

Arjun Lal Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-06-1992

Reported in : 48(1992)DLT17; 1992(23)DRJ181

Judge : P.N. Nag, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal No. 239 of 1990

Appellant : Arjun Lal

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : P.P. Khurana and; V.K. Shall, Advs

Judgement :

P.N. Nag, J.

(1) The petitioner, Shri Arjun Lal, being aggrieved against his supersession and non-promotion to the post of Accounts Officer from the post of Accountant with effect from the date his juniors were promoted, has prayed for the directions from this Court to the respondent to the effect that they should promote the petitioner forthwith to the post of Accounts Officer with effect from the date the persons junior to him were promoted and further for the grant of consequential benefits.

(2) The petitioner, who initially joined as the Lower Division Clerk with the respondent after getting certain promotions, was ultimately promoted to the post of Accountant in the scale of pay of Rs.500-20-700-EB-25-900. There is no dispute that the next channel of promotion from the grade of Accountant is to the grade of Accounts Officer. Further, there is no dispute that the petitioner on 13.12.1989, when the Departmental Promotion Committee (for short 'DPC') was held for promotion to the post of Accounts Officer was fully eligible to be considered for promotion to the above post and was also in the field of choice along with two juniors- namely Shri Kanhiya Lal and Shri S.S. Maurya and the Dpc as such considered the case of the petitioner along with other two juniors. However, the recommendations of the Dpc as regards the petitioner were put in a sealed cover whereas his two juniors namely Kanhiya Lal and Shri S.S. Maurya, were promoted as Accounts Officer in supersession of the petitioner vide order No. 5251 dated 22.12.1989, on officiating basis. Being aggrieved against this supersession and adopting sealed cover procedure in this respect by the petitioner, the petitioner has filed the present writ petition.

(3) The stand of the respondent in substance, is that no doubt the case of the petitioner was considered by the Dpc held on 13.12.1989 for the purpose of promotion to the post of Accounts Officer but on account of the adverse vigilance report against the petitioner and after taking into consideration his performance report for the last 5 years, Dpc recommended that its findings with regard to the suitability of the petitioner for promotion to the post of Accounts Officer be kept in a sealed cover and it was only for this reason that the petitioner was not promoted to the post of Accounts Officer with the other persons junior to him. The Disciplinary Authority had passed an order dated 30.9.1988 for initiating major penalty proceedings against the petitioner because the petitioner was involved in a case in which other officers, namely, Shri Vijay Kumar (Executive Engineer), Shri R.K. Garg (Assistant Engineer), Shri A.K. Singhal (JE), Shri I.J. Mehta (JE) and Shri N.J. Pillai (JE), were also involved. The charges against these officers, including the petitioner, were for using sub-standard material in the work of construction in 192 Sfs Houses at Kishan Garh, Pocket C, Gr. 1. Since the petitioner was drawing pay of Rs.2,825.00 and was involved in a case, therefore the case of the petitioner was sent to Cvc on 18.10.1988 for advice and the advice of Cvc was

received on 9.5.1989. Moreover the case was investigated by Cbi and all the records were seized by CBI. Since the final draft of the charge sheet had been received from Cbi on 11.4.1990 and the fair charge sheet had been issued in due course. It was on account of these reasons that the sealed cover procedure was adopted in the case of the petitioner and he could not be promoted.

(4) From the reply given by the respondent it is clear that the charge sheet has been issued to the petitioner, including other officers, in 1990, although exact date has not been given and at the relevant time, i.e., on 13.12.1989 when the Dpc met for the purpose of promotion for considering the case of the petitioner Along with two juniors to the post of Accounts Officer, charge sheet was not in fact issued and served on the petitioner and the matter was in fact under investigation.

(5) Counsel for the petitioner vehemently submits that the matter stands concluded that it is only when charge-memo in disciplinary proceedings is issued to the employee, it can be said that the departmental proceedings have been initiated against the employee. The sealed cover procedure can be adopted only after the charge memo or charge sheet is issued. The pendency of sealed cover procedure. therefore, sealed cover procedure could not be resorted to in the case of the petitioner and such an action on the part of the respondent therefore, is wholly without jurisdiction and unsustainable in the eyes of law.

(6) There is a good deal of force in the submission of the learned counsel for the petitioner. This question has been considered by the Supreme Court in Union of India etc. v. K.V. Jankiraman etc. [JT 1991 (3) S.C. 5273]. Relevant portion of paragraph 16 of that judgment reads as under:

'16. 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.'

(7) This question has been under consideration by this Court as well. In Civil Writ Petition No. 2278/87, the Division Bench of this Court has held that mere contemplation for initiating disciplinary proceedings is no bar for giving promotion to an employee. The bar is only when the disciplinary proceedings have been initiated by issue of a charge-sheet. therefore, the action of the respondent in adopting sealed cover procedure in the case of the petitioner is wholly unsustainable in the eyes of law.

(8) Mr. Shali, learned counsel for the Dda states that even if the action of sealed cover pocedure is held illegal, the petitioner is not entitled for any salary for the period from the date his juniors were promoted as the petitioner has not worked as Accounts Officer for that intervening period and the principle of 'No work no pay' would apply.

(9) This contention of the learned counsel has been advanced merely to be rejected. In such a situation, had the petitioner been promoted, he would have worked as an Accounts officer but he was kept away from the work by the authorities for no fault of his as he was not promoted by adopting sealed cover procedure which was wholly unwarranted in the eyes of law. Since the action of the respondent is wholly without jurisdiction and not borne out by law, the petitioner cannot be made to suffer by not paying pay and allowances from the date his juniors were promoted.

(10) The respondent were directed to open the sealed cover containing the recommendations of the Dpc held for the purpose of promotion to the post of Accounts Officer from the post of Accountant and in case the petitioner has been found fit for promotion by the Dpc, the respondent is further directed to promote him forthwith to the post of Accounts Officer from the date his juniors were promoted. The petitioner shall also be entitled to all consequential benefits.

(11) This order shall be implemented by the respondent within one month from today. The petitioner shall also be entitled to costs - counsel's fee Rs. 2,000.00 .

