Union of India vs.ashok Kumar

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Court : Delhi

Decided On : Apr-10-2018

Appellant : Union of India

Respondent : Ashok Kumar

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI $~62 * + W.P.(C) 3500/2018 & CM Nos.13825-27/2018 UNION OF INDIA .....

... Petitioner
Through: Mr.Jasmeet Singh, Advocate ASHOK KUMAR versus Through: None ..... Respondent CORAM: HONBLE MS. JUSTICE HIMA KOHLI HONBLE MS. JUSTICE PRATIBHA RANI The petitioner/Union of India is aggrieved by the judgment

ORDER
1004.2018 % 1. dated 16.01.2017, passed by the Central Administrative Tribunal allowing O.A. No.4141/2015, filed by the respondent herein, who is presently working on the post of Additional Commissioner in the Income Tax, Department of Revenue, Ministry of Finance, praying inter alia for issuing directions to the respondent/UOI to promote him to the post of Commissioner, Income Tax in terms of the promotion order dated 16.09.2015, with effect from the date when his juniors were promoted, with all consequential benefits.

2. The facts of the case as emerge from the records are that on 05.09.1993, the respondent had joined service as an Assistant Commissioner of Income Tax and had earned promotions from time to time, up to the rank of Additional Commissioner of Income Tax. On 25.11.2010, RC No.0102010A0036 was registered against the W.P.(C) 3500/2018 Page 1 of 6 respondent under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act, 1988, and Section 109 IPC by CBI, ACB, Kolkata. On the conclusion of the investigation, CBI had filed a final closure report dated 29.12.2013, under Section 173 Cr PC before the court of the Special Judge, Kolkata seeking closure of the investigation on the ground that same did not reveal sufficient evidence for substantiating the allegation of possession of disproportionate assets by the respondent. Vide order dated 12.03.2014, the learned Special Judge had accepted the report submitted by the CBI for closing the investigation.

3. In the year 2015, a DPC was constituted to consider promotions of eligible officers to the post of Commissioner of Income Tax (CIT), for the vacancy year 2014-15. A meeting of the DPC was held on 05.06.2015, wherein the name of the respondent along with his batch mates was considered and he was found fit. The proposal of the DPC for granting promotion to the respondent and the other officers was forwarded to the DOPT for obtaining the approval of the Appointments Committee of the Cabinet (ACC). While conveying the approval of the ACC in respect of the recommendations made in the DPC held on 05.06.2015, the DOPT had intimated the Department that the ACC had directed it to expedite taking a decision on the pending complaints against the respondent along with six other officers and re-submit their cases for consideration of the ACC at the earliest.

4. The grievance of the respondent as raised before the Tribunal was that though his name had figured at serial number 131 in the W.P.(C) 3500/2018 Page 2 of 6 proposal placed before the DPC and he was found fit and placed in the List of the recommendations made by the DPC at serial number 105 for his promotion, the promotion order issued on 16.09.2015, did not include his name whereas those who were junior to him, namely, Sh.Satpal Gulati & Sh.B.Venkataswara Rao, were promoted to the post of CIT.

5. The petitioner/UOI entered appearance before the Tribunal and filed a counter-affidavit wherein it was admitted that the name of the respondent was recommended for promotion by the DPC in its meeting convened on 05.06.2015. It was also not denied that the criminal proceedings initiated against the respondent were closed by the Special Judge, CBI, Kolkata vide order dated 12.03.2014. However, it was averred that the request of the CBI for initiating departmental action for major penalty, against the respondent, was still pending.

6. After considering the submission made by the parties, the Tribunal had observed that the case of the respondent is squarely covered by the provisions of OM dated 14.09.1992, issued by the DOPT, pursuant to the judgment of the Supreme Court in the case of the Union of India etc. vs. K.V. Jankiraman (1991) 4 SCC109 wherein it was stipulated as under: servants 2. At the time of consideration of the cases of Government 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. W.P.(C) 3500/2018 Page 3 of 6 Government servants under suspension. i) ii) Government servants in respect of whom a charge the disciplinary sheet has been proceedings are pending; and issued and iii) Government servants in respect of whom prosecution for criminal charge is pending. 7. The aforesaid OM dated 14.09.2012 was subsequently amended by a Memorandum dated 02.11.2012, issued by the DOPT after undertaking a comprehensive review of the instructions pertaining to vigilance clearance for promotion. The relevant para clarifying the above OM is reproduced below: 5. The O.M. No.22012/1/99-Estt. (D) dated 25th October, 204 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No.22011/4/91-Estt (A) dated 14.09.1992, along with other eligible candidates, without taking into consideration the disciplinary case/.criminal prosecution pending. No promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/dereliction of duty etc., there is a serious complaint and is still under investigation, the Government is within its right to suspend the official. In that case, the officers case for promotion would

automatically be required to be placed in the sealed cover. the matter 8. Relying on an earlier decision taken by the Tribunal on the above issue, in terms of the judgment dated 15.01.2014, passed in W.P.(C) 3500/2018 Page 4 of 6 O.A. 4094/2013, entitled Niraj Srivastaa vs. Union of India & Ors. and the judgment dated 08.09.2016, passed in O.A. No.4664/2015 entitled Brijpal vs. Delhi Development Authority & Ors., the Tribunal had opined that the fact situation in the present case is no different as no criminal or disciplinary proceedings were pending against the respondent as on the date his case for promotion to the post of Commissioner of Income Tax was considered i.e. on 15.06.2015, for the reason that the criminal investigation had already been closed by the Special Judge, CBI vide order dated 12.03.2014 and no disciplinary proceedings were initiated against him till that point in time. Accordingly, the OA of the respondent was allowed by directing the petitioners to implement the recommendations of the DPC dated 05.06.2015 and grant him notional promotion to the post of Commissioner of Income Tax from the date his juniors were promoted, along with financial benefits from the date of his actual promotion and seniority.

9. Mr.Jasmeet Singh, learned counsel for the petitioner assails the impugned order on the ground that the Tribunal failed to appreciate that the CBI had recommended initiating departmental proceedings for imposition of major penalty against the respondent. This aspect was highlighted by the petitioner in para 4.3 of the counter-affidavit filed before the Tribunal wherein it was specifically averred that in the final report submitted by the CBI before the Court of the learned Special Judge, CBI, Kolkata it was stated that the evidence collected during the investigation of the case was adequate for sustaining the charge of possession of disproportionate assets to the tune of `9,52,312.07 W.P.(C) 3500/2018 Page 5 of 6 (14.58% of income from all known sources) against the respondent in the departmental proceedings for a major penalty.

10. Admittedly, till date, the petitioner has not initiated any departmental proceedings against the respondent by charging him for possessing disproportionate assets to the tune of over ` 9 lakhs. In such circumstances, we see no reason to differ with the opinion expressed by the Tribunal in the impugned order. The DPC was convened on 05.06.2015 and it is undisputed that on the said

date, no criminal or departmental proceedings were pending against the respondent and the department had given a vigilance clearance before recommending his name for promotion along with the others.

11. That being the position, the impugned order dated 16.01.2017 is sustained as being legal and valid and the present petition is dismissed in limine along with the pending applications. APRIL10 2018 hkaur/pg HIMA KOHLI, J.

PRATIBHA RANI, J.