

Union of India

Vs

Tejinder Singh

Civil Appeal No. 2964 of 1986

(A. P. Sen, B. C. Ray JJ)

26.09.1986

ORDER

1. After the interminable hearing of this appeal had gone on for quite some time lasting for several days, the appellants have filed an affidavit sworn by K.V. Choudhary, Under Secretary, Government of India, Ministry of Finance (Department of Revenue) today. Apart from revealing that the government has no desire or intention to spare any officer who is found to have intentionally flouted government instructions and orders with regard to deposit of seized cash etc. and that it had already issued instructions on September 2, 1986 to all the Directorates concerned to review the cases of delay in deposit of seized cash and report the facts, it is further stated that after receiving the reports the government proposes to scrutinise each and every case and initiate the necessary disciplinary action against such of the officers who may be found to have deliberately flouted government instructions and delayed deposits, in the light of the advice given by the Central Administrative Tribunal. This was in answer to a question put by us to learned counsel for the appellants on September 25, 1986 as to whether the government proposed to initiate departmental proceedings against officers similarly circumstanced as the respondent, asking him to put the facts in the form of an affidavit.

2. The aforesaid affidavit however goes further and discloses certain subsequent events to put the records straight. It transpires that during the pendency of the appeal the government received from the Union Public Service Commission the proceedings of the Review Departmental Promotion Committee held on August 11, 1986 wherein the respondent herein was regarded as 'not yet fit', thereby revising the recommendation made by the Departmental Promotion Committee in September 1985 in respect of the respondent. It is stated the review was necessitated as the confidential report of the respondent for the year 1982-83 recorded by K.R. Raghavan, the reporting officer, contains certain adverse remarks which were not considered by the Departmental Promotion Committee in September 1985. Subsequently, the Union Public Service Commission advised that the adverse remarks against the integrity and attitude of the respondent may be communicated to him and his representation may be considered and thereafter it would be open to the department to approach the Union Public Service Commission for a Review Departmental Promotion Committee.

3. It is averred that accordingly the government communicated the adverse remarks to the respondent. He filed his representation and the same was considered by the competent authority and rejected. It is further averred that thereafter the government approached the Union Public Service Commission to review the proceedings of the Departmental Promotion Committee held in September 1985 in accordance with their earlier advice as regards the grading of the respondent for suitability for promotion in the light of the adverse entry in his confidential report for 1982-83 made by the Reporting Officer. It is also averred that the Union Public Service Commission accordingly

held a Review Departmental Promotion Committee on August 11, 1986 and graded the respondent 'not yet fit' for promotion. It is said that this fact had been brought to the notice of the appointing authority which had earlier deferred the promotion of the respondent for the reason that a view should be taken later after the departmental proceedings initiated against him had concluded. These subsequent events brought on record put the matter entirely in a different complexion. Faced with the situation, learned counsel appearing for the respondent seeks leave to withdraw the application for interim relief filed by him before the Central Administrative Tribunal, with liberty to pursue such remedy as may be available.

4. The appeal is accordingly allowed and the impugned order passed by the Central Administrative Tribunal directing the Union of India, Ministry of Finance to consider the respondent for promotion to the post of Commissioner of Income Tax, Level II, is set aside. While setting aside the impugned order of the Tribunal we would like to record that the Tribunal had no jurisdiction whatever while dealing with a petition to quash the contemplated departmental enquiry against the respondent, to make an interim order of this nature. We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceedings cannot be a ground for withholding consideration for promotion or the promotion itself. We are not aware of any rule or principle to warrant such a view. As at present advised, we do not subscribe to the view expressed by the Tribunal.

5. We are given to understand that the rights of the respondent are adequately safeguarded by the order of the Central Administrative Tribunal dated March 3, 1986 passed in O.A. No. 45 of 1986 directing that one post shall be kept vacant for him with consequential benefits. In view of this, we wish to add that there was no occasion for the Tribunal to make the impugned order directing the Union of India, Ministry of Finance to consider and promote the respondent as Commissioner of Income Tax, Level II, irrespective of whether departmental inquiry was contemplated or pending. This virtually amounted to pre-judging the whole issue before the Tribunal.

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