



**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH**

O.A.NO.060/00888/2019
 (Orders reserved on: 10.01.2020)
 Orders pronounced on 17th day of January, 2020

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

Dr. N. Sathyanarayana S/o Sh. N. Hanumantha Reddy,
 Aged 55 years, working as Joint Director (Plant Pathology),
 O/o Directorate of Plant Protection and Quarantine and
 Storage, NH-IV, CGO Complex, Faridabad-121001 (Group
 A)

Applicant

(BY: MR. ROHIT SETH, ADVOCATE)

Versus

1. Union of India, Ministry of Agriculture & Farmers Welfare, Department of Agriculture & Cooperation, rep. by its Secretary to Government of India, Department of Agriculture, Cooperation and Farmers Welfare, Krishi Bhawan, New Delhi-110001.
2. Directorate of Plant Protection, Quarantine and Storage represented by its Plant Protection Advisor, NHIV, Faridabad, Haryana-121001.

(BY: MR. SANJAY GOYAL, SR.CGSC)

3. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110069.

(BY: MR. B.B.SHARMA, ADVOCATE)

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Respondents



ORDER
(SANJEEV KAUSHIK, MEMBER (J))

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking a declaration that he was entitled for consideration and promotion to the post of Additional Plant Protection Advisor (APPA), against the vacancy for the years 2016-17 and onwards and that the respondents could not have denied his claim for want of Vigilance Clearance, as there was no material, whatsoever, against him to deny the indicated clearance.

2. Before addressing the arguments raised by the learned counsel for the parties, the undisputed facts, which led to filing of the present lis are, that the applicant was promoted as Joint Director (Plant Pathology) w.e.f. 3.10.2012 against vacancy year 2010-11. One Mr. J.P. Singh, was promoted as Joint Director, for the vacancy year 2012-13, vide order dated 17.8.2012. Mr. Singh was placed senior to the applicant in the provisional seniority list of Joint Directors. Both of them were eligible for promotion to the post of APPA. The applicant challenged seniority granted to Mr. Singh vide departmental channel, but was unsuccessful. He filed O.A. No. 020/00436/2016 before Hyderabad Bench of the Tribunal in which stay was granted on 29.4.2016. An



M.A.No.100/2017 was moved by official respondents to allow them to fill up the post of APPA by way of deputation. However, noticing that vacancies were available, the Court issued direction on 3.4.2017 (Annexure A-9) to consider both, applicant and Mr. Singh, for promotion, while question of inter-se seniority of duo was kept open.

3. On 25.4.2017, the applicant was travelling from Tuticorin to Chennai, and despite declaration that he was carrying cash of Rs.3.5 lacs, he was detained by CBI authorities at Chennai, and an FIR No. RC MA 2017 A 009 dated 25.4.2017 was registered against him. He remained under arrest for 17 days. He was placed under suspension during the period from 26.4.2017 to 6.12.2017. When the applicant came to know in July, 2019, that promotion to the post of APPA was likely to be made and his case was not being considered for want of vigilance clearance due to CBI case, he submitted a representation dated 30.7.2019 (Annexure A-12), pleading that action is illegal as his case does not fall within the three parameters laid down in DoPT OM dated 14.9.1992, but to no avail, hence this O.A.

4. Respondents No.1 and 2 have filed a joint reply. They submit that applicant was arrested for conspiracy, habitually demanding and accepting huge amount of bribe



under sections 7, 8,9 and 13 (2) read with 13 (1) (a) and 13 (1)(d) of Prevention of Corruption Act, 1988 (For short "P.C. Act, 1988") and Section 20 of P.C. Act, 1988, raises a presumption against a public servant who is an accused for the offences committed by him. The prosecution sanction under section 19 of P.C. Act, 1988 has already been accorded on 26.9.2019 (Annexure R-3), after due application of mind. The AV Unit of DAC&FW, vide letter dated 25.7.2019 (Annexure R-4) refused to accord Vigilance Clearance in favour of the applicant and in terms of OM dated 2.11.2012, the intimation was sent to the UPSC. They submit that applicant is junior to J.P. Singh. The name of applicant was included in the zone of consideration for promotion as APPA (IPM) for the year 2017-18 and he was placed at Sr. No.2. However, by additional affidavit it is submitted that proposal was being re-submitted for promotion for vacancy year 2016-17 itself.

5. Respondent No.3 has filed a separate reply. It is submitted that DPC is conducted in UPSC in terms of DoP&T OM dated 10.4.1989 and on the basis of inputs such as recruitment / service rules, number of vacancies, seniority / eligibility list, vigilance clearance certificate / statement of penalties, if any, imposed on the officers etc. It is submitted



that since Vigilance Clearance of applicant was not furnished as per OM dated 2.11.2012, the proposal was returned to the concerned representative of the Ministry.

6. The applicant has filed rejoinder to the written statement of Respondents No.1 and 2.

7. We have heard the learned counsel for the parties at length and examined the material on file.

8. The short question that is involved for our consideration is as to whether the respondents could have withheld the vigilance clearance of the applicant on account of registration of a case by CBI under the P.C. Act, 1988, so as to deny him an opportunity of consideration for promotion to the post of APPA against the vacancy year 2016-17 ?

9. It is not in dispute that in terms of the directions of the Hyderabad Bench of this Tribunal, the cases of applicant as well as of Mr. Singh for promotion as APPA were to be considered by the UPSC. However, the respondents entertained a doubt that there being a criminal case pending against the applicant, he could not be issued clearance certificate so as to consider his case for such promotion.



10. The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi, (for short "DoPT") had issued O.M dated 14.09.1992 on the issue of "Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation-Procedure and guidelines to be followed". Para 2 of the said OM being relevant to the issue is reproduced as under:-

"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.

11. Subsequently, a clarification was issued by the DoPT vide O.M dated 02.11.2012 where they have reiterated what has been said earlier in the circular but apart from



that they have clarified as to what stage prosecution is said to be pending. It has been stated that in terms of instructions issued vide O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 based on the O.M. No. 22011/4/1991-Estt. (A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in **K.V. JANKIRAMAN CASE** AIR 1991 SC 2010) makes it clear that vigilance clearance for promotion may be denied only in the three circumstances namely (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. Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms. Ultimately, in para 12 of indicated O.M. it has been clarified as under :-

"12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in Para 2 of this Department's O.M. dated 14.09.1992 are not satisfied.



The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings."

12. As to what would be the stage, when it can be said that a criminal or judicial proceeding is pending has also been thrashed out in this OM as well in para 8 thereof. The same provides as under :-

"8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under :-

"(b) judicial proceedings shall be deemed to be instituted - (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made".

13. The aforesaid O.M. in fact makes the things very clear and does not invite any iota of doubt, at all, that in this case it could not be said that the judicial proceedings were pending against the applicant when the respondents sent the proposal for promotion to the post of APPA against the vacancy for the year 2016-17. It is admitted at all hands that only an FIR has been filed against the applicant in the indicated case. The OM makes it clear as to when judicial proceedings shall be deemed to be instituted. It is in two parts. First part is that on the date when a complaint or



report of police officer is filed but second aspect is important "of which the Magistrate takes cognizance" and it is clear that cognizance is said to have been taken when charges are filed against an accused in a criminal case. Hon'ble Supreme Court in case of **UNION OF INDIA VS. K.V. JANAKIRAMAN ETC.** (AIR 1991 SC 2010) as well as in the case of **UNION OF INDIA & ORS. VS. ANIL KUMAR SARKAR**, 2013(4) SCC 161, have held that promotion can be denied if the case of an employee falls under the circumstances enumerated in the relevant OMs. In short, it can be done only if a charge sheet has been issued to an employee, then it cannot be said that departmental proceedings are pending against him which may give right to an employer to take away right of the employee for promotion during the pendency of the case and secondly, if charges have been framed in a criminal case, then he can be denied promotion during pendency of the case.

14. Section 190 of the Criminal Procedure Code lays down that that on a complaint or challan submitted by the police officer, the concerned magistrate takes cognizance by framing charges. It is only when the magistrate takes cognizance of it, the criminal prosecution is said to be



pending against an accused. On date of cognizance, the Magistrate takes a view as to whether a preliminary investigation in shape of challan/complaint is to be approved against accused or not? The word "cognizance" stands explained by the Hon'ble Supreme Court in case of

GENERAL OFFICE COMMANDING VS. C.B.I & & ANR.

(Criminal Appeal No. 257/2011) decided on 01.05.2012.

Paras 39 & 40 of the said decision are as under :-

"39. In broad and literal sense 'cognizance' means taking notice of an offence as required under Section 190 Cr.P.C. Cognizance- indicates the point when the court first takes judicial notice of an offence. The court not only applies its mind to the contents of the complaint/police report, but also proceeds in the manner as indicated in the subsequent provisions of Chapter XIV of the Cr.P.C. (Vide:R.R. Chari v. The State of Uttar Pradesh, AIR 1951 SC 207; and State of W.B. & Anr. v. Mohd. Khalid & Ors., (1995) 1 SCC 684).

40. In Dr. Subramanian Swamy v. Dr. Manmohan Singh & Anr., AIR 2012 SC 1185, this Court dealt with the issue elaborately and explained the meaning of the word 'cognizance' as under:

"In legal parlance cognizance is 'taking judicial notice by the court of law', possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially"

The Hon'ble Delhi High Court in Writ Petition (C) No. 7810/2008 (**UNION OF INDIA VS. SH. OM PRAKASH**) decided on 27.11.2008, followed the same. In aforesaid case, Hon'ble High Court has held as follows:-

"13. Under these circumstances, it appears to us quite clear that since there is no rule of Office Memorandum



which entitles the Petitioner to withhold the physical promotion of the Respondent only because sanction for his prosecution has been granted, the Tribunal took the correct decision in allowing the OA filed by the Respondent. Thus, he stated that prosecution for criminal charge can be said to be pending against a Government servant only when complete police report has been filed against him, of which the Magistrate has taken cognizance."

An identical issue was decided by a Bench of this Tribunal in O.A. No. 060/00068/2015 titled **KISHORE KUMAR SRIVASTAVA VS. UNION OF INDIA & OTHERS**, decided on 18.08.2015 has taken the same view that mere issuance of prosecution sanction is irrelevant to arrive at a conclusion that a criminal case is pending against an employee.

15. In the case in hand, no doubt, the prosecution sanction had been issued to prosecute the applicant but fact remains that if one were to examine the case of the applicant in the light of the parameters laid down in the indicated OMs and interpretation drawn by courts particularly in the case of Om Parkash (supra) by Delhi High Court in which it was clearly held that "prosecution for criminal charge can be said to be pending against a Government servant only when complete police report has been filed against him, of which the Magistrate has taken cognizance." Thus, it is held that Vigilance Clearance could not be denied to the applicant as court was yet to take



cognizance of the criminal case launched against the applicant. The question posed above stands answered accordingly.

16. In the light of the aforesaid discussion, this O.A. is partly allowed. The respondents are directed to consider the case of the applicant for issuance of Vigilance Clearance, in the light of observations made hereinabove, and consider the case of the applicant in the light of earlier direction of Hyderabad Bench of this Tribunal for the post of APPA against vacancies for the year 2016-17 etc. and if the applicant is found eligible, then grant him promotion from due date with all the consequential benefits, within a period of four weeks from the date of receipt of a certified copy of this order. No costs.

(MOHD. JAMSHED)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh
Dated: 17.01.2020

HC*