

Central Administrative Tribunal
Principal Bench

OA No.2844/2002

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New Delhi this the 22nd day of October. 2003

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri R.K. Upadhyaya, Member (A)

Shri K.N. Vohra
Assistant Director (Retired)
(Customs & Central Excise)
DDA MIG Flat No.309
Parshad Nagar
New Delhi-5.

-Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India through

1. The Secretary
Ministry of Finance
Department of Revenue
Central Secretariat
North Block, New Delhi-1
2. The Chairman
Central Board of Excise & Custom
North Block, New Delhi-2.
3. The DIrector General (Preventive Operation)
Customs and Central Excise
New Delhi.
4. The Director (Preventive Operation)
4th Floor, Lok Nayak Bhawan
Khan Market, New Delhi.
5. The Deputy Secretary
Govt. of India
Ministry of Finance
Department of Revenue, New Delhi.

-Respondents

(By Advocate: Shri R.N. Singh, proxy for
Shri R.V. Sinha)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

Applicant, a retired Assistant Director, imbuans respondents' order dated 19.7.2002 wherein request made by him for opening the sealed cover has been turned down for grant of Senior Time Scale (STS).

2. Briefly stated applicant was promoted to

Group 'A' Class-I vide Board's order dated 17.1.1990. All officers promoted with applicant were given senior scale on completion of four years Class-I service. Applicant was proceeded against for a major penalty by issuance of Memorandum dated 21.9.1994 for the allegation of facilitating parties for grant of licence on forged documents as well as for negligence and non-performance of statutory duties. Applicant retired on superannuation of 30.4.1994 after completing 5 years service as Class-I officer. His case for promotion to the Senior Time Scale has been placed under sealed cover.

3. On completion of the enquiry, the enquiry officer vide his report dated 21.8.2000 proved Article of Charges 3 and 4 and also partly proved Article of Charge 2. Applicant was exonerated from Charge No.1.

4. By an order dated 25.5.2001, the disciplinary authority taking a lenient view conveyed displeasure of the Government to applicant.

5. As applicant has not been imposed upon any listed punishment under CCS(CCA) Rules, he preferred a representation for opening sealed cover and giving effect to it by promoting him in the STS. As the representation was not disposed of, OA 1000/2000 filed by applicant was disposed of with the direction to respondents to dispose of the representation of the applicant regarding promotion by order dated 23.4.2000.

6. By an order dated 19.7.2000 holding that as the allegations have not been dropped and applicant has not been completely exonerated, sealed cover procedure adopted by the DPC on 8.8.1995 as well as 17.11.1995 was not opened and given effect to, giving rise to the present OA.

7. Shri M.K. Bhardwai, learned counsel relying upon the decision of a coordinate Bench in OA-2451/97 decided on 25.5.2000 in **Dayal Singh Bhoria Vs. Union of India** contends that displeasure has been declared not to be a punishment and further relying upon the decision of the Apex Court in **Union of India Vs. K.V. Jankiraman** 1991 (2) SCALE SC 423 contends that complete exoneration would be construed if no statutory penalty is imposed upon a Government servant. The sealed cover is to be opened and notional promotion from the date of junior is to be accorded. In this backdrop, it is further contended that nothing precludes the President from passing an order under Rule 9 of the CCS(Pension) Rules, 1972 in the event no penalty is imposed. Applicant cannot be found to be blameworthy. As such, having regard to Para-17.6.1 of the DOPT OM dated 14.9.1992, it is contended that sealed cover cannot be opened only in cases where the Government servant as a result of disciplinary proceeding is found guilty and any penalty, major or minor is imposed upon him. Further, referring to paragraph-17.6.3, it is contended that if any blame is found to be attached to the Government servant at least a penalty of censure should be

imposed and in case of a retired Government servant, the post open is under Rule-9 of the CCS (Pension) Rules, 1972. (B)

8. On the other hand, learned counsel for respondents vehemently opposed the OA and contended that in view of OM of DOPT dated 12.1.1998 as well as 14.9.1992, a Government servant against whom a disciplinary proceeding has been initiated resulting in resort of sealed cover as regards his promotion and on conclusion of the disciplinary proceedings if the allegations are dropped and the Government servant is completely exonerated, only then the sealed cover should be given effect to and the Government servant would be considered for promotion. He places reliance on a decision of the Apex Court in **Union of India Vs. R.S. Sharma** 2000 (4) SCC 394 as well as decision of this Bench in **Mahender Jit Singh Mattoo Vs. Union of India & Others**, OA No. 1543/2001 decided on 11.12.2002. According to the learned counsel for the respondents applicant has been held guilty by the enquiry officer of the charges and he was not exonerated but the disciplinary authority taking a lenient view, conveyed the displeasure.

9. In order to get the sealed cover opened and given effect to as applicant has not been found not to be balmeworthy, the displeasure would not be a complete exoneration and in that event as per provisions of Para 17.6.1, case of applicant is liable to the rejected.

10. In the reioinder, applicant has reiterated his pleas taken in the OA.

11. We have carefully considered the rival contention of the parties and perused the material on record.

12. Admittedly, as per the provisions of Rule-11 of CCS (CCA) Rules, 1965 displeasure is neither a major nor a minor punishment. The OM dated 12.1.88 in so far as opening of sealed cover is concerned, provides as under:-

The same procedure outlined in para 2.1 above will be followed by the subsequent Department Promotion Committees convened till the disciplinary case/criminal prosecution/investigation pending or contemplated against the Govt. servant concerned is concluded.

On the conclusions of the disciplinary case/criminal prosecution, or an investigation which resulted in dropping of allegation or complaints against the Govt. Servants, the sealed cover or covers shall be opened. In case the Govt. servants is completely exonerated, the due date of his promotion will be determined with ref. to the position assigned to him in the findings kept in the sealed cover/covers and with ref. to the date of promotion of his next junior on the basis of such position. He may be promoted notionally with ref. to the date of promotion of his junior but he will not be allowed any arrears of pay for the period proceeding the date of actual promotion. The Govt. servant may be promoted if necessary, by reverting the Junior most officiating person.

8.1 If any penalty is imposed on the Govt. servant as a result of the disciplinary proceedings or if he is found guilty inn the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

8.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, 'Warning' should not be issued as a result of such proceedings. If it is found, as a result of the

proceedings that some blame attaches to the Govt. servant, at least the penalty of censure should be imposed." (5)

13. These instructions were further revised vide DOPT OM dated 14.9.1992 and provides as under:

"Sealed cover cases-Action after completion of disciplinary case/criminal prosecution.

17.6.1 On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the juniormost officiating person. He may be promoted notional with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. These are only some of the circumstances where such denial can be justified.

17.6.2 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His cases for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

17.63 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attached to the Government servant, at least the penalty of "censure" should be imposed." (b)

14. The Apex Court has an occasion to interpret the provisions of opening of sealed cover on the basis of OM of 1988 which has been re-iterated in the subsequent OM issued in 1992 in **Jankiraman's** case (supra), wherein the following observations have been made:

"22. This sentence is preceded by the observation that when the employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed, he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion committee. This direction in the memorandum has also to be read along with the other direction which follows in the next sub paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning" should not be issued as result of such proceedings."

"23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R.17.(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

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Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

15. In so far as actual benefit of salary is concerned, the following observations have been made by the Apex Court in **Jankiraman's** case (supra):

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. to ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum."

16. In so far as notional promotion and complete exoneration are concerned, the Apex Court held that on conclusion of the disciplinary

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proceedings when no statutory penalty is imposed, which not only includes penalty assigned under Rule 11 but also the action under Rule 9 of the CCS (Pension) Rules. the government servant has to be given notional promotion from the date he would have been promoted as determined by the DPC.

17. In so far as interpretation to complete exoneration is concerned, the same has been done by the Apex Court only with respect to grant of salary on the principle of 'no work no pay'. In that case it is interpreted that complete exoneration would mean that the government servant is not found blameworthy in the least and is not visited with any penalty even of censure.

18. Having regard to paras 17.6.1, 17.6.2 and 17.6.3, para 17.6.1 cannot be read in isolation. The harmonious rule of interpretation, i.e. harmonious construction will have to be applied. On application of the above rule of interpretation the disciplinary proceedings which result in dropping of allegations the sealed cover shall be opened and on complete exoneration the promotion is to be considered with reference to date of promotion of the next junior. However, a bar to opening of the sealed cover is the penalty imposed in the disciplinary proceedings. However, it is clarified that when a disciplinary proceeding is held and a blame is attached to the government servant at least the penalty of censure should be imposed. From the co-joint reading of the above what has come out is that in a case where a

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government servant has been facing disciplinary proceeding and his promotion is kept under sealed cover. On conclusion of the proceedings the complete exoneration would be construed if no punishment is imposed, i.e., at least censure. In that event, it cannot be held that government servant is found balmeworthy. As per the decision of the Apex Court in **K.V. Jankiraman's** case (supra) for notional promotion the only requirement while a government servant is exonerated is that complete exoneration would be when no statutory penalty is imposed. However, for actual another criteria has been adopted.

19. In the instant case, though the enquiry officer has held applicant guilty, but the President while acting as a disciplinary authority instead of imposing upon any penalty or acting under Rule 9 of CCS (Pension) Rules, 1972, withholding pensionary benefits etc. conveyed the displeasure of the Government which is not a penalty under the CCS (CCA) Rules, 1965. As such, the only construction would be that applicant having not been imposed any punishment is completely exonerated of the charges. However, he would not be entitled to actual benefit of salary.

20. The decision in **R.S. Sharma's** case (supra) referred to by the respondents would have no application as the same pertains to a case where employee before actual promotion was involved in another DE, as such sealed cover was ordered to be maintained and the earlier promotion was not given effect to.

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21. Having regard to the reasons recorded above, OA is partly allowed. The impugned order dated 19.7.2002 is quashed and set aside. Respondents are directed to open the sealed cover on recommendation of DPC held in 1995 and consider case of applicant on notional basis for grant of senior scale. ^④ In that event applicant shall be entitled to arrears of pay but shall be entitled to all other benefits, including revision of pensionary benefits, if found fit. The above directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

(R.K. Upadhyaya)
Member (A)

(Shanker Raju)
Member (J)

"San.."

④ Please see orders dated 13.4.2004
in M.A.No.759/2004 and M.A.No.760/2004
in ~~OA~~ No. 2844/2002.