

(2002) 05 DEL CK 0158

Delhi High Court

Case No: Civil Writ Petition No. 2937 of 2000

Union of India (UOI) and Another

APPELLANT

Vs

Central Administrative Tribunal
and Another

RESPONDENT

Date of Decision: May 3, 2002

Citation: (2002) 98 DLT 86 : (2002) 63 DRJ 24

Hon'ble Judges: Shamik Mukherjee, J; Devinder Gupta, J

Bench: Division Bench

Advocate: N.C. Sikri, V.K. Rao and Piyush Sharma, for the Appellant; S.N. Anand, for the Respondent

Final Decision: Allowed

Judgement

S. Mukerjee, J.

The grievance of the Union of India (Department of Telecommunication) as a writ petitioner, against the impugned judgment of the Tribunal dated 11.2.2000, is that the said impugned judgment goes totally contrary to the latest pronouncement of the Apex Court reported as [Union of India and Another Vs. R.S. Sharma](#), . The Tribunal in the impugned judgment had proceeded upon the earlier view of the Apex Court as laid down in [Union of India Vs. K.V. Jankiraman, etc. etc.](#) , for returning the finding that since up to the date of the promotion order dated 27.3.1994 no charge memo had been served on the private respondent in the present case in the course of any departmental inquiry, nor was he charge-sheeted in the CBI case till that time as such the said order has to be given effect to within a period of two months from the impugned judgment of the Tribunal Along with consequential benefits.

2. In the latest decision of the Apex Court in R.S. Sharma's case (supra), the earlier view as laid down in K.V. Janakiraman's case (supra) was re-considered in the light of paragraph 7 of the "Sealed Cover Procedure" adopted by the Govt. of India (vide Government of India, Deptt. of Per. & Tng., Officer Memo No. 22011/2/86-Estt. (A)

dated the 12th January 1988)

3. It has been held that where an individual has not been actually promoted, and where, as in the present case, in the meanwhile formal sanction has been accorded to prosecute him in that case, as per interpretation of paragraph 7 of the Sealed Cover Procedure as laid down in R.S. Sharma's case, the implementation of the recommendations has to await till his being completely exonerated of all the charges.

4. While distinguishing and explaining the scope of Janakiraman's case, it has been held that the judgment was confined to the second paragraph of the Sealed Cover Procedure, and also that where a private respondent such as in the present case, is still facing the trial for serious offences, the situation is different from that of Janakiraman's case. Therefore the very basis of Tribunal's judgment appears unsustainable in the light of the recent pronouncement in R.S. Sharma's case.

5. To Support the impugned order of the Tribunal, learned counsel for respondent No. 2 has also relied on [Tagin Litin Vs. State of Arunachal Pradesh and another](#), and Union of India and Anr. v. B.C. Chaturvedi 1995 (6) 750, contending that since the grant of promotion has been held in those cases as not standing in the way of inflicting of punishment against the employee concerned, Therefore according to him, as a corollary, it would follow that there is no impediment in law to the implementation of the order of promotion even if there be serious charges pending against the said individual.

6. To our mind that is not the correct way to look at the legal issues arising in the present case. While it is no doubt true that mere grant of promotion cannot stand in the way of disciplinary action, however, an employee who comes to the court and seeks the relief of implementation on the ground that his name having been put in the select list pursuant to the recommendation of the D.P.C., then he would have to establish that there is no hurdle to the issuance of the said direction as prayed for by him. At this stage, when the material is brought forward by the Union of India to the effect that there are serious charges against the private respondent which were investigated by the CBI and which have led to the grant of sanction of prosecution and ultimately to the filing of charge-sheet in the criminal court, thereupon there arises an insurmountable hurdle as per the latest law laid down by the Apex Court as in the case of R.S. Sharma (supra).

7. It is not disputed in the present case that the private respondent's name figured in the select list for promotion, but the promotion order was never actually given effect to. In fact the promotion order itself mentions that such orders are not to take effect in the case of persons who are subject to vigilance cases until they are completely exonerated. Therefore both on account of promotion order itself being conditional to the exoneration of the private respondent and also in the light of the latest decision of the Apex Court in R.S. Sharma's case, the impugned judgment of

the Tribunal cannot be sustained and is Therefore liable to be quashed and set aside. Respondent No. 2, Along with others, being accused persons in CBI case for which prosecution sanction was granted on 27.8.1998 and charge sheet in respect of which was filed on 27.1.2001, as such the said private respondent cannot be allowed the benefit of implementation of the promotion order dated 27.5.1994, till he is completely exonerated of the charges against him in terms of the latest pronouncement of the Apex Court in R.S. Sharma's case.

8. The writ petition is accordingly allowed with costs, and the impugned order of the Tribunal is hereby quashed. The OA filed by Respondent before the Tribunal, shall also stand as dismissed.