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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 2056/2002

NEW DELHI THIS. 14th DAY OF FEBRUARY 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Jai Charan Verma,
S/o Sh. Hukam Singh,
R/o Village Dallupra,
Delhi - 110094

.....Applicant

(By Shri Naresh Kaushik, Advocate)

VERSUS

1. Delhi administration,
through Chief Secretary,
5, Somnath Marg, Delhi.
2. Commissioner of Police,
M.S.O. Building
Police Headquarters,
ITO Complex, IP Estate,
New Delhi.
3. Special Commissioner of Police (Admn.)
MSO Building, Police HQ,
ITO Complex, IP Estate,
New Delhi.

.....Respondents

(By Ms. Avnish Ahlawat with Mohit Madan, Advocates)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Jai Charan Verma, applicant in this OA seeks implementation of directions contained in Tribunal's order dated 19.7.99 in OA 790/92 and consequent admission of his name in the promotion list 'F' (Executive) for the post of Inspector of Delhi Police w.e.f. the date on which his junior has been so included, with all consequential benefits.

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2. Heard Shri Naresh Kaushik and Ms. Avnish Ahlawat with Shri Mohit Madan learned counsel for the applicant and the respondents respectively.

3. The applicant working with Delhi Police had filed OA No. 790/92 seeking directions to the respondents to open the Sealed Cover containing the recommendations of DPC, relating to the inclusion of his name promotion list 'F' (Executive). The respondents in that OA had opposed the same by holding that a criminal case initiated in terms of FIR No. 398/1990 was pending against him. This Tribunal disposed of the said OA on 19.7.99 directing that the sealed cover be opened and acted upon.

4. The respondents challenged the above direction before the Hon'ble Delhi High Court in CWP No. 6425/1999 which was dismissed by the Hon'ble High Court relying upon the decision of the Hon'ble Supreme Court in the case of R.L. Meena & Ors. Vs. UOI & Ors. . As the respondents did not give effect to the order the applicant approached the Tribunal in Contempt Petition No. 420/2001. The said petition was disposed of on 02.1.2002 by holding that as the respondents had opened the sealed cover , no case for contempt was made out but that the applicant, if aggrieved could challenge the action of the respondents, in accordance with law. Hence this OA.

5. Grounds raised in this OA are :

- (a) the plea taken by the respondents for deferring the case of the applicant's inclusion in promotion list 'F' i.e. pendency of criminal case in FIR No. 398/90 was grossly misconceived and unsustainable , in view of the Tribunal decision on 19.7.99 endorsed by the Hon'ble High Court by its order dated 26.7.2001 on the basis of the judgement of the Hon'ble Supreme court in R.L. Meena & Ors. Vs. UOI & Ors.

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- b) FIR 398/90 was itself filed 12.1990 i.e. nearly five years after the DPC met on 13.3.1985 to consider the case of the applicant. Under the rules and instructions the respondents were required to open the Sealed Cover on conclusion of Departmental proceedings / criminal case which was pending against the applicant on the date the DPC met i.e. 13.3.85. No proceedings initiated subsequently could come in the way of implementing the directions.
- (c) implication of the applicant in FIR 398/90 was false and had nothing to do with the implementation of the order passed by the Tribunal in OA No.790/1992 and,
- (d) the case of the applicant is squarely covered with the decision of the Hon'ble Supreme Court, in Delhi Jal Board Vs. Mahinder Singh decided on 1.9.2000.

In view of the above the application should succeed, urges the applicant.

6. In the reply filed on behalf of the respondents, it is pointed out that as many as four (4) cases were pending against ^{him} and as he was under suspension with effect from 9.8.84 and orders for DE were issued on 17.10.86, recommendations of the successive DPCs from 1985 were kept in sealed cover and correctly so. The applicant was also informed accordingly. He was re-instated from suspension on 24.7.1989 and the proceedings were dropped and period of suspension was treated on duty, following his acquittal in all the four cases. Apart from this, respondents were receiving the complaints against the applicant and as such his request for promotion was not considered. On 6.7.92 he was again suspended, following FIR 398/90 containing allegation of impersonation. The Tribunal had first disposed of OA No 790/92 on 15.12.92, directing the respondents to open the sealed cover and act accordingly. On the respondents filing the review application, the Tribunal recalled the order and kept the OA pending.

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However, on 19.7.94, without waiting for the outcome of the criminal case, the Tribunal disposed of the OA 790/92, directing the respondents to open the sealed cover. The said decision was stayed by the Hon'ble Delhi High Court in CWP No. 6425/99 on 26.10.99. While the applicant was acquitted in 398/90 by the trial court on 7.5.2000, the Hon'ble High Court has directed its retrial. After CWP No. 6425/94, was dismissed, on 26.7.2001, the applicant filed CP 420/2001, which was disposed of on 2.1.2002, holding that no contempt has been made out as in the meanwhile the sealed cover was opened, though the findings were not acted upon. Respondents point out that the applicant case had been considered by review DPC, for promotion to List 'F' (Exe.) w.e.f. 11.3.85, 8.11.85 & 28.8.86, but the recommendations could not be given effect to as he was under suspension. Position in respect of DPCs recommendations dated 17.9.2001, was also the same.

7. In the rejoinder the applicant pointed out that any event subsequent to the holding of the DP cannot be permitted to act retrospectively so as to nullify the recommendations of the DPC. This was the finding of the Hon'ble Delhi high Court also, recorded while upholding the Tribunal's order dated 19.7.99.

8. During the oral submissions Shri Naresh Kaushik, learned counsel appearing on behalf of applicant took us through a number of decisions of the Ho'ble Apex Court, on the subject of holding DPCs and adoption of the sealed cover procedure. These included State of Andhra Pradesh Vs. N. Radhakrishnan, [(1998) 4 SCC 154] Bank of India Vs. D. Suryanarayan [(1999) 5 SCC 762] and Delhi Jal Board Vs. Mahender Singh [(2000) 7 SCC 210] and stated that as at

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the time when the DPC was being held there was nothing against the applicant. his case could not have been placed under the sealed cover and if so placed the same should have been opened and the recommendation acted upon-. Smt. Avnish Ahlawat on the other hand, sought to rely upon of the Hon'ble Supreme Court in the case of UOI & Anr. Vs R S Sharma (2000) 4 SCC 394 and averred that when his promotion became due he ^{came to be} ~~was~~ involved in another case and was placed under suspension and therefore, his case came under prohibition for promotion. Sh. Kaushik submitted that the decision of the Hon'ble Supreme Court in R S Sharma's case was applicable in the circumstances of that case and that it did not lay down any law in respect of DPCs and sealed cover proceedings, which was not covered by earlier decisions as well as DoPT's OM dated 14.9.1992, OA therefore should succeed with full consequential relief to the applicant, prays Sh. Kaushik.

9. We have carefully considered the matter. The point for determination in this OA is whether the recommendations in respect of any Govt servant placed in the sealed cover by the DPC, can be held back and not given effect to merely on account of certain adverse circumstances, which have arisen on a much later date. The case of the applicant, a SI in Delhi Police came up for consideration by the DPC for inclusion in the Promotion List 'F' (Executive) - Inspector - for the first time on 11.3.85. At that time, he was under suspension as four FIRs had been registered against him and he was under suspension. DPC, therefore placed its recommendations about him in a sealed cover, in terms of the extant instructions. This status continued with three more DPCs. In July 1989, his suspension was withdrawn treating the entire period of

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suspension from August 1984 to July 1989, as having been spent on duty and he was acquitted by the court in all the cases. Review DPC held on 17.9.2001, placed its recommendations in sealed cover. The applicant approached this Tribunal in OA No. 790/92, seeking that he be considered for promotion, as in the meanwhile he stood exonerated of the charges. The said OA was finally disposed by the Tribunal on 19.7.99, with the following observations.

" 11. Without considering it necessary to go into the question whether applicant Shri Jai Charan Verma is indeed the same Jai Chand S/o Sh. Chander who is a named accused in FIR No. 398/90, it is clear that this FIR was instituted on 23.12.1990, i.e. nearly five years after the DPC met to consider applicant's promotion some time before 13.3.1985. Under rules & instructions respondents are required to open the sealed cover, upon the conclusion of departmental proceedings / Criminal cases which were pending against applicant on the date the DPC met, and from the disciplinary authority's order dated 11.10.1991 (Annexure-B to the o.A.) it is clear that he dropped the disciplinary proceedings against applicant."

Failure on the part of the respondents to give effect to the Tribunal's order dated 17.9.99, duly upheld by the Hon'ble High Court, led to the filing of the CP No. 420/2001 which was finally disposed of on 2.1.2002 with the following findings:

"7. The operative portion of the directions to respondents contained in the Tribunal's order dated 19.7.99 was to open the sealed cover and thereafter to proceed in accordance with law. It is not denied that the sealed cover has been opened and it has been found that the regular DPC had deferred applicant's case for consideration. Meanwhile as stated by respondents, a review DPC was held to consider applicant's case for admission to Promotion List 'F' (Ex.) w.e.f. 11.3.85, 8.11.85 and 28.8.86, but its recommendations have not been acted upon, because applicant is under suspension in criminal case FIR No. 398/90 wherein the order of acquittal has been set aside by the Delhi High Court and the case has been sent for trial, it cannot be said that respondents have wilfully or deliberately defied the

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Tribunal's order dated 19.7.99, which alone would warrant initiation of contempt proceedings against respondents. If applicant is aggrieved by respondents' stand, it is open to him to challenge the same separately in accordance with law, if so advised.

8. Giving leave to applicant as aforesaid the CP is dropped. Notices discharged."

10. In short while the applicant feels that the respondents were bound to give effect to the recommendations of the DPC as he stood exonerated of all charges relating to the period, when his case had come up for consideration by the DPC and his junior was promoted, the respondents feel that on account of the FIR 390/98, registered on 23.12.90 and pending retrial there was no need to give effect to the recommendations of the DPC on the applicant.

11. We note that in terms of the extant instructions when the case of the applicant was taken up by the DPC for consideration for inclusion in List 'F' (Executive), recommendations of DPC regarding Government Servants under suspension; those in respect of whom departmental proceedings are pending or those in respect of whom decision had been taken to initiate such proceedings; those in respect of whom prosecution is pending or sanction for prosecution has been given or against whom investigation for a serious allegation including corruption are in progress. were to be placed in the sealed cover and the said recommendations were to be given effect to only after the proceedings are over and the individual is exonerated. In view of the above, the recommendations of the successive DPCs which met in 1985 and 1986 on the applicant were correctly placed in the Sealed Cover. There cannot be any quarrel with the said arrangement. However, the applicant's

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having been acquitted by the court in all the four FIR cases and his suspension having been withdrawn w.e.f. July 1989, with directions to treat the period of suspension of August 1984 - July 1989, as having been spent on duty, the applicant was entitled to have the benefit of the DPCs recommendation on him, which had been placed in the sealed cover, extended to him. There cannot be any impediment in the adoption of the recommendations. Only if any of the above four situations, had arise after the adoption of the recommendations by the DPC but before the issuance of the order giving effect to, the recommendations could have been held back or not given effect to.

12. The above position holds good, presently also, though following the decision of the Hon'ble Supreme Court in the case of UOI Vs K.V. Janakiraman & Others 1993 SCC (L&S) 387] , DoPT by their OM No. 22011/4/91-Estt. (A) dated 14.9.93 some modifications have been brought in the guide lines . Paras 2 and 7 of the OM read as under:

"2. At the time of consideration of the cases of Government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension;
 - ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
 - iii) Government servants in respect of whom prosecution for a criminal charge is pending.
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7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are

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completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

In view of the above, wherever after the recommendations of the DPC but before its implementation, (promotion), adverse circumstances mentioned in para 2 arise, the case will be treated as being placed on sealed cover or deemed to have been so placed. It is in the circumstances that the date of promotion becomes relevant, and the said date can only be the date on which the promotion became due and not any subsequent date. Therefore, if the DPC had recommended the promotion of an individual and till the date on which the concerned individual's promotion became due i.e. the date on which the immediately junior was promoted, the circumstances brought out in para 7 above, had not arisen the promotion cannot be denied. Subsequent placement of the individual under suspension and/or issuance of charge sheet for departmental proceedings or initiation of criminal proceedings, cannot, come in the way of the benefit of the DPCs recommendations coming into effect.

13. In the instant OA, as noted earlier the DPC had met for the first time in 1985 to consider the case of the applicant for inclusion in the promotion list "F" (Executive), relatable to a vacancy in the period, but on account of his being under suspension from August 84, did not consider his case. Subsequently following his exoneration in all the four FIRs, registered against him, his re-instatement from suspension w.e.f. July 89 with directions to treat the period of suspension as duty, the effect is as if there was nothing adverse against the applicant on the day the DPC met. The applicant is therefore properly and correctly entitled to have the

benefit of the findings of the earliest DPC wherein his case was considered and recommended. If the said recommendation was in his favour, the benefit there of shall flow to him from the due date i.e. the date on which his immediate junior was placed on Promotion List "F" and promoted. Filing of FIR No. 398/90, on 23.12.90, cannot in any way take away the right of the applicant for promotion in terms of recommendations of DPC, on 18.3.85. Tribunal, had in its order dated 17.9.99, noted that the FIR had been filed nearly five years after the DPC and cannot therefore negate the recommendations of the DPC. The above decision has been upheld by the Hon'ble Delhi High Court, while dismissing CWP No.2465/99, filed by the respondents. Hon'ble High Court has relied upon the decision of the Hon'ble Apex Court in the case of R L Meena and others Vs UOI and Others which has laid down law as under:

"The fact that by the time the disciplinary proceedings in the first enquiry 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 Deptt., 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."

14. In this regard we further note that a few decisions of the Hon'ble Supreme Court are on the point. These include in addition to K.V. Janakiraman's case, State of Andhra Pradesh Vs. N. Radhakishan [(1998) 4 SCC 154], LIC of India & Ors Vs. Jagmohan Sharma & Others [1998 SCC (L&S) 528], Union of India & Ors Vs Sudha Salhan [1998 SCC (L&S) 884], Bank of India & Others Vs D Suryanarayan (1999) 5 SCC 762], UOI & Anr Vs R Sharma (2000) SCC (L&S) 653 and Delhi Jal Board Vs Mahninder Singh [(2000) 7 SCC 210]. In Radhakrishnan's case the Hon'ble Apex Court has frowned upon the unexplained delay in

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the completion of disciplinary proceedings, as has occurred in the case. Findings in D. Suryanarayan's case (supra) are equally relevant. It reads:-

" The sealed cover procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over. As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge sheet on 3.12.1991. In the year 1986 and 87 when the respondent became due for promotion and when the Promotion Committee held its proceedings there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991."

In the instant case findings of DPCs of 1985 and 86 were kept in the Sealed Cover on account of the suspension of the applicant and pendency of four FIR cases, which ended in his acquittal and withdrawal of suspension in July 1989 treating the entire period of suspension as period spent on duty. Obviously, the applicant was entitled for getting the benefit of the DPC recommendations, and the same could not at all have been denied on the basis of the FIR 398/90. Equally relevant are the findings of the Hon'ble Apex Court in Delhi Jal Board Vs Mahendire Singh.

" The right to be considered by DPC is a fundamental right guarantee under Article 16 of the Constitution of India, provided a person is eligible and is within the one 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 inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges were framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by DPC 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 DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department,

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would not come in the way of giving him the benefit of the assessment by the first DPC in his favour in the anterior selection. There is therefore, no question of referring the matter to a larger Bench."

15. As the acquittal of the applicant in all the four FIRs of 1982 and 1984 in 1989, showed that he was not under any cloud when the DPC was held, therefore the benefit of the recommendations of the DPC, kept in sealed cover early, but opened subsequently, though not given effect to, should have flowed to the applicant from the date on which the same were granted to his immediately junior officer.

16. An identical situation had come up for the decision of this Tribunal in the case of V K Saxena Vs UOI & Ors (OA No. 505/2001). In that case, the promotion of the applicant which was due on 23.11.2000, (when his junior was promoted) was not ordered but the denial of promotion was sought to be justified by the disciplinary proceedings initiated on 16/19.1.2001. The Tribunal while allowing the OA filed by the applicant, held as under:-

"We note that whereas disciplinary proceedings have been resorted to against applicant by a memorandum of 16/19.1.2001, promotion orders of applicant's juniors were issued on 23.11.2000 vide Annexure-I. The facts of the instant case are clearly distinguishable from those of the case of Rajeshwar Singal (supra). Whereas disciplinary proceedings against applicant were initiated on 16/19.1.2001, Annexure-I promoting juniors was issued on 23.11.2000 on the basis of the DPC for promotion to the grade of Joint Commissioner. A look at annexure I clearly indicates that if applicant had been promoted on 23.11.2000 vide Annexure-I, his name should have occurred right after Sl No. 3, Mrs. Suchitra Sharma and above Sl No. 4, ~~Major~~ Krishna. Withholding promotion of applicant from 23.11.2000 till 19.1.2001 when disciplinary proceedings were initiated against applicant would not invite application of DoPT OM dated 14.9.1992 for resorting to sealed cover procedure. He could certainly have been promoted on 23.11.2000 along with his colleagues and juniors to the post of Joint Commissioner

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much before initiation of disciplinary proceedings against him. Respondents have wrongly interpreted the provisions of DoPT OM dated 14.9.1992 and withheld applicant's promotion by keeping the DPC recommendations for his promotion in sealed cover."

17. Respondents have, as noted earlier, relied upon, the decision of the Hon'ble Apex Court in the case of R S Sharma (supra) in support of their stand. However the facts in this case ^{are} clearly distinguishable from those in Sharma's case. In the said case a particular investigation ^{was on} about the individual concerned when the DPC met and made its recommendation in the sealed cover, but before the recommendations could be given effect to the sanction for prosecution was accorded ^{by the competent authority} for the same case. Therefore, the person was not granted the benefit of DPC's recommendation. On the other hand, ⁱⁿ applicant's case was kept in Sealed Cover by the DPCs held in 1985 & 86, on account of four pending cases of 1982 & 84, and his suspension from 84 - 89 but all the cases ended in his acquittal in Criminal Court and the Suspension was withdrawn in 89, treating the intervening period as having been spent on duty. Therefore, in effect, when the DPC met in 85 & 86 and the review DPC met in 2001, to deal with the applicant's case, with reference to 1985 vacancy, there was nothing against him and he was therefore entitled to have the benefit of the DPC's recommendation in his case, kept in Sealed Cover, if the same was in his favour. Against such a backdrop, the respondents' reliance on the decision of the Hon'ble Apex Court in R S Sharma's case was totally misplaced and they could not have sought shelter behind the said decision to deny the applicant promotion/inclusion in the List 'F' which was due in 1985 by resorting FIR 398/90, which came to be a registered on late as in 1990.

18. To recapitulate in brief, in this case recommendation of the DPC on the applicant's inclusion in the promotion list "F" (for the post of Inspector) had been held back on the ground that before the decision could be given effect to fresh proceedings, by way of prosecution, had come to be initiated. The fact remains, however, that applicant's case had in fact been considered by the DPCs of 1985 and 1985 and findings recorded therein were due for implementation as far back as with effect from 1985. Once the applicant had been cleared up of all the charges by acquittal as well as revocation of suspensions with the direction that the period of suspension be treated as duty for all purposes, the necessary corollary was only to give to effect to the review DPC's recommendations, from the date on which his immediate junior was granted promotion. Denying the same on the basis of an FIR registered five years later in 1990, was totally impermissible and cannot be endorsed in law.

19. In the above view of the matter, the OA succeeds and is accordingly allowed. The respondents are directed to give effect to the recommendations by the DPC in his case, as ordered by this Tribunal in OA No. 790/92 on 19.7.99 and if they are in his favour and place him in promotion list "F" (Executive) with all consequential benefits, from the date on which his immediate junior was granted the same. This exercise shall be completed by the respondents within two months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

/Patwal/

(Govindan S. Tampi)
Member (A)