promotion with effect from June 28, 1995 when immediate protest was received from certain quarters and the promotion of the petitioner was withheld by a communication issued a day later. The matter was re-examined when the impugned order was issued. The facts were within the knowledge of respondents 1 and 2 and despite that petitioner was granted promotion in his own turn. The withholding of the same a day later on considerations which are not relevant in such matters were taken into account and a note was hurriedly prepared to justify the impugned action. It may be noticed that the Additional General Manager (Administration) Shri M.K.Parida recorded in his note while seeking approval of minutes of the meeting which considered the cases of petitioner and respondent No. 5 as follows : "S/Shri Y.P.Singh and S.P.Aggarwal, Chief Engineers who are the senior- most officers available in the feeder grade have completed the requisite two 209 years of regular service and are eligible for being considered for promotion to the post of Addl. General Manager (Tech). There are no disciplinary case pending against both these officers. However, in the vigilance cases pending against these officers, as per the report received from the vigilance department, (copy enclosed), charge-sheets are not so far been issued to them. Government of India instructions contained in DOP&T Om No. 22011/4/91-Estt.(A) dated 14.9.92 Government servants against whom vigilance cases are pending but no formal charge-sheet has been issued are required to be considered for

promotion. The Dpc accordingly considered the senior-most eligible officers S/ Shri Y.P. Singh and S.P. Aggarwal and recommended Shri Y.P. Singh for adhoc promotion to the post of Addl. General Manager (Tech) against the vacancy lying vacant vice Sh. O.P. Anand, Retd. Sh. S.P. Aggarwal has been recommended for adhoc promotion in the vacancy to arise on 1.7.95 consequent on the retirement of Shri A.K. Bhargava. Since the petition filed by Sh.O.P.Anand in the Court is still pending, their adhoc appointment shall be subject to any further directions from the Court in the matter. The Special Officer exercising the powers of the DESC/ Corporation, is requested to approve the minutes of the Dpc enclosed and the adhoc appointment of S/Shri Y.P. Singh and S.P. Aggarwal, Chief Engineers as Addl. G.M. (Tech) for a period up to 31.3.1996 or till further orders or till such time the posts are filled on regular basis whichever is earlier subject to any further directions of the Court in the case filed by Shri O.P. Anand. Shri S.P. Aggarwal will however be actually promoted after 30.6.1995 when the vacancy becomes available subject to VC/DC if necessary. This issues with the approval of G.M. (E)."

(16) The same officer, however, on a subsequent date recorded that the charges against the petitioner were grave and serious and had been unduly delayed and a suggestion was made that the entire case be handed over to CBI.

(17) In view of the above facts which are not denied, it can safely be said that the petitioner is being sought to be discriminated and treated in an arbitrary manner whereas respondent No. 5 has been given clean chit and exonerated from all the charges against him. That is otherwise no ground to give relief to the petitioner. However, on the basis of the law as laid down in Union of India Vs. K.V. Jankiraman, etc. etc., , the petitioner cannot be treated differently when his promotion was duly and validly considered on June 28, 1995 and wrongly withheld a day later. There is no dispute about the proposition of law that the Court would normally direct the Appointing Authority to consider or reconsider the case of the employee for promotion and writ of mandamus directing promotion of the petitioner would not lie. Reference is made to the judgment of the Supreme Court as reported in State Bank of India and others Vs. Mohd. Mynuddin, and Union Public Service Commission Vs. Hiranyalal Dev and Others, . The first judgment deals with the case where the Selection Committee considered the case of the employee but did not find him fit for promotion on all occasions. There was no allegation of bias or malafide urged against the members of the Selection Committee or the Manage- 210 merit. Therefore, on those facts the High Court was held not right in directing the employers to promote the respondent employee. Similar observations were made in the second case and it was held that the Tribunal could not substitute itself in place of the Selection Committee for making the selection.

(18) The other plea which is highlighted by respondents 1 and 2 is that there is no right accruing to the petitioner as he has been merely promoted on adhoc basis and his promotion has been withheld. This argument will not hold good in

the facts and circumstances of the present case where two employees, petitioner and respondent No. 5, have been treated differently though no charge memo was issued against either of them when their cases for adhoc promotion were considered. On the basis of the judgment in Union of India etc. v. K. V. Jankiraman etc, (supra) they were both entitled to similar and same relief. The case of respondent No. 5 is even worst as on the date of his eligibility for consideration for the post of Additional General Manager with effect from August 31, 1994, some sort of charges were pending against him and he was awarded penalty of censure subsequently on November 17, 1995. That may be one of the reasons for not holding the meeting of Dpc as obviously respondent No. 5 was liable to be excluded. Be that as it may, this issue is of an academic nature in the present petition as subsequently he has been exonerated and at best sealed cover procedure would have been resorted to. Now, it is contended that he has been completely exonerated and that point is not in challenge and no decision is required in the present case. The denial of promotion to the petitioner on June 29, 1995 is clearly based on extraneous and malafide considerations and is liable to be struck down.

(19) In view of the aforesaid reasons, the action of respondents 1 and 2 cannot be sustained. The subsequent order of withholding adhoc promotion of the petitioner dated June 29, 1996 is quashed. Respondents 1 to 3 shall also consider the case of the petitioner for regular promotion in the vacancy arising on July 1, 1995. It is also not stated before this Court as to whether respondent No. 5 had been considered for regular promotion according to rules or he only held the position on adhoc basis. The writ petition is allowed in the above terms. Writ Petition allowed. Jaiveer @ Raju Vs. State (National Capital Territory of Delhi), - Respondent Crl. Misc. (Main). 1207 of 1996 &: Crl. Misc. (Main). 358 of 1995- Decided in Sept., 1996 Indian Penal Code, 1860 - Sections 498-A, 304-B, 406 - Cruelty, Dowry- death, Punishment, for Criminal Breach of Trust - Accused alleged to cause