

SULEKH CHAND AND SALEK CHAND

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v.

COMMISSIONER OF POLICE AND ORS.

SEPTEMBER 30, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

*Service Law*

*Promotion—Promotion denied on ground of criminal prosecution and departmental enquiry—Acquittal on merit—Departmental enquiry dropped—Candidate entitled to promotion with effect from the date his immediate junior was promoted.*

C

The appellant was promoted from the post of A.S.I. to S.I. but he was confirmed w.e.f. January 4, 1989. The appellant claimed that his case for promotion had to be considered w.e.f. October 1, 1982. This claim was resisted on the ground that in 1983, he was charged for an offence u/s 5(2) of the Prevention of Corruption Act and he was kept under suspension.

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These appeals had been filed against the order of the Central Administrative Tribunal.

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Allowing the appeal, this Court

Held: 1.1. The reasons which prevailed with the D.P.C. were the prosecution u/s 5(2) of the Prevention of Corruption Act and the departmental enquiry against the appellant. The proposed departmental enquiry also is related to the self same offence under section 5(2) of the Act. The judgment acquitting the appellant of the charge u/s 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obliterated. In the instant case, the material on the basis of which his promotion was denied was the sole ground of the prosecution u/s 5(2) and that ground when did not subsist, the same would not furnish the basis for D.P.C. to overlook his promotion. The departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the D.P.C. had

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A proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. [120-G, 121-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7063-64 of 1994.

B From the Judgment and Order dated 8.12.93 of the Central Administrative Tribunal Principal Bench, New Delhi in O.A. Nos. 1175/89 & 1218 of 1988.

C Ms. Sangeeta Kumar for the Appellant.

V.N. Ganpule, S.A. Matto and S.N. Terdol for the Respondents.

The following Order of the Court was delivered :

Leave granted.

D These appeals arise from the order of the Central Administrative Tribunal in O.A. No. 1218/88 dated December 12, 1993. The appellant was promoted from the post of A.S.I. to S.I. but he was confirmed w.e.f. January 4, 1989 though it was stated that his case for promotion had to be considered with effect from October 1, 1982. This claim was resisted by the respondents on the ground that in 1983, he was charged for an offence under section 5(2) of the Prevention of Corruption Act and he was kept under suspension and he was also communicated of adverse remarks for the period from June 7, 1980 to March 31, 1981 and that he became eligible to be considered for promotion as S.I. w.e.f. December 16, 1985. Therefore, E his case was considered and he was promoted in 1989. Counsel for the respondent was directed to produce the record relating to the D.P.C. proceedings. We have perused the proceedings of D.P.C. which would clearly show that the reasons which prevailed with the D.P.C. were the prosecution under section 5(2) of Prevention of Corruption Act and the departmental enquiry, against the appellant. It is not in dispute that the proposed departmental enquiry also is related to the self same offence under section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under section 5(2) became final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is H entitled to reinstatement as if there is no blot on his service and the need

for the departmental enquiry is obviated. It is settled that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self same allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the D.P.C. had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. The appeals are allowed. No costs.

A.G.

Appeals allowed.