



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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O.A. No.60/119/2019 Date of decision: 17.01.2020.
M.A. No.60/1096/2019
M.A. No.60/1097/2019 (Reserved on 10.01.2020)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. MOHD. JAMSHED, MEMBER (A).**

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Binay K. Jha son of Late Shri Srideo Jha, aged 58 years, Group A, Resident of Bunglow No.1, Type VI, Income Tax Colony, Rishi Nagar, Ludhiana, presently working Chief Commissioner of Income Tax, holding charge of Principal Chief Commissioner Income Tax, North Western Region, Aayakar Bhawan, Sector-17E, Chandigarh-160017.

**... APPLICANT
VERSUS**

1. Union of India through Secretary to Government of India, Ministry of Personnel and Training, North Block, New Delhi-110001.
2. Union of India through Secretary to Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. The Appointment Committee of the Cabinet through its Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi-110001.
4. The Central Board of Direct Taxes through its Chairman, North Block, New Delhi-110001.

... RESPONDENTS

PRESENT: Sh. Rajiv Atma Ram, Sr. Advocate, along with Sh. Jaivir Singh, counsel for the applicant.
 Sh. Sanjay Goyal, counsel for the respondents.



ORDER

SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant has approached this Tribunal by filing present O.A. seeking issuance of a direction to the respondents to open the sealed cover in terms of decision in the case of **UNION OF INDIA VS. K.V. JANAKIRAMAN**, 1991 (3) SCT 317, and grant him promotion with effect from the date his junior Sh. Rakesh Mohan Garg has been so promoted, after forwarding his case for appointment to the CBDT. He has further sought quashing of OM dated 14.9.1992 (Annexure A-15) which has been relied upon by the respondents, order dated 27.6.2018 (Annexure A-16), whereby the Appointments Committee of Cabinet (ACC) had agreed to the proposal for treating recommendation of Departmental Promotion Committee (DPC) in reference to the applicant as in deemed sealed cover and order dated 10.1.2019 (Annexure A-18) withholding administrative Clearance.
2. Before noticing arguments addressed by learned counsel for the parties, we may briefly mention facts which led to filing of the present O.A. In the year 1983, applicant was selected and appointed as Indian Revenue Service ('IRS' for short) Officer. On the basis of excellent record of the



applicant, he was given promotion at different stages and lastly he was promoted as Chief Commissioner of Income Tax. Currently, he is posted as Chief Commissioner of Income Tax at Ludhiana, holding additional charge of Chief Commissioner, Amritsar with further additional charge of Principal Chief Commissioner of Income Tax, North and Western Region at Chandigarh. It may be relevant to state that at the time of arguments learned Senior Advocate informed this Court that Additional charge of the post of Principal Chief Commissioner of Income Tax (for short "PCCIT") has been taken away from the applicant. Applicant has been shown at Number 83004 in the seniority list of IRS Officers. Service conditions of IRS officers are governed by the Indian Revenue Service Rules, 2015. The next promotional post is of Principal Chief Commissioner/Principal Director General Income Tax in apex scale. Respondents circulated agenda note for promotion to the post of PCCIT. The DPC held its meeting on 18.6.2018 in which the name of the applicant was considered along with other eligible officers. However, vide order dated 27.6.2018 (Annexure A-16) passed by respondent no.1, persons from 1983 batch, who were junior to the applicant (except for Sh. R.P. Srivastava), were promoted to the post of PCCIT but



while doing so, case of the applicant was kept in deemed sealed cover.

3. It is the case of the applicant that on the date of DPC i.e. on 18.6.2018, no departmental or criminal proceedings were pending against him. However, the applicant was served with a charge sheet on 20/29.6.2018 (Annexure A-3) on the basis of a complaint made by one Sh. S. K. Srivastava, who is 1985 batch IRS officer. It is to notice here that applicant is not impugning charge sheet and is only against the decision of the respondents in keeping recommendations of DPC qua him in deemed sealed cover for promotion to the post of PCCIT on various grounds.

4. The applicant has impugned the decision of "Deemed Sealed Cover" on three counts firstly that on the date of DPC, there was nothing against him, so the respondents could not have invoked procedure of sealed cover in terms of OM dated 14.9.1992. Secondly, that respondents have also now followed their own OM wherein they are supposed to review his case for promotion periodically after expiry of six months and lastly that the applicant has to be considered for adhoc promotion in terms of Clause 5.2 of OM dated 14.9.1992, which has been illegally denied to him.



5. The respondents have filed a short written statement wherein they have not disputed the factual accuracy. However, they have submitted that no doubt, on the date of DPC i.e. 18.6.2018 applicant was not under cloud and was clear from vigilance angle along with his batch mates, as per letters dated 3.5.2018 and 15.6.2018. He was assessed as fit by the DPC for promotion to the post of PCCIT for panel year 2018. However, when matter was placed before Competent Authority, namely ACC, before that date he was served with a charge sheet dated 20.6.2018, therefore, while approving case of others, recommendation qua applicant was kept in deemed sealed cover and ultimately vide communication dated 10.01.2019 (Annexure A-18), respondents have also withdrawn the vigilance clearance.

6. We have heard learned counsel for the parties.

7. Assailing the impugned orders, Learned Senior Counsel Mr. Rajiv Atma Ram for the applicant has argued that the action of the respondents in keeping the recommendation of DPC qua the applicant for promotion as PCCIT in deemed sealed cover is contrary to the settled law by the Hon'ble Supreme Court in the case of **K.V.Jainkiraman** AIR 1991 SC 2010. To elaborate his submission, he argued that the applicant fulfills all the three conditions laid down in the OM



dated 14.9.1992, as neither the applicant was served with charge sheet nor any criminal proceedings were pending against him on the date when his case was considered for promotion as PCCIT by the DPC on 18.6.2018, therefore he argued that the impugned decisions be declared as invalid. To buttress his plea, he places reliance upon the decision in the case of **K.V.Jankiraman** (supra) and **COAL INDIA LIMLITED V. SAROJ KUMAR MISHRA** JT 2007(6) SC 6.

8. Learned Senior Advocate further argued that the respondents have neither considered his case for adhoc promotion as PCCIT in terms of clause 5 of indicated O.M nor have reviewed his case after six months, as envisaged, in clause 4 of the OM dated 14.9.1992, thus the applicant is suffering on both counts. Lastly he argued that despite submission of inquiry report on 4.6.2019, the applicant has not been called upon to file objection if any and the respondents are sitting tight over the matter even after expiry of six months. Thus, he pleaded that in an arbitrary manner, applicant has been deprived of promotion to the post of PCCIT and subsequent promotion.

8. Per contra, Sh. Sanjay Goyal, Senior Standing Counsel for the respondents vehemently prayed and argued that in terms of clause 7 of OM dated 14.9.1992, respondents have



rightly placed the case of the applicant under deemed sealed cover.

9. We have given our thoughtful consideration to arguments advanced by learned counsel for the parties and perused the record and examined the decisions cited.

10. To reach at the truth of the matter, it is appropriate to examine the provisions of the OM dated 14.9.1992, which have heavily been relied upon by the applicant to support his case and by the respondents as well, to support their decision of adopting sealed cover procedure. The said OM was issued by Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, which reads as under:-

“Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation – Procedure and guidelines to be followed.

The undersigned is directed to refer to Department of Personnel & Training O.M.No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. Vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.



2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category 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 criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri.....(name of the Government servant). Not to be opened till the terminator of the disciplinary case/criminal prosecution against Shri.....'. The proceeding of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committee convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. 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 junior most officiating person. He may be promoted notionally 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 proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enunciate 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.

3.1 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 case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 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 attached to the Government servant; at least the penalty of 'censure' should be imposed.

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalize expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite the completion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which keeps its



findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:- a)Whether the promotion of the officer will be against the public interest; b)Whether the charges are grave enough to warrant continued denial of promotion; c)Whether there is any likelihood of the case coming to a conclusion in the near future; d)Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and e)Whether there is any likelihood of misuse of official position which the Government servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution. The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecutions against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i)the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii)the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the adhoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecutions on the merits of the case or is fully exonerated in the departmental proceeding, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad-



hoc promotion will all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placements in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC. He would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

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 received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India."

11. The aforesaid OM dated 14.9.1992, refers to OM dated 12.1.1988 issued by the DOPT, under which sealed cover procedure was permitted to be adopted only in four circumstances, which read as under:

"Cases where Sealed Cover Procedure applicable:-

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 servant under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings.
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any agency, department or otherwise."

12. In subsequent OM dated 14.9.1992, DoPT recommended procedure only in three circumstances, as compared to earlier OM dated 12.1.1988 wherein the sealed cover procedure was to be adopted on four aspects. The fourth aspect, which was mentioned in OM dated 12.01.1988, referring to a situation where the DPC was required to be informed if a government servant against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct was in progress either by the CBI or any agency, department or otherwise, was in the zone of consideration for promotion, was deleted by the subsequent OM dated 14.9.1992. So, the parameters, which the DPC is required to adopt for sealed cover procedure in case of a



Government servant who falls within the zone of consideration has been limited to the following three categories:

- (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 criminal charge is pending.

Para 7 of the O.M. is also relevant, which is reproduced as under :-

"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 received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also."

13. A bare reading of these Government instructions would show that a Government servant, who is recommended for promotion, but in whose case any of the circumstances mentioned above, arise after the recommendations of the DPC but before his actual promotion, will be considered as if placed in the sealed cover.

14. The OM dated 14.9.1992 has been issued by DOPT after decision by the Hon'ble Supreme Court in the celebrated case of **K.V. Janakiraman** (supra). Relevant paras of the same read as under:-



"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:-

- (1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee?
- (2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal?
- (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over'. Hence the relevance and importance of the questions.

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16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are



kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

17. There' is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

It is, thus, clear that in terms of the indicated guidelines and interpretation thereof courts have held that pendency of any disciplinary proceedings should be brought to the notice of the Departmental Promotion Committee at the very initial stage itself. Promotion would obviously have three ingredients; selection by DPC, acceptance of recommendation of DPC by the competent authority and the officer joining his posting in furtherance to such order particularly when the order makes joining as a condition in the order of posting. In order to give promotion in its true sense, these steps must be completed. It is upon completion of these steps that the promotion actually takes effect. The concept of actual promotion cannot be treated synonymous to a selection or approval by the



authorities. Right of an employee to receive benefits of service of the promoted post would accrue only upon his joining the promoted post. In the event, any of the stated steps are kept in abeyance, it would not amount to granting actual promotion to the employee. Promotion includes stepping up to a higher post or a higher scale. In literal sense, promote means to advance to a higher position, grade or honour. It must be understood in the wider sense. The employee would not have a right to be promoted but has a right to be considered for promotion.

15. Coming back to the facts of this lis, it is clear that the case of the applicant was considered along with his batch mates, for promotion to the post of PCCIT in the DPC held on 18.6.2018. The applicant was assessed as fit for promotion and accordingly his case was recommended to the ACC but prior to considering those recommendation, on 20.6.2018, applicant was served with a charge sheet under Rule 14 of CCS (CCA), Rules, 1965. Considering the fact that the applicant had been served with charge-sheet before actual promotion, the respondents have invoke clause 7 of OM dated 14.9.1992, which puts an embargo on promotion of those officers, whose conduct comes under cloud before actual promotion takes place, even though their names have been



considered and recommended for such promotion. Para 7 of the OM, as reproduced above, gives wide powers to the Governmental authorities to withhold the actual promotion orders before issuance of the same if an employee is found to be falling in any one of the three exceptions carved in para 4 of OM dated 14.9.1992 and in this case as well, the applicant had been charge-sheeted before approval of his promotion by the ACC. Thus, his case has rightly kept in deemed sealed cover procedure.

16. In the light of aforesaid prismatic reasons, we find no illegality in the impugned decision of the respondents in keeping the case of the applicant in deemed sealed cover, in terms of the indicated guidelines.

17. However, before parting with the judgment, we may also consider the alternate prayer of the applicant with regard to periodical review of his case for promotion, after every six months' period and also for considering his case for adhoc promotion, as is envisaged in the guidelines. It is not in dispute that the applicant was earlier given additional charge of PCCIT which was later on withdrawn. Neither in the written statement nor at the time of arguments, learned counsel for the respondents has informed that the case of the applicant was reviewed in terms of clause 4 of OM dated 14.9.1992.



Therefore, we direct the respondents to consider case of the applicant for periodical review after six months. There is another reason for the aforesaid directions as despite submission of inquiry report way back in the month of June, 2019, the applicant was not called for to submit his reply/objections to the inquiry report and the respondents are sitting over the matter. We further direct the respondents to expedite and conclude the departmental proceedings.

18. The O.A. along with all pending MAs stands disposed of in the above terms. No costs.

**(MOHD. JAMSHED)
MEMBER (A)**

Date: 17.01.2020.
Place: Chandigarh.

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**(SANJEEV KAUSHIK)
MEMBER (J)**