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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1420/89

New Delhi this the 8th day of April, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

Kanti Prasad S/O Late Ram Saran Das,
R/O G-233, Sector 23, Sanjay Nagar,
Ghaziabad, and working as
Regular Junior Accounts Officer
and promoted as A.A.O.,
Ministry of Communication on
Deputation to Mahanagar Telephone
Nigam Limited, 12th Floor,
1st Tower, Jeevan Bharti,
Connaught Circus,
New Delhi-1.

... Applicant

By Advocate Shri Gyan Prakash

Versus

1. Union of India through
Secretary, Ministry of
Communication, Deptt. of
Telecommunications,
Sanchar Bhawan,
New Delhi.
2. Asstt. Director General-SEA,
Deptt. of Telecommunication,
Telecom Commission,
Sanchar Bhawan, New Delhi.
3. Managing Director,
Mahanagar Telephone Nigam Ltd.,
Jeevan Bharti, 1st Tower,
12th Floor, Connaught Circus,
New Delhi - 110001.

... Respondents

By Advocate Shri V. K. Rao

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath -

The petitioner, Shri Kanti Prasad, commenced his career as Accounts Clerk in the year 1972. He was promoted as Junior Accounts Officer in the year 1983 and confirmed in that position in the year 1984. He was sent on deputation to Mahanagar Telephone Nigam Ltd. on 11.1.1984. The next promotional post available

to the petitioner is that of Accounts Officer. An order was passed on 30.5.1989 promoting the petitioner as Deputy Accounts Officer w.e.f. 15.12.1987 subject to the condition that no disciplinary/vigilance case is pending against him. It is further stated in the order that those officers against whom punishment of stoppage of increments is current should not be promoted. The petitioner was not actually promoted in accordance with the said order dated 30.5.1989 on the ground that a disciplinary inquiry is pending against him. It is in this background that the petitioner has approached this Tribunal praying for quashing the order dated 20.6.1989 (Annexure A-1) in which it is stated that since disciplinary/vigilance case is pending against the petitioner, his promotion has not been given effect to, and for consequential reliefs.

2. Shri Gyan Prakash, learned counsel for the petitioner, contended that this is a case in which the petitioner could not be denied promotion on the ground that the memo of charges in the disciplinary proceedings was not served on him when the order was passed on 30.5.1989. Reliance was placed by the counsel on the decision of the Supreme Court in Union of India & Ors. vs. K. V. Jankiraman & Ors. — JT 1991 (3) SC 527. Prima facie, that decision appears to support his contention. The learned counsel for the respondents, Shri V. K. Rao, however, relied upon the latest judgment of the Supreme Court in Union of India vs. Kewal Kumar — JT 1993 (2) SC 705. After

a review of the decisions of the Supreme Court in Jankiraman's case (supra) and following another earlier decision in the case of Delhi Development Authority vs. H. C. Khurana — JT 1993 (2) SC 695, the Supreme Court has crystalised the principle in the following terms in paragraph 4 of the judgment :-

"4. The question to examine in each case, is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the D.P.C. made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that, in a case like the present, where the C.B.I. had recorded the F.I.R., sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the F.I.R., to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be faulted."

Hence, the crux of the matter is not as to whether the memo of charges was served in the disciplinary proceedings or the charge was framed in a criminal case. The crux of the matter is as to whether a decision was taken by the competent authority in this behalf or not. If the competent authority in the present case had taken a decision to initiate

disciplinary inquiry for imposition of a major penalty against the petitioner, the sealed cover procedure had to be followed even if the memo of charges was not formally drawn and served on the petitioner. It is a question of fact as to whether a decision in this behalf was taken at the appropriate point of time as laid down by the Supreme Court. In this case, we have the averment of a responsible officer in the Counter filed on behalf of respondent No.1, namely, by Shri K. N. Ganapathy, Asstt. Director General (SEA), Deptt. of Telecommunications, Sanchar Bhawan, New Delhi. It is averred therein that a case was investigated in regard to the allegation that the petitioner had submitted medical reimbursement bills amounting to Rs.11,175/- which were found to be false and forged. It is in this background that the competent authority was required to apply its mind and to take a decision as to whether a disciplinary inquiry should be held or not. This is what has been stated by the first respondent. We shall quote the relevant averments in the counter as follows :-

*Based on the evidence collected against Shri Kantiprasad the enquiries held, the competent authority had already taken a decision to proceed against the applicant. When the enquiries were in full swing the applicant Shri Kantiprasad, vide his letter dated 12/01/1989 had offered to withdraw the bill and also offered apologies, saying that he had become a victim of the manipulations of his relatives. This tendering of apology by blaming one of his relations and offering to withdraw the claim is an after thought and an idea conceived after coming to know that vigilance team has procured photo copies of the original cash memoes. The offer of withdrawal of claim is nothing but an

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admission of the guilt. The applicant is working as Junior Accounts Officer in the Department of Telecommunications, which is a responsible post. He is expected to check and point out the mistakes and irregularities in financial matters being committed by the staff. He is entrusted with the job of strict maintenance of a check over all the expenditure incurred by the department and render proper advice to the higher officers as far as financial matters are concerned. Accordingly, he is expected to maintain the highest degree of integrity. By the above act, the applicant has failed to maintain the absolute integrity as expected of him by the department. The investigations in this fraud case are almost finalised, and as brought out above the competent authority has already taken a decision to proceed against the applicant."

"This Honourable Tribunal may kindly appreciate that the integrity of a Government servant is a vital factor in determining his suitability for promotion to a higher grade. If a Government servant against whom investigations on some serious allegations of misconduct has been instituted, gets promoted just because the chargesheet has not been issued to him, the important criterion of maintaining absolute integrity will be totally relegated to the background. If the Government is forced to promote a Government servant against whom investigations are in progress for claiming bogus and fraudulent medical bills, the objective of maintaining purity in administration will be defeated and such a situation will not be in public interest."

It is clear from these averments that though the formal chargesheet was not served on the petitioner, on the basis of the evidence collected during the investigations in regard to the fraud committed by the petitioner, a decision was taken well before the relevant date for the purpose of holding a disciplinary inquiry against the petitioner. The mere fact that the memo of charges

was not served is, therefore, not a good ground for holding that the sealed cover procedure could not have been adopted in this case.

3. Following the decision of the Supreme Court in Union of India vs. Kewal Kumar (supra), it has, therefore, to be held that the withholding of the promotion pending disciplinary inquiry was justified on the facts and circumstances of this case. We are also informed that the petitioner has in the meanwhile been punished with imposition of penalty of stoppage of increments and that he has challenged the said order imposing stoppage of increments in another original application which is pending before the Tribunal.

4. For the reasons stated above, this application fails and is dismissed. No costs.

P. T. Thiruvengadam

(P. T. Thiruvengadam)
Member (A)

V. S. Malimath

(V. S. Malimath)
Chairman

/as/