Central Administrative Tribunal
Principal Bench

1. OA No.1543/2001

2. OA No.2412/2001

3. OA No.3102/2001

New Delhi this the 11th day of December, 2002.

Hon'ble Shri S.A.T.Rizvi, Member(A)

Hon'ble Shri Shanker Raju, Member(J)

OA 1543/2001

Mahender Jit Singh Mattoo,
S/o Late Sri Kirpal Singh,
Aged 54 years,
R/o IV-1/57, Gopinath Bazar,
Delhi Cantt, New Delhi-110010. ...Applicant.

(By Advocate:Shri A.K.Behra)

-Versus-

1. Union of India through
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Lt. Governor,
Govt. of NCT of Delhi,
Raj Bhawan, Rajpur Road,
Delhi-110007.

3. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi. ...Respondents.

(By Advocate: Ms.Renu George)

OA 2412/2001

Mahender Jit Singh Mattoo,
S/o Late Sri Kirpal Singh,
Aged 54 years,
R/o IV-1/57, Gopinath Bazar,
Delhi Cantt,
New Delhi-110010. ...Applicant

(By Advocate:Shri B.B. Raval)

-Versus-

1. Union of India through
The Secretary, Ministry of Home Affairs,
North Block, New Delhi-110001.

2. Commissioner of Police,
Police Headquarters,
IP Estate, New Delhi.

3. Shri D.R. Chopra,
Joint Secretary (Vigilance),
Directorate of Vigilance,
Government of NCT of Delhi,
Old Secretariat,
New Delhi. ...Respondents

(By Advocate: Ms.Renu George)

OA 3102/2001

Mahender Jit Singh Mattoo,
S/o Late Sri Kirpal Singh,
Aged 54 years,
R/o IV-1/57, Gopinath Bazar,
Delhi Cantt,
New Delhi-110010. ...Applicant.

(By Advocate:Shri B.B.Raval)

-Versus-

1. Union of India through
The Secretary, Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110001.

2. Commissioner of Police,
Police Headquarters,
Near I.T.O.
New Delhi-110002.

3. Shri P.K.Jalani,
Joint Secretary,
Government of India,
Ministry of Home Affairs,
North Block, New Delhi. ...Respondents.

(By Advocate: Shri R.N.Singh)

O R D E R (ORAL)

Mr. Shanker Raju, Member (J):

These OAs pertain to one applicant and are inter-related, involving common question of law and fact. Hence they are disposed of by this common order.

2. In OA-1543/2001 the grievance of applicant in this OA is that respondents are proposing to place him under suspension with a view to negate the effect of the order of the Tribunal passed on 6.6.2001 in MA-982/2001 in OA-1260/2000 to open the sealed cover and to take further action in accordance with law. He has sought a direction to respondents not to suspend applicant at this belated stage.

3. In OA-2412/2001 applicant impugns chargesheet issued to him under Rule 14 of CCS (CCA) Rules, 1965 and has sought quashment of the same with all consequential benefits.

4. In OA-3102/2001 a challenge has been put against order passed by respondents on 13.8.2001 denying regular promotion to applicant to the post of ACP in Grade II of DANIPS and to continue his case under sealed cover. He has sought quashment of this order with direction to respondents to open the sealed cover and regularise adhoc service of applicant as ACP.

5. Briefly stated, applicant joined as a Sub Inspector in Delhi Police on 7.4.67 and was promoted as Inspector as well as Assistant Commissioner of Police on ad hoc basis w.e.f. 5.5.93. A vigilance clearance was sought at the time of promotion of applicant on 3.11.89 where his name stood at serial No.65. Though no DPC was held from 1993 to 2000 for

promotion in Grade II of DANIPS as ACP respondents held a DPC in April, 2000. Applicant's case was considered and was found fit as per rules but the promotion order dated 10.5.2000 does not include his name. ON 26.2.2000 respondents communicated to him that as he was under deemed suspension on account of criminal case his case was placed in a sealed cover. OA-1260/2000 was filed before the Tribunal whereby, by an order passed on 10.11.2000 apprehended order of suspension was stayed. Subsequently, through an amended challan name of applicant was deleted from columns 2 and 4 of the chargesheet and on a report under Section 169 Cr.PC by the Police ultimately on 13.11.2000 applicant was discharged from criminal case.

6. On 10.4.2001 deemed suspension of applicant was revoked and he joined back his duties. Applicant filed MA-982/2000 in OA-1260/2000 for direction to respondents to open the sealed cover, by an order passed on 6.6.2001 was acceded to and two months time was accorded to respondents to open the sealed cover. OA-1260/2000 was disposed of on 25.7.2001 with the direction that in the event there are no legal objections as on date respondents shall open the sealed cover and proceed further. While doing so, the effect of revocation of suspension on 10.4.2001 and discharge of applicant in FIR No.76/99 was taken note of.

7. A chargesheet was issued under Rule 14 of the CCS (CCA) Rules, 1965 on 18.7.2001 alleging charges pertaining to the year 1990 and the charges which constitute offences against applicant in the criminal case in which he has been discharged. By an order dated 13.8.2000 recommendations of DPC kept in sealed cover has not been opened on the ground that applicant has been issued a chargesheet in the disciplinary proceedings, giving rise to these OAs.

8. Sh. B.B. Raval, learned counsel appearing for applicant contends that the chargesheet issued on 18.7.2001 is liable to be set aside. In so far as article-I is concerned, applicant has been alleged to have committed misconduct for applying fraudulently for immigration in June 1990 and 26.4.1991, inquiry initiated after a gap of about 10 years with inordinate delay is liable to be set aside in the wake of the decisions of the Apex Court in State of M.P. v. Bani Singh, AIR 1990 SC 1308 as well as State of Punjab v. Chaman Lal Goyal, 1995 SCC (L&S) 541.

9. As regards other articles II and III of the charges, it is stated that the same pertain to the offence alleged against applicant in the criminal case FIR No.76/99 under Sections 419/420/468/471/511/120-B of IPC and 12 of P.P. Act on which he has already been discharged as nothing incriminating has been

found prima facie against him, as such once he has been exonerated of the charge, no proceeding can be held on the same grounds.

10. Shri Raval further states that the DPC was held i n April, 2000 and the deemed suspension resorted to in 1999 has come to an end immediately on release of applicant on bail and in absence of any order passed afresh under Rule 10 (1) and on further discharge on 30.11.2000 the sealed cover was to be opened and given effect to respondents have delayed implementation and now resorting to the chargesheet and a criminal case for disproportionate assets promotion of applicant cannot be placed under sealed cover.

11. Moreover, it is contended that the DPC has not been held as per rules as per DOP&T OM issued in 1989. Admittedly, DPC was not held from 1993-2000 and the panel should have been drawn separately yearwise from 1992-95 and as applicant admittedly was eligible and considered for 1995 he should have been promoted as nothing was pending against him. Subsequent criminal case and chargesheet would not effect his promotion and resort to sealed cover is contrary to the law laid down by the Principal Bench in OA-1415/2000 in H.K. Yadav v. Union of India decided on 24.9.2001.

12. Shri Raval states that as per para 6.4.3 of Government of India's OM dated 9.4.96 while preparing the yearwise panels the scrutiny of the

record of service should be limited to the records which would have been available had the DPC met at the appropriate time and as nothing was pending against applicant in 1995 promotion should have been given effect to and resort to sealed cover is contrary to law. Subsequent events would not effect the promotion.

13. Shri Raval further states that the deemed suspension has no relevance as he was not placed under suspension during the relevant period for consideration by a DPC. As the suspension was revoked and nothing adverse existed against applicant the logical corollary warranted opening of sealed cover and acting upon the recommendations. Withholding of promotion on prosecution sanction accorded on 7.7.2001 and institution of DE on 18.7.2001 will be of no consequence and would not apply in the case of applicant.

14. Respondents represented by Mrs. Renu George as well as Sh. R.N. Singh, strongly rebutted the contentions of applicant and stated that as applicant was ~~not~~ discharged in the criminal case which as per Cr. P.C. does not amount to acquittal the proceedings initiated on the same charge cannot be quashed.

15. It is further stated that yearwise panels have been drawn and the promotion was considered as per the DPC guidelines contained in OM issued by Government in 1989 as well as modified in 1999 keeping

in view the directions in OA-1260/2001 on 25.7.2001. Applicant sealed cover was not opened but as he was facing a disciplinary proceeding and criminal prosecution has been launched against him before his actual promotion in the event any condition, i.e., pendency of disciplinary proceedings or criminal charge is found the promotion is to be kept in sealed cover as per DOP&T Om dated 14.9.92. The same would be acted upon after the criminal trial and proceedings are over against applicant.

16. In so far as decision of Principal Bench in OA-1415/2000 is concerned, it is contended that the same is per incuriam of Government of India's instructions contained in para 7 of OM dated 14.9.92 as well as decision of the Apex Court in Union of India v. R.S. Sharma, (2000) 4 SCC 394 where the actual promotion was denied as the conditions laid down under para 7 of OM dated 14.9.92 existed, as such the same cannot be relied upon in case of applicant. Shri Singh also objects to the multiple reliefs sought in OA-3102/2001 by contending that the prayer contained is to quash the order passed continuing the sealed cover as well as regularisation of adhoc service, which cannot be countenanced in view of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

17. Ms. Renu George in OA-2412/2001 contended that RC No.DAL-1988 A 0055 dated 23.9.98 has been registered against applicant under Prevention of Corruption Act, 1988 where sanction was accorded and

29

the trial is pending. It is further stated that the chargesheet issued after 11 years would not vitiate the entire proceedings, which are validly drawn as per the rules and the decision of the Apex Court.

18. We have carefully considered the rival contentions of the parties and perused the material on record.

19. Before we proceed to resolve the issue involved in the present case it is relevant to reproduce some relevant provisions relating to the present case:

> "6.4.3 Service record to be scrutinized while preparing yearwise panel---For the purpose of evaluating the merit of the officers while preparing year-wise panels, the scrutiny of the record of service of the officers should be limited to the records that would have been available had the DPC met at the appropriate time. For instance, for preparing a panel relating to the vacancies of 1978, the latest available records of service of the officers either up to December, 1977, or the period ending March, 1978, as the case may be, should be taken into account and not the subsequent ones. However, if on the date of the meeting of the DPC, departmental proceedings are in progress and under the existing instructions sealed cover procedure is to be followed, such procedure should be observed even if departmental proceedings were not in existence in the year to which the vacancy related. The officer's name should be kept in the sealed cover till the proceedings are finalized."
>
> (pages 843-844 Swamy's Complete Manual on Establishment and Administration, May, 2000 Edition)
>
> Para-7 of OM dated 10.9.1992 is reproduced as under:

> "Sealed cover applicable to an officer coming under cloud before promotion.--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 DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

20. If one has regard to the aforesaid provisions, DPC while preparing yearwise panels should scrutinize the record available with the DPC had it met at the appropriate time and if it is found on the date of meeting of the DPC departmental proceedings or criminal case are in progress, sealed cover is to be resorted to, but this procedure shall also be resorted to in case even if proceedings were not in existence in the year to which the vacancy related, officer's name should be kept in sealed cover. In a nut shell even if the proceedings are not pending on the date of consideration but Government officer who before his actual promotion after recommendation any of the circumstances like pendency of disciplinary proceedings or criminal trials arises the case is to be placed in the sealed cover and promotion would not be made unless the government servant is completely exonerated of the charges.

21. Admittedly, applicant was promoted on adhoc basis in the year 1993 and as per his eligibility his promotion was due in the year 1995. As the DPC could not be held till 2000 in April 2000

DPC made yearwise panels and considered the case as per the vacancies yearwise. Applicant in the meantime was involved in a criminal case and was placed under suspension. As such his case was placed in sealed cover. Subsequently, on his discharge in the criminal case forwarding of report under Section 169 Cr.PC by Police on 13.11.2000 suspension was also revoked in April 2001. Applicant approached this court in OA-1260/2000 whereby on an interim order passed on 11.6.2000 directions have been issued to respondents to open the sealed cover but on final disposal of the OA on 26.7.2001 the interim order gets merged into it and by this order directions have been issued that if no legal objections as on date are there the respondents should open the sealed cover and proceed further. We find that on 25.7.2001 applicant had already been issued a memorandum under Rule 14 of the CCS (CCA) Rules for a major penalty and moreover RC-55/A/98 dated 23.9.98 for an offence of disproportionate assets was registered against applicant on 7.7.2001 on which the sanction was taken from the Lt. Governor and the chargesheet was filed in the court. As such on 25.7.2001. i.e., when the respondents have acted upon the recommendations of the DPC in April, 2000 applicant was under cloud as a disciplinary proceeding has been proceeded against him and a chargesheet was issued and in the criminal case sanction was taken as per clause 7 of the OM dated 14.9.92, applicant is not entitled for actual promotion and his case would be considered after he is completely exonerated in the proceedings. Aforesaid circular came in scrutiny before the Apex Court in

(32)

R.S. Sharma's case (supra) and by the following observations the vires of this circular has been upheld:

> "13. Two factual aspects are admitted. One is that the respondent was not actually promoted even now. The other is that formal sanction has been accorded to prosecute him in the meanwhile. If that be so, para 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by DPC in respect of the respondent have to remain in the sealed cover, until he is completely exonerated of the charges against him.
>
> 14. Shri Anil Kumar Sharma, learned counsel adopted the contention that the situation would not have arisen as envisaged in para 7 of the Sealed Cover Procedure if the appellants had complied with the conditions stipulated in the office memorandum dated 31.7.1991 either on that day itself or at least soon thereafter by promoting the respondent. The learned counsel contended that the Department had wilfully and deliberately avoided to comply with the said office memo dated 31-7-1979, and hence the appellants should not be permitted to take advantage of their own wrong.
>
> 15. We are not impressed by the said arguments for two reasons. One is that, what the department did not do is not the yardstick indicated in para 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the government servant who is not 'actually promoted' by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the second para, the recommendations of DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of para 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the Department for not opening the sealed cover immediately after 31-7-1991.
>
> 16. Learned counsel for the respondent made an endeavour to contend that in the light of the decision of this Court in Union of India v. K.V. Jankiraman the Sealed Cover Procedure can be resorted to only after charge-memo is received or a charge-sheet is filed and that unless such

an event had happened at the relevant time the government employee cannot be denied of his promotion, if he is otherwise entitled to it. Learned counsel also submitted that Jankiraman was since followed in Union of India v. Dr. Sudha Salhan and Bank of India v. Degala Suryanarayana. The clauses of the second para of the Sealed Cover Procedure considered in Jankiraman were not those involved in the present case and hence that decision is of no avail to the respondent. In the other two decisions the facts warranted application of the ratio contained in Jankiraman. The added factor in these two cases was that the public servant concerned had been exonerated of the charges framed by the criminal courts. In the present case the respondent is still facing trial for serious offences, and hence the situation is different.

17. We may also point out, in this context, that in Delhi Development Authority v. H.C. Khurana and Union of India v. Kewal Kumar this Court found that the ratio in Jankiraman is applicable only to the situations similar to the cases discussed therein, and hence the Sealed Cover Procedure resorted to by DPC in those two cases was upheld by this Court."

22. If one has regard to the aforesaid ratio laid down by the Apex Court action of the respondents in resorting to sealed cover procedure cannot be found fault with and moreover as per DOP&T OM dated 9.4.96 though the consideration of record is restricted to the DPC held for the particular year but yet if subsequent proceedings, i.e., either disciplinary or criminal are initiated then the sealed cover procedure should be adopted till the proceedings are finalised. Moreover, DOP&T OM dated 23.2.99 provides adopting of sealed cover procedure in case where a disciplinary or criminal proceeding is pending against a government servant.

23. As the contention of the learned counsel for applicant is that had the sealed cover been opened on 13.11.90 itself there was nothing pending against applicant which could have warranted adoption of sealed cover and he would have been promoted accordingly as is consideration for promotion was made by the DPC in April, 2000 for the vacancies pertaining to the yester year. This cannot be countenanced. The contention that once he stood discharged from the criminal case his sealed cover was to be opened as the deemed suspension is by implication goes as soon as the government servant is released from the custody. This cannot be countenanced, as in the order passed by the court in OA-1260/2000 on 25.7.2001 sealed cover was directed to be opened as on date if no legal objections are existing. As applicant was issued a chargesheet and a criminal case was registered where a sanction was accorded conditions existing do not permit actual promotion and the sealed cover resorted cannot be found fault with. Moreover, as a coordinate Bench it is not open for us to go beyond the directions or to sit in appeal over the decision of the court. As the sealed cover was to be opened with respect to 25.7.2001, the order impugned does not suffer from any legal infirmity as they have rightly adopted the sealed cover in the wake of pendency of disciplinary as well as criminal proceedings against applicant which is perfectly in order and in consonance with the Government of India's instructions contained in para-7 of OM dated 14.9.92 as upheld by the Apex Court in R.S. Sharma's case (supra).

24. In so far as the relief contained in OA-1543/2001 the same is consequential to opening sealed cover as the sealed cover would be opened after the proceedings are over against the applicant, who is not prejudiced in any manner, as he is still continuing on ad hoc basis and in case of his complete exoneration he would be accorded all the benefits in accordance with law and instructions on the subject.

25. Lastly the challenge to the proceedings initiated under Rule 14 of the CCS (CCA) Rules, 1965 by applicant is concerned, resort of applicant is that having discharged in the criminal case he cannot be proceeded in disciplinary proceedings on the same charge and moreover the charge relating to 1991 when applicant was allegedly sought US immigration his belated for which no reasonable explanation has been given is concerned, we find that the charges are inseparable. Moreover, as contended by applicant that on his discharge he cannot be proceeded in disciplinary proceedings on the identical charges cannot be countenanced. Discharge and acquittal are two different aspects. In a discharge an accused is exonerated even before the evidence is recorded and the entire procedure of the trial is gone into whereas in a acquittal the trial proceeds and concludes after recording of evidence, defence and recording of reasons. Moreover, under Section 300 of Cr.P.C. an acquittal is a bar for trying an accused onceagain for the same offence whereas in case of discharge a fresh trial can be held with the consent of the court

discharging the accused or any other court. In nut shell, an acquittal is exoneration of the accused on merits whereas discharge is not.

26. If one has regard to the aforesaid provisions, in the present case applicant was arrested in case FIR NO.76/99 and on filing challan applicant was found in column No.4 but on a report filed by Police under Section 169 Cr.PC on the ground that there is no sufficient evidence or reasonable ground to justify forwarding the accused to the Magistrate without taking cognizance an order has been passed to discharge applicant. In fact, as per Section 190 a Magistrate has to take cognizance either on the police report or otherwise. As in case of applicant no cognizance has been taken it cannot be held to be a valid discharge in a warrant case under Section 239 as it is on the report under Section 173 of the Cr.P.C. after the prosecution and accused given an opportunity for being heard the Magistrate considers the charge against the accused to be groundless he discharges the accused by recording reasons. As the action of the Magistrate is only on the basis of report under Section 169 in the circumstances when cognizance has not been taken he has been discharged. Neither there any evidence has been gone into nor trial has proceeded.

27. The question regarding continuation of proceedings or punishment even after acquittal in the criminal case is concerned, the issue was settled by

the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines, JT 1999 (2) SC 456 by observing as follows:

> "34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, the raid conducted at the appellant's residence and recovery of incriminating articles therefrom. The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that that the charges were established against the appellant.' The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the 'raid and recovery' at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex-parte departmental proceedings, to stand."

28. If one has regard to the aforesaid ratio a punishment by a quasi-judicial authority or an inquiry on the same charge cannot be sustained if the government servant is acquitted on a judicial pronouncement on merits when the entire trial has been gone into in the criminal case.

29. In the instant case, trial has not proceeded and as such in the light of the decision of Apex Court in Nelson Motis v. Union of India, JT 1992

(5) SC 511, the disciplinary proceedings drawn against applicant cannot be found fault with, where the following observations have been made:

> "5. So far the first point is concerned, namely whether the disciplinary proceeding could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject matter of the criminal case."

30. Moreover, in the absence of no misconduct or malafides, in a judicial review at an inter-locutory stage the disciplinary proceedings cannot be interfered, as held by the Apex Court in Union of India v. Upendra Singh, 1994 (2) SLJ 77.

31. In the light of what has been stated above, we do not find any merit in the OAs, which are accordingly dismissed. No costs.

Let a copy of this order be placed in the case file of each case.

S. Raju

(Shanker Raju)
Member (J)

(S.A.T. Rizvi)
Member (A)

'San.'