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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1594/2000

New Delhi, this the 6th day of February, 2003

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

Shri Rishi Prakash Tyagi ..Applicant
(By Advocate: Shri Arun Bhadawaj)

Versus

Union of India & Ors.Respondent
(By Advocates: Shri N.S. Mehta & Smt. Sumedha Sharma)

Corum:-

Hon'ble Mrs. Lakshmi Swaminathan, VC (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to Benches of the Tribunal? NO

(Govindan S. Tampi)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1594/2000

This the 06/1 day of ^{February} ~~January~~, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. Rishi Prakash Tyagi,
S/o Sh. Jagram Tyagi,
R/o Quarter No. 14, Type-III,
P.S. Ashok Vihar, Delhi.

.....Applicant

(By Shri Arun Bhardwaj, Advocate)

VERSUS

1. Union of India through
Secretary, Min. of Home Affairs
Central Secretariat New Delhi
2. Lt. Governor of Delhi, Raj Niwas,
Raj Niwas Marg, Delhi
3. Commissioner of Police, HQrs
IP Estate, New Delhi
4. Addl. Commissioner of Police (Estt).
Police HQrs, IP Estate,
New Delhi
5. Deputy Commissioner of Police (Estt)
Police HQrs.
IP Estate, New Delhi.Respondents.

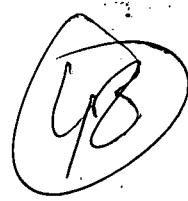
(By Sh. N S Mehta, advocate for Respondent No. 1 and
Mrs. Sumedha Sharma, Advocate for NCT Delhi
Respondent No. 2 to 5).

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Shri Rishi Prakash Tyagi, applicant in this OA challenges respondents' order No. 52216-40/CB-I, dated 26.6.2000, intimating that his case among those of a few others have been placed in the sealed cover and seeks that he be promoted to the Grade II of DANIPS, after opening the sealed cover and granted all consequential benefits.

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2. During the oral submissions the applicant was represented by Shri Arun Bhardwaj while the respondents were heard through Sh. N S Mehta, Sr. Standing Counsel alongwith Ms Sumedha Sharma.

3. The applicant who joined as Sub . Inspector in Delhi Police on 25.3.66, became an Inspector on 19.8.80 and was confirmed as such on 28.6.85. A criminal complaint was filed against him, along with a few others including another Inspector K. P. Singh on 26.11.87. Applicant was summoned on 2.4.94 by the Metropolitan Magistrate on 2.4.94, and his revision application against the same was rejected on 7.4.98, but the same order was stayed by the Hon'ble Delhi High Court on 30.5.98, in his Cr.M(M). The petition was dismissed on 27.10.99. Similar Cr. M(M) filed by K. P. Singh resulted in a stay on 31.5.98, which continued for a longer spell. Applicants petition, though has been dismissed, prosecution had not proceeded on account of the continuance of the stay in KP Singhs case. No charge has been framed as yet. Therefore on 5-7 April 2000, when the DPC for promotion from the grade of Inspectors to Grade II of DANIPS was held, no criminal case was pending against the applicant. Still the promotion orders dated 10.5.2000, did not include his name and he was informed by the impugned orders that his case had been placed in sealed cover, as he did not have vigilance clearance. The applicant had been representing his case. Since January 95 and the last of his representations dated 12.6.2000 had been rejected on 24.7.2000,. Hence this OA.

4. Grounds raised in the OA are that:

a) the action of the respondents was illegal and discriminatory;

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- b) KP Singh a similarly placed individual has been dealt with differently;
- c) all others concerned in the same summons have been promoted;
- d) denial of promotion to the applicant was malafide;
- e) in the absence of any charge sheet his case could not have been placed in the sealed cover;
- f) rejection of his representation has been illegal;
- g) sealed cover process has been wrongly adopted in his case, against the guide-lines issued in KV Jankiraman's case by the Hon'ble Supreme Court;
- h) in view of the promotion of Tej Singh he could not have been denied the promotion;
- j) his promotion could not have been stalled when many of his juniors had been promoted;
- k) a number of others having proceedings against them have been promoted and
- l) no reasonable ground existed which could support the respondents action.

In the above circumstances OA should succeed, pleads the applicant.

5. In the reply filed on behalf of the respondent No. 1 on 1.1.01, it is pointed out that in the DPC held on 5-7 April 2000, for promotion to DANIPS, the recommendations in respect of the applicant were kept in sealed cover, as Govt of NCT Delhi had indicated that a criminal case was pending against him. The said criminal case related to a custodial death which occurred on 25.8.87, in Vivek Vihar Police Station, New Delhi, when the applicant was Station House Officer, following which he along with six others were placed

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under suspension. The case was eventually filed as untraced. Following a complaint filed by the father of deceased, Metropolitan Magistrate initiated enquires and arrived at a prima facie finding about the involvement among others of the applicant, in the said offence and summoned him. His revision petition against the summons having been rejected by the Sessions Court, the applicant got the said Order stayed by the Hon'ble High Court on 30.5.98, but his CMP was dismissed on 27.10.99. It is in the above circumstances, that the applicant's case was kept in sealed cover by the DPC on 5-7/4/2000 in terms of DoPT's OM No. 22011/4/91-Estt (A) dated 14.9.92, which permitted the adoption of the said procedure when an officer was under suspension, when Charge-sheet in disciplinary proceedings has been issued and when prosecution for a criminal charge was pending. Prosecution is deemed to have been launched when the investigating Police Officer submits the report, which is taken cognisance by the Court. Applicant's case fell in the said category and hence the placement of recommendations his case in sealed cover. This was proper and correct. K.P. Singh, a similarly placed officer had obtained a stay from the High Court on 1.5.98, which continued till 22.8.2000. He was, therefore, given vigilance clearance for the DPC held on 5-7, April 2000 and was promoted on the basis of DPC's findings. This was also correct. The applicant has been treated properly and as permitted in law and his case for promotion by opening the sealed cover would arise only in the event of his ultimate exoneration in criminal proceedings and not before that. His representation had been, in the circumstances rightly rejected. He has no case and the OA deserved to be dismissed, urge the respondents.

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6. In the short reply filed on 27.7.2001 on behalf of Respondent No. 2 and 3 (GNCT) it is pointed out that when the vigilance clearance was sought in respect of officers eligible for induction to Grade II in DANIPS, the same was not given in respect of the applicant as a complaint was reportedly pending trial in the court against him. No such case was reported as pending against K.P. Singh who was accordingly given vigilance clearance. Further in 1994, while considering the case of Sub-Inspectors for promotion to the rank of Inspectors reference to the above complaint had been made against Shri Tej Singh. Recommendations in his case were kept in the sealed cover. However, the said ^{sealed} cover was opened on receipt of notice from the Tribunal in OA 91/96 filed by Shri Tej Singh claiming that mere summons by the Magistrate in the complaint did not mean that the charge had been framed. As no such case was reported as pending against Shri Surender Kumar, he was given vigilance clearance. In the above circumstances the promotions granted to KP Singh on the one hand and Tej Singh as well as and Surendar Kumar on the other were correct but the same do not assist the case of the applicant, according to the respondents.

7. During the oral submissions made on 22.5.2001, it was indicated by Shri Arun Bhardwaj that the respondents were adopting different standards in dealing with the identical matters. He pointed out that though the applicant was similarly placed as few others who were concerned in the same case and some others individuals in similar other cases, ~~others~~ have been promoted, a benefit which was not extended to the applicant. In view of above, specific directions were issued on 22.5.2001 to respondents to file additional

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affidavit explaining the stand they have taken in this regard. In the additional affidavit filed on 11.9.2001 by the counsel for respondent No.1, it is indicated that S/Shri Quamar Ahmad and Mahabir Singh who were also summoned on 2.4.94 were discharged by the Session Judge. K P Singh, who was not given any benefit by the Session Court moved the Hon'ble Delhi High Court and obtained the Stay of the criminal proceedings which were in operation when his case was considered for promotion to Grade II DANIPS. The Stay was vacated and petition was dismissed only in August 2000 by which time he was already promoted. That being the case the promotions given to Quamar, Mahabir Singh and KP Singh were, according to the respondents, proper and regular. In respect of 11 persons referred to by the applicant, the respondents point out that they had been cleared from the vigilance angle and none of the conditions necessitating the sealed cover procedure existed in their cases. Their promotions also were correct. In the case of Tej Singh who was involved in the same case as the applicant, the recommendations of the DPC were originally kept in sealed cover on account of the pendency of the complaint but it was opened by the competent authority and recommendations were given effect, following receipt of the notice in OA No. 91/96 on the ground that mere summons by the Metropolitan Magistrate did not amount to filing of Charge sheet. Tej Singh was therefore promoted. In the case of Surinder Kumar the DPC had not been informed about pendency of the case against him but he was found 'unfit' on account of a major penalty imposed on him on 24.6.91. However, as the said penalty having since been reduced to 'Censure', his case was taken up by a Review DPC on 18.8.94. At that stage also Delhi Police authorities did not inform the DPC about the pendency of any criminal case

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against the individual. Accordingly the Review DPC recommended his case. He was promoted on 10.6.96, but with effect from 18.8.94. The applicant in fact had filed a Writ Petition in High Court Delhi against the order of Sessions Judge and the latter had stayed the proceedings by order dated 1.5.98 but had dismissed the writ petition on 27.10.99 i.e. before his case came for consideration for promotion to Grade II of DANIPS. He was, therefore, not cleared from vigilance angle and accordingly his case had been properly kept in the sealed cover. His promotion would be considered only after complete exoneration from the proceedings. It is conceded that the promotions of Shri Tej Singh and Surinder Kumar had taken place on account of the vigilance clearance communicated erroneously by Delhi Police. The same, however, cannot come to the assistance of the applicant as extending undue benefit of one erroneous promotion to those allegedly placed similarly would have wide repercussions. It was the firm policy of the Government that officers under cloud should not be promoted till they are fully cleared of the charges. They also state that respondents 3 and 4 are expected to enquire into the circumstances under which wrong vigilance clearance had been conveyed in respect of Tej Singh and Surendar Kumar. In the additional affidavit filed on 26.11.2001, respondents 3 & point out that the applicant's allegation that despite pendency of criminal cases/ Departmental enquiries pending against a number of officers they have given promotion was incorrect. Before taking a decision to release or withholding of vigilance clearance/ integrity certificate Police HQrs had considered the reports received from all the wings including Vigilance Branch. Units where the applicant and KP Singh, were working had not mentioned anything about the pendency of

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any complaint / proceedings against them. The same was the report from the Vigilance Branch as well. Respondents No. 3 to 4 adopted the reply of respondent no. 1 but furnished details of the dates on which some others have been promoted. In the further affidavit filed on 4.2.2002, they point out that the integrity certificate in respect of applicant had never been withheld by the Delhi Police. In respect of Tej Singh, recommendations of the DPC were kept in the sealed cover but on receipt of notice in his OA No. 91/96, the matter was re-examined at the competent authority's level when it was held that mere pendency of a complaint case and/or the issuance of summons by the Magistrate was not sufficient to withhold promotion, as held by the Hon'ble Supreme Court in the case of Union of India Vs K.V. Jankiraman [ATR 1991 (78) SC 2010]. The above resulted in his promotion. The respondents also state that the petition filed by KP Singh before the Hon'ble High Court had been dismissed but that he had been promoted in the meanwhile. According to them there was nothing incorrect in the above decision. In the written submissions filed on 5.9.2002 respondents No. 3 and 4 have adopted a different stand. They aver that on account of complaint case reportedly pending trial against the applicant, his vigilance clearance was denied but in KP Singh's case, as no such fact was reported, vigilance clearance was granted. At the same time they reiterate that the applicant and KP Singh who appear at Sr Nos. 77 and 173 in the Delhi Police list and who were posted in PCR Unit had not been adversely reported by the authorities. According to them what had occurred was only a 'human' error or mistake at their end and the applicant shall not be permitted to take any advantage of this mistake, as a matter of right.

8. During oral submissions Shri Arun Bhardwaj vehemently pursued the arguments made by him on behalf of applicant. He stated that in as much as none of the three conditions referred in para 2.3 of the DOPT OM dated 14.9.1992 were present in his case as he was not under suspension, as no charge sheet had been issued to him in disciplinary proceedings and as no charge had been framed against him - sealed cover proceedings could not have been resorted to. He stated that the promotions ordered in the case of others were not being contested by him as according to him, they had been correctly done but what he was aggrieved with, was the discrimination meted out to him by placing his case alone in sealed cover. The respondents have adopted dual standards only with intention of hurting him and denying him his promotion. He has already retired on superannuation, without enjoying the fruits of promotion, which he should have got as of right. The inaction on the part of the respondents and their improper appreciation of the relevant rules and instructions should not be permitted to hurt, the applicant's case pleads Shri Bhardwaj. Shri N S Mehta, Sr. standing counsel for the Union only states that the action by the respondents in respect of KP Singh was not incorrect as on the date of meeting of the DPC criminal proceedings against him stood stayed by the High Court, which was not the position in the case of applicant. He however agreed that the promotions granted to Tej Singh and Surendar Kumar, were on account of the incorrect supply of details by the Delhi Police authorities. Smt. Sumedha Sharma learned counsel adopted the pleas made by Shri N S Mehta in general but added that in respect of promotions of Surendar Kumar and Tej Singh, a 'human' error factor had caused a failure in the system and

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remedial action therefore is contemplated. She also confirmed that till date in the Metropolitan Magistrate Court no charge sheet has been framed against anyone in the concerned case.

9. Both the learned counsel for the respondents aver that the applicant was only trying to take the advantage of a mistake which had occurred in the respondent's end which should not be permitted.

10. We have carefully considered the matter. Bereft of frills, the point for determination in this case falls into a very small compass i.e. whether the applicant's case should have been placed in the sealed cover by the DPC, in the circumstances of the instant case. Facts are not disputed. The applicant and a few others were concerned in a complaint filed, following a alleged custodial death at Vivek Vihar Police Station, where they were working. Metropolitan Magistrate of the area had after Preliminary Enquiries issued summons to them. The applicant's Review Application before the Sessions Judge against the summons did not succeed but the decision of the Sessions Judge was stayed by the Hon'ble Delhi High Court on 30-5-98. The petition was dismissed on 27.10.99, before the DPC met on 5/7-4-2000. On the other hand, in the case of KP Singh, the stay granted by the Hon'ble High Court was continuing when the DPC had met. The respondents had, therefore, declined to give Vigilance clearance to the applicant but had granted the same to the KP Singh ^{based on} this minor distinction. It is also on record that two other persons, also concerned in the same complaint, Tej Singh and Surendar Kumar were also promoted because vigilance clearance was incorrectly given in their cases by Delhi Police. It is further averred that though DPC's findings in



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respect of Tej Singh were originally placed in the sealed cover, the same was opened by the competent authority on receipt of notice in OA filed by him, by agreeing to the view that mere filing of a complaint and issuance of summons per se did not amount to framing of the charge and did not come in the way of promotion.

11. In the above scenario, it would be relevant to refer to the most important case law in the matter of DPC w.r.f. sealed cover procedure and instructions issued subsequent to it. In the case of K.V. Jankiraman (supra), the Hon'ble Supreme Court had, while dealing with the sealed cover procedure to be adopted by the DPC, recorded:-

"6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that 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. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities 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 the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take 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

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would 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 a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities tha conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:-

"(i) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

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(4) the sealed cover procedure can be resorted ony after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that 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. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said findings of the Full Bench of the Tribunal."

It is in pursuance of this land mark judgment the Govt. of India issued fresh and detailed instructions on sealed cover proceedings vide their OM No.22011/4/91-Estt(A) dated 14.9.1992. Para 2 of the said OM reads as under:

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2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) who are under suspension; /
- ii) in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- iii) in respect of whom prosecution for a criminal charge is pending.

Therefore the sealed cover proceedings can be adopted only if any of the three circumstances, as enumerated above are present.

12. The plea of the applicant is that since none of the three conditions referred to in para 2.3 of the OM did exist in his case, the recommendations about his case by the DPC could not have been placed in the sealed cover. Respondents seek to draw a distinction between the cases of the applicant and K.P. Singh, by stating that in the first the petition filed before the Hon'ble High Court stood dismissed and the criminal proceedings were permitted to be continued while in the other, this was done only after the DPC meeting was over and the person concerned was promoted. Endorsing this distinction would mean that in the same criminal proceedings initiated against a group of individuals, can proceed in respect of a few and can be stalled in respect of

others. This position cannot be sustained in law. It is pertinent to note that respondent No.1, the authority concerned in the promotion of officers to the rank of Assistant Commissioner of Police, have stated on oath that the action taken by them in respect of K.P.Singh was fully correct and justified. The position, which is held to be correct in the case of K.P.Singh would have to be so in the case of the applicant as well. No ground has been brought on record to show which would justify this difference for treatment, which has been adopted apparently to delay and deny the applicant his promotion.

13. We also observe with considerable distress that the stand taken by the respondents while handling this matter, leaves much to be desired. While dealing with a group of officers all of whom are involved in the same case, the respondents have chosen to accord vigilance clearance to one or two but have denied the same to others, including the applicant. Obviously, they have adopted a policy of 'pick and choose' for which there is no place in a fair and just administration. The belated submissions by respondent Nos. 3 & 4 that the promotions of Tej Singh and Surender Kumar had occurred only on account of a 'human error/mistake factor' betrays total non-application of mind on their part. That apart, as observed by us above, respondent No.1, having adopted the stand that the case of K.P.Singh was correctly recommended for promotion by the DPC, there was no reason why the same benefit could not have been extended to the applicant as well, as both of them were similarly circumstanced as far as the

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criminal proceedings are concerned on the days when the DPC met. Being persons placed in equal circumstances, they should have been treated alike. The same has not been done and the respondents have acted in a discriminatory manner violating the requirement under Article 14 of the Constitution. We also note that the applicant had already retired on superannuation without getting the benefit of promotion which has been given to his colleagues and juniors, who were similarly placed. This, in the circumstances of the case, was clearly avoidable.

14. We are also informed that remedial action is under contemplation for rectifying the mistakes which have already arisen while preparing the papers for submission to DPC by the DPC but nothing apparently has been done as yet.

15. In the above view of the matter OA succeeds and is accordingly allowed. The impugned Memorandum dated 26.6.2000 is quashed and set aside. The respondents are directed to have the sealed cover in which the findings of the DPC held on 5-7-4.2000, in respect of the applicant have been placed, opened and to take action accordingly. If the applicant is found fit he shall be promoted to Grade II in DANIPS from the due date with all the consequential benefits of pay and allowances, which would include arrears and the enhanced pensionary benefit. This exercise shall be completed within 3 months from the date of receipt of this order. No costs.

(Govindan S. Tampli)
Member (A)

Patwal/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)