

(P)

Central Administrative Tribunal, Principal Bench

Original Application No. 1120 of 2000

New Delhi, this the 28th day of May, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Raj Pal,
S/o Shri Mohar Singh,
Asstt. Accounts Officer,
Pay & Accounts Office (IRLA)
Ministry of Information & Broadcasting,
Government of India,
A.G.C.R. Building,
I.P. Estate,
New Delhi. 110 001.

R/o House No. 308
Village Minirka,
P.O. Jawaharlal Nehru University,
New Delhi- 110 067.Applicant.

By Advocate: Sh.B.S. Mainee.

Versus

UNION OF INDIA

THROUGH: ~

1. The Secretary to the
Government of India,
(Dept. of Expenditure),
North Block, New Delhi-110 001.

2. The Controller General of
Accounts, Ministry of
Finance, (Dept. of
Expenditure) Lok Nayak
Bhawan, Khan Market, New
Delhi.

3. The Secretary to the
Government of India,
Ministry of Information &
Broadcasting, Shastri
Bhawan, New Delhi.

Through

The Chief Controller of Accounts,
Ministry of Information & Broadcasting,
H-Block, Con. Circus,
New Delhi-110 001.Respondents

By Advocate: Shri Madhav Panikar.

Km

By Hon'ble Mr. Kuldip Singh, Member (J)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 who is aggrieved by the wrongful, arbitrary and discriminatory action of the respondents vide which he alleges that his juniors namely, S/Shri Sukhbir Singh, Charanjit Nahar, S.K. Kardam, Kailash Chandar, Krishan Lal and Jainti Prasad have been promoted from the post of Assistant Accounts Officer to the post of Accounts Officer and the case of the applicant has been ignored.

2. It is further stated that the reason for supersession of the applicant has not been given. However, on enquiries, the applicant has come to know that the respondents are considering filing of the charge-sheet in respect of an event which has taken place somehow on 6.3.90 on the basis of which disciplinary proceedings had already been held against the applicant and the applicant was fully exonerated.

3. Facts in brief are that the applicant was initially appointed as Junior Accounts in the year 1978. From where he was promoted to the post of Senior Accountant in the year 1987 and again as Junior Accounts Officer in the year 1989. However, while working as Junior Accounts Officer, a Memorandum of charge-sheet for major penalty was served upon the applicant in the year 1991 alleging that the applicant had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a public servant inasmuch as he demanded and accepted a sum of Rs.500/- on 6.3.90 as illegal gratification from one Shri S.C. Gupta.

km

4. An enquiry was held and the applicant was exonerated. Simultaneously the CBI had also registered a case against the applicant under the Prevention of Corruption Act. The CBI had also submitted a report for closure of the case but somehow the Special Judge did not accept the closure report and applicant alleges that he understands that the efforts are being made by the CBI to obtain sanction of the competent authority for initiating criminal proceedings against the applicant but so far the sanction has not been granted and the matter is shuttling between the Ministry of Finance on the one hand and Ministry of Law and Ministry of Personnel on the other hand and it has not yet been finalised and whether criminal proceedings could be initiated for the same event before the criminal court and as such it is submitted that just for this reason the applicant cannot be denied promotion and the department could not have resorted to the "sealed cover" procedure because the Hon'ble Supreme Court has held that promotion cannot be denied before the charge-sheet is filed before the court or departmental proceedings are initiated and in this case since the departmental proceedings had already culminated in exoneration of the applicant and the charge-sheet on the criminal side has not yet been filed because the competent authority has not yet granted sanction so resorting to "sealed cover" procedure by the department is illegal and is punitive being stigmatic and discriminatory also so it is prayed that the OA be allowed and respondents be directed to consider the case of the applicant for promotion to the post of Pay & Accounts Officer from the date when his juniors have been promoted with all consequential benefits.



5. The respondents who are contesting the OA have not disputed the facts. They also allege that on 6.3.90 a trap was laid against the applicant who was arrested on the ground of having accepted illegal gratification.

6. The respondents further say that on 11.7.91 the CBI had filed a closure report under Section 173(2) of the Code of Criminal Procedure, 1973 taking into consideration the statements made by the complainant but the closure report was not accepted by the Special Judge so a decision has been taken to resort to "sealed cover" procedure as a criminal case is pending against the applicant thus the respondents wanted to justify the procedure adopted by them.

7. We have heard the learned counsel for the parties and have gone through the records of the case.

8. The learned counsel appearing for the applicant submitted that once the applicant has been exonerated in the departmental proceedings then the filing of charge-sheet by the CBI has been deprecated by the Hon'ble Supreme Court in a similar case entitled as P.S. Rajay Vs. The State of Bihar, JT 1996(6) SC 480 where the Hon'ble Supreme Court had laid down as under:-

" Section 5(2) read with section 5(1)(c)- CBI raid and investigation - Appellant forged the valuation report of the house owned by him - Contradictions in the report of the valuers - Charges in departmental proceedings and in the criminal proceedings are one and the same - Appellant exonerated on the basis of the report of the Central Vigilance

km

Commission and the same was accepted by the UPSC - Whether the respondent is justified in pursuing the prosecution against the appellant under section 5(2) read with section 5(1)(e)? - Held no - Standard of proof in criminal case is far higher than in the departmental proceedings - Conduct of CBI deprecated - Appeal allowed.

HELD

At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings."

9. The counsel for the applicant has also referred to a case entitled as U.O.I. etc. etc. Vs. K.V. Jankiraman etc. etc., AIR 1991 SC 2010 wherein it was held as follows:-

" It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. The

[Signature]

(13)

plea that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of purity of administration to reward the employee with a promotion, increment etc., would not be tenable. The preliminary investigations taken an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits to resort to the sealed cover procedure. The authorities thus are not without a remedy.

The promotion etc, cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee." (emphasis supplied)

10. After referring both the judgments the counsel for the applicant submitted that as far the departmental proceedings against the applicant for the said incident are concerned, the applicant has already been exonerated and at the time of holding of the DPC for promotion to the post of Accounts Officer no case was pending with the department nor any case had been instituted against the applicant or the criminal court so the department could not have resorted to the sealed cover procedure.

11. In reply to this Shri Madhav Panidkar, counsel appearing for the respondents submitted that the law as laid down by the Hon'ble Supreme court in the case of

km

(7)

K.V. Jankiraman has been subject matter in another subsequent judgment in the case of State of Madhya Pradesh and Another Vs. Syed Naseem Zahir and Others, 1993 Supp (2) SCC 225. In the said case the charges against the applicant related to a period prior to 1987 but the applicant was served with a charge-sheet on April 15, 1988 and at the time of DPC the department was contemplating to initiate proceedings against the employee in that case and the court while deciding the case, observed as under:-

"7. It is no doubt correct that in view of Jankiraman case the DPC was not justified in keeping the recommendation pertaining to Syed in a "sealed cover", but it is difficult to ignore glaring facts in a given case and act mechanically. Even in Jankiaraman case, while dealing with Civil Appeal Nos. 51-55 of 1990 this Court observed as under: (SCC p 126 para 39)

" In view of the aforesaid peculiar facts of the present case the DPC which met in July, 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary".

Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of respondent Syed be not opened till the departmental proceedings against him are concluded" (emphasis supplied).



12. Relying upon this, the learned counsel for the respondents submitted that since the filing of the charge-sheet against the applicant is still being contemplated by the CBI so the department could have resorted to the sealed cover procedure and could have withheld the promotion till the finalisation of the decision in the criminal case.

13. To our mind, the contention, as raised by the learned counsel for the respondents has no merits as even in the judgment relied upon by the respondents the Hon'ble Supreme Court had not disapproved the law as laid down in Janikaraman's case (Supra) rather the court had quoted the case of K.V. Jankiraman with approval and it is only on the peculiar facts of the case that the court had not accepted the plea of the employee.

14. Now coming to the facts of the present case we find that the incident pertained to the year March, 1990. Thereafter the departmental enquiry had been held and applicant had been exonerated. The CBI had already filed report for closure of the case but somehow the same was not accepted by the Special Judge and the various Ministries have still not taken a decision whether sanction to prosecute the applicant should be accorded or not meaning thereby that the charge-sheet has not yet been filed which means that the criminal prosecution has not yet been initiated against the applicant. Thus on the date when the DPC was held neither any departmental proceedings nor any criminal proceedings were pending

km

against the applicant so we are of the considered opinion that the department is totally unjustified to resort to the "sealed cover" procedure.

15. Hence, we allow the OA and direct the respondents to open the sealed cover and if the DPC had recommended the promotion of the applicant then the applicant may be promoted from the date his juniors are promoted in accordance with the rules and instructions on the subject. He will also be entitled to all consequential benefits. No costs.

Kuldeep
(Kuldeep Singh)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

Rakesh