

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2485/97 198
T.A. No.

DATE OF DECISION 5-12-97

Sri Vijay Bahadur Singh Applicant (s)

Sri K. B. S. Rayen Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Sh. V. L. Upad Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Dr. Jose P. Verghese, VC (C)

The Hon'ble Mr. N. Sahu, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

(Dr. Jose P. Verghese)
VC (C)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2485/1997

New Delhi, this the 5th day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

Shri Vijay Bahadur Singh,
Son of Late Shri Ram Singh,
Assistant Commissioner of Income Tax,
Room No. 501, Income Tax Office,
Sanjay Place,
Agra.

Petitioner

(By Advocate: Shri KBS Rajan)

-Versus-

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.

2. Chief Commissionere of Income Tax,
Office of the Income Tax,
Ayhakar Bhawan,
16/69 Civil Lines,
Kanpur.

Respondents

(By Advocate: Shri V.P. Uppal)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case is aggrieved by the order of the respondents by which the promotion already granted to the petitioner by an order dated 10.4.1997 shall be treated as deemed sealed cover case by cancelling the said promotion already given. It was stated on the order itself that the said order has been passed on the basis of the fact that a chargesheet has been filed in the court of Sub Judge Dehra Dun against the petitioner and in accordance with the extant rules when a criminal complaint is pending, evidenced by chargesheet, proceedings are to be kept under a sealed cover. The said provision is contained in para 7 of the OM of DOPT dated 14.9.1992 and the same is reproduced herebelow:

(6)

" 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 OM will be applicable in his case also".

2. It was submitted on behalf of the petitioner that the sub rule as stated above has no application in cases where the promotion is already granted and as such the order of cancellation of the promotion already granted and taken over charge by the petitioner of the promoted post and thereafter cancelling the same without notice is against the principles of natural justice, and may amount to reversion.

3. After notice, the respondents have filed a reply and stated that the promotion order already issued in favour of the petitioner was required to be recalled and a show cause notice for the said purpose has already been issued on 8.5.1997.

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4. We have gone through the entire record and heard the arguments from both the sides and by applying the ratio of the decision of the Hon'ble Supreme Court given in Union of India & Ors. Vs. K.V. Jankiraman & Ors. and the OM issued by the respondents thereafter, namely, the one dated 14.9.1992 (AIR 1991 SC 2010) we are of the opinion that the provision contained in para 7 is only an enabling provision and that is applicable only in case the petitioner is not actually promoted. By no means the promotion is to be construed as a natural of consequence of a pending enquiry. The pending enquiry at the most is a shadow that is caste on the petitioner and the respondent is not without any remedy in case the pending criminal proceedings results in conviction. In the circumstances the cancellation of the promotion already given would amount to prejudging the result of the inquiry against the petitioner. At the most under para 7, the respondents only could keep the result back in the sealed cover which of course is of no consequence. In the circumstances the proposal of cancellation of promotion given to the petitioner, namely, the one dated 8.5.1997 is hereby set aside, granting the liberty to the respondents to act upon the result of the pending criminal proceedings on completion of the same in accordance with the law. With this the OA is allowed. No order as to costs.

(N. Sahu)
Member (A)

(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal

(8)

Per: Shri N. Sahu, Hon'ble Member (A) I entirely agree with the conclusion of the Hon'ble Vice Chairman (J)> However, I wish to add the following:

1. The procedure and guidelines outlined in the DOP&T's letter dated 14.9.1992 in respect of promotion of Government Servants against whom disciplinary/court proceedings are pending are applicable to pending proceedings before the promotion orders are actually issued. They have no application to cases where promotion orders are already issued. Para 7 makes this amply clear.

2. Annexure II Order No. 47 of 1997 dated 16.4.1997 is a promotion order already issued and communicated to the applicant as well as acted upon.

3. It is meaningless to talk of a 'sealed cover procedure' and "deemed sealed cover procedure", once the promotion order is communicated to the applicant and published. There is nothing more left now to place in the sealed cover. A 'deemed sealed cover' is an unnecessary and unwarranted invention of the respondents.


4. We are able to see that the sealed cover procedure could not be followed by the DPC on 10.4.1997 because there was no information before it about the chargesheet filed on 5.4.1997. There could be a "a mistaken belief", as contended by the respondents that no court proceedings were pending against the applicant. After Apex Court's decision in Kewal Kumar's case (1993) 24 ATC 77, the law is that

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even when a decision is taken to file a chargesheet by the competent authority, that would be sufficient to justify a sealed cover procedure. Keeping this in view the respondents are themselves to blame for not placing the correct information before the DPC in time. The learned counsel for the respondents laid considerable stress on the argument that the promotion order was not implemented, because the CCIT, Kanpur did not assign any specific post to the applicant as ACIT. This argument is unacceptable because in a recent judgement the Hon'ble Supreme Court in the case of Taghi Litin Vs. State of Arunachal Pradesh {1996 (3)} SLJ 57 held that the appointment on a post or office is based on:

- (a) decision by the competent authority about a particular person;
- (b) interpretation of the said decision as an Order of Appointment;
- (c) communication of the Orders of Appointment to the person who is appointed.

All the three conditions above are satisfied in the applicant's case. Not assigning a particular post does not diminish or reduce the effectiveness of Order of promotion and appointment. The Notification ~~dated~~ dated 16.4.1987 clearly 'appoints' the applicant as Assistant Commissioner. The date from which he takes over is only a functional aspect and not taking over, does not make the 'appointment' itself still-born as the learned counsel contended.



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5. There is no provision shown to us anywhere in the rules to justify undoing the promotion order already issued and acted upon and in the absence of any such provision, we cannot justify the proposed cancellation of the promotion order vide S.C.N. dated 8.5.1997.

6. As already indicated above, I respectively agree with the Hon'ble Vice Chairman (J) and hold that this OA deserves to be allowed.



(N. Sahu)
Member (A)