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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1579/94

New Delhi this the 7th day of September, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Smt. Lakshmi Swaminathan, Member(J).

A.K. Manchanda,
Deputy Commissioner,
Income-tax Office,
Ayakar Bhavan,
Agra (UP). Applicant.

By Advocate Shri K.N. Balgopal.

Versus

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Central Board of Direct Taxes,
North Block, Central Secretariat,
New Delhi.

ORDER (ORAL)

Shri N.V. Krishnan.

We have heard him. The grievance of the applicant is against the Annexure 'A' order dated the 25th November, 1993 addressed to the Chief Commissioner of IncomeTax, Kanpur by which the applicant's representation against non-grant of Selection Grade was rejected by the 1st respondent.

2. It is stated that a DPC met to consider the case of all persons for promotion to the non-functional selection grade. The applicant was also considered. However, the orders of promotion of others have been issued on 6.4.1993, Annexure-B. In that list, the applicant's name ^{states that} does not find a place. The applicant, in the

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meanwhile, ~~states~~ that a memo of charges was issued on 18.1.1993 which was received by him on 10.2.93. He, therefore, contends that on the date the DPC met on 2.12.1993, there was nothing against the applicant as the memo of charges was issued much later. Therefore, neither the recommendations of the DPC may be kept in a sealed cover as intimated in the impugned Annexure 'A' order nor can the promotion be withheld. In the circumstance, the applicant has prayed for a direction to the respondents to include the applicant's name also in the notification dated the 6th April, 1993, Annexure 'B' and grant him selection grade with effect from the date on which the others have been granted.

3. We have heard the learned counsel for the applicant. He relies upon the judgement of the Supreme Court in Union of India, etc. Vs. K.V. Jankiraman, etc. (AIR 1991 SC 2010). The learned counsel for the applicant produced for our perusal the Office Memo No.22011/4/91Estt.(A) dated the 14th September, 1992 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi, regarding the promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. That Office Memo was issued after the decision of the Supreme Court in Jankiraman's case. Paras 2 and 7 of that Office Memo which are relevant are reproduced as follows:

"2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone of promotion falling under the following categories 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 a criminal charge is pending.

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".

In other words, there may be cases where, when the DPC met there was nothing against the employee and, therefore, the DPC might have made recommendations in favour of the employee and that recommendation would not have been placed in a sealed cover. But, if subsequently the circumstances mentioned in para 2 above arise, the same will be considered as if his case

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had been placed in a sealed cover by the DPC.

4. That is the situation in the present case. The impugned Annexure 'A' order states that the case of the applicant is deemed to be kept in a sealed cover in terms of para 9 of the O.M., the date of which is not clear. Only the figures "14-9" are clear. It undoubtedly refers to the O.M. dated the 14th September, 1992 but has, by mistake, referred to para 9 itself. The relevant order is in para 7 quoted above.

8. The applicant's case is covered by para 7 of that O.M. The decision communicated in Annexure 'A' cannot be impugned without challenging the O.M. This has not been done.

6. In the circumstances, we find no merit in this O.A. O.A. is dismissed. No costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'

7.9.94