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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 505/2001

This the 16th day of April, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

HON'BLE MR. KULDIP SINGH, MEMBER (J)

V.K. Saxena
Deputy Secretary
M/o Consumer Affairs, Food and Public Distribution
Krishi Bhawan
New Delhi.

... Applicant

(By Advocate: Shri L.R. Luthra)

-versus-

Union of India
Through Secretary
Department of Revenue
M/o Finance, North Block,
New Delhi.

... Respondent

(By Advocate: Shri R.R. Bharti)

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Hon'ble Shri V.K. Majotra, Member (A)

Applicant has challenged order No. 157 dated 23.11.2000 (Annexure-1) whereby his juniors have been promoted to next higher grade of Joint Commissioner of Customs and Central Excise bye-passing the applicant. Learned counsel of the applicant Shri L.R.Luthra stated that applicant is a member of Indian Custom and Central Excise Service (IC & CES), 1987 batch and holds the post of Deputy Commissioner. He has been on deputation as Deputy Secretary in the Ministry of Consumer Affairs, Food and Public Distribution since 19.11.99. Applicant's name in seniority list dated 30.11.2000 (annexure-II) is at serial No.1373. Vide Annexure-III dated 10.5.2000 respondents asked the applicant to state whether he would like to revert to the cadre to avail benefit of ad hoc promotion to

the grade of Joint Commissioner as proforma promotion under next below rule, would not be accorded. Vide Annexure IV dated 12.6.2000, applicant conveyed to the respondent in response to Annexure-III that he would like to revert to his parent cadre to avail of ad hoc promotion under consideration in the Department. However, whereas several juniors of the applicant were promoted on ad hoc basis to the grade of Joint Commissioner vide Annexure-I, applicant was not promoted despite his willingness.

2. Learned counsel of the respondent Shri R.R. Bharti stated that name of applicant along with other Group 'A' officers was considered for ad hoc promotion to the grade of Joint Commissioner by the Departmental Screening Committee. His name was recommended for empanelment for ad hoc promotion to the grade of Joint Commissioner. However, before his turn approached for ad hoc promotion, it was reported that certain serious misdemeanours have been committed by the applicant and later on he was served a charge sheet vide Memorandum dated 16/19.1.2001 for initiation of major penalty proceedings in terms of Rule 14 of CCS (CCA) Rules, 1965 and as such his case was treated as deemed to have been kept in sealed cover. Learned counsel filed copy of the above Memorandum initiating disciplinary proceedings against the applicant relating to alleged misconduct during the period 18.8.1998 to 28.9.98. Learned counsel stated that on the basis of the ratio in the case of **Union of India and ors. Vs. K.V. Jankiraman & Ors.** JT 1991 (3) SC 527 sealed cover procedure has to be adopted when disciplinary/criminal proceedings are pending against a Government servant or when he is under

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suspension. He further stated that in terms of D.O.P.T OM No. 22011/4/91-Estt.(A) dated 14.9.92 sealed cover procedure has to be adopted not only when the Government servant is under suspension or disciplinary proceedings or criminal proceedings are pending against him but also when a Govt. servant who is recommended for promotion by the DPC but in whose case suspension/D.E/criminal proceedings have arisen after the recommendations of the DPC are received but before he is actually promoted and that he shall not be promoted unless he is completely exonerated of all the charges against him and provisions contained in OM dated 14.9.92 are applicable in his case also. Learned counsel stated that disciplinary proceedings having been initiated against the applicant after the receipt of DPC recommendations but before actual promotion of the applicant, sealed cover procedure has been rightly adopted in applicant's case.

3. Learned counsel of respondents stated that in a similar case, namely, O.A. No.356/2001 decided on 29.1.2002 (**Rajeshwar Singal v. Union of India & Ors.**), it was held as follows :

"In our view although the applicant had not been under suspension and no disciplinary proceedings or criminal prosecution had been pending against him at the time of the DPC meeting i.e. on 18.8.2000, he had actually not been promoted on 20.9.2000 and in terms of OM dated 14.9.1992, the recommendations of the DPC are deemed to have been kept in sealed cover and have to remain in sealed cover until the investigations against him are concluded.

Having regard to the reasons recorded and discussions made above, we do not find any merit in the OA which is dismissed accordingly, however without any order as to costs".

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4. 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, Manoj 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 O.M. 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 much before initiation of disciplinary proceedings against him. Respondents have wrongly interpreted the provisions of DOPT O.M. dated 14.9.1992 and withheld applicant's promotion by keeping the DPC recommendations for his promotion in sealed cover.

5. Having regard to the reasons recorded above, respondents are directed to open the sealed cover relating to recommendations of DPC for promotion of applicant forthwith and promote him to the post of Joint Commissioner of Customs & Central Excise ^{if recommended by DPC} _{U/s} from the date his junior Manoj

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Krishna was promoted as such. Applicant will also be entitled to consequential benefits. Respondents are further directed to implement the above directions within two months from receipt of these orders.

6. The OA is disposed of in the above terms. No costs.

Kul
(Kuldip Singh)

Member (J)

V.K.Majotra
(V.K.Majotra)

Member (A)

cc.