

DELHI JAL BOARD

v.

MAHINDER SINGH

SEPTEMBER 01, 2000

[M. JAGANNADHA RAO AND RUMA PAL, JJ.]

*Constitution of India, 1950 : Article 16*

*Service Law—Promotion—Sealed cover procedure—Right to be considered for promotion is a fundamental right—Employee—Departmental proceedings—Abeyance of promotion till finalisation of departmental enquiry—Sealed cover procedure—The findings of the Disciplinary Enquiry exonerating the officer have to be given effect to as they obviously relate back to the date on which the charges are framed—If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any Disciplinary Enquiry—The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first departmental Promotion Committee in his favour in the anterior selection.*

*Bank of India v. Degala Suryanarayana, [1999] 5 SCC 762 and State of A.P. v. N. Radhakrishan, [1998] 4 SCC 155, referred to.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 11726 of 2000.

From the Judgment and Order dated 27.3.2000 of the Delhi High Court in L.P. A. No. 129 of 2000.

K.N. Raval, Additional Solicitor General, Ms. Aparna Rohtagi, Mahesh Kasana and K.B. Rohtagi for the Petitioner.

The following Order of the Court was delivered :

This Special Leave petition is preferred against the order of the Division Bench of the Delhi High Court dated 27.3.2000 in LPA 129/2000 dismissing the

A LPA filed by the Delhi Jal Board on the ground of delay and Advocate not being present. The respondent-writ petitioner contended before the learned Single Judge that the sealed cover prepared by the Departmental Promotion Committee should be opened and he be given the benefit of promotion as per the recommendation of the DPC notwithstanding the pendency of a latter disciplinary case.

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The learned Single Judge of the High Court accepted the writ petitioner's contention following two judgments of this Court reported in [1999] 5 SCC 762 *Bank of India v. Degala Suryanarayana* and in [1998] 4 SCC 155 *State of A.P. v. N. Radhakrishan* and allowed the writ petition. It was held that once the first disciplinary inquiry resulted in favour of the writ petitioner, the benefit of the findings of DPC in the sealed cover should be given to the writ petitioner notwithstanding the pendency of a second inquiry. In the two judgments of this Court which were followed by the learned Single Judge, it was held that if a person's case had been considered for promotion by the Departmental Promotion Committee and because of pendency of certain charges, the findings of DPC were kept in a sealed cover, he was entitled to the benefit of the findings of the Selection, if they were in his favour if the disciplinary inquiry ended in his favour, notwithstanding the fact that by that date, some other inquiry might have been pending against him.

E Learned Additional Solicitor General Sri K.N. Rawal has contended that the abovesaid two judgments of this Court require reconsideration.

After hearing learned Additional Solicitor General at considerable length, we do not think that they require reconsideration. In fact, we are in entire agreement with that view.

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The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the Disciplinary Enquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any Disciplinary Enquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment

H made by the Departmental Promotion Committee in favour of such an officer,

if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when the DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.

In the SLP, we have not thought it fit to send matter back to the Division Bench which had dismissed the appeal as time barred and on the ground that the Advocate was not present. In our view, this is not a fit case to remand the matter to the High Court because the only argument addressed by the learned Additional Solicitor General before us is that the earlier judgments of this Court cited above and relied upon by the learned Single Judge require reconsideration and that question cannot obviously be raised before the Division Bench of the High Court. We have, therefore, considered the correctness of the judgment of the learned Single Judge on merits.

The Special Leave petition is dismissed accordingly.

T.N.A.

Petition dismissed.