

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01280/2014

Date of CAV: 03.11.2020

Date of Pronouncement: 06.11.2020



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

K.Harsha Vardhan, IAS,
S/o Late K.Ganga Raju,
Aged about 50 years,
Project Director Bhu-Bharathi Project,
O/o the Commissioner of Survey & Settlements,
Survey Bhavan, Narayanguda, Hyderabad.Applicant

(By Advocate : Mr.K.Sudhakar Reddy)

Vs.

1. The Government of Andhra Pradesh,
Rep by the Chief Secretary, Secretariat,
Hyderabad.
2. The Principal Secretary (Political),
General Administration Department,
Government of Andhra Pradesh,
Secretariat, Hyderabad.
3. The Union of India ----- (Pro forma Party)
Rep by its Secretary,
Department of Personnel & Training,
Ministry of Personnel, New Delhi.
(Pro forma Party)Respondents

(By Advocates : Mrs.K.Rajitha, Sr. CGSC for R-3
Mr.M.Bal Raj, Govt. Pleader for State of AP &
Mr.P.Raveender Reddy, Spl. Counsel for TS

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed in regard to grant of JAG promotion to the applicant.



3. Brief facts of the case are that the applicant was appointed in the IAS cadre against promotion quota vide Governmental Order dated 12.3.2010 and his year of allotment to the said cadre is 2005. His batch mates were promoted to JAG grade, which is a Non Functional Grade, in Feb 2014 but not the applicant. Applicant represented and there being no response, OA has been filed.

4. The contentions of the applicant are that officers who have 9 years of service in Sr. Time Scale are eligible to be appointed in JAG grade without any screening. Applicant, though eligible, was not granted JAG, which is violative of Articles 14 & 16 of the Constitution of India.

5. Respondents 1 & 2 in the reply statement state that prior to the induction of the applicant into the IAS cadre, based on allegations of disproportionate assets a criminal case has been registered against the applicant in Cr. No. 25/ACB- CR/2009 under Section 13(2) r/w. 13(1)(e) of Prevention of Corruption Act 1988 on 11.11.2009. Director General, ACB, after due investigation submitted a report on 22.10.2013 recommending inquiry by the Commissioner of Inquiries and the same is under progress. In the meanwhile, applicant was appointed to the IAS cadre in 2010 by assigning 2005 year of allotment. In 2014, officers of the 2005 batch, who

had completed 9 years of service, were considered for JAG grade as per DOPT memo dated 28.3.2000/ para 11.1 of Annexure II of instructions of promotion guidelines and while doing so the case of the applicant could not be taken up, since vigilance clearance was denied as per GOI OM dated 29.10.2007. Others eligible officers were promoted on 11.2.2014 and as a disciplinary case was pending against the applicant, he was not promoted. Applicant represented on 19.5.2014 about denial of JAG grade and the same is under examination. Charges were framed against the applicant on 23.9.2014 under Rule 8 of AIS (D&A) Rules, 1969. Without filing the defence statement applicant filed the OA.

6. Heard both the counsel and perused the pleadings on record.
7. I. Applicant, who belongs to the 2005 batch was issued a charge memo on 23.9.2014 under Rule 8 of AIS (D&A) Rules 1969 after due investigation by the ACB in respect of allegations of disproportionate assets. Batch mates of the applicant, who completed 9 years of service in senior time scale have been granted JAG on 11.2.2014, whereas the applicant was denied the same.

II. Respondents have stated that the applicant was not given vigilance clearance in accordance with GOI OM dated 29.10.2017 and therefore, his case was not taken up for grant of JAG. Ld. Counsel for the applicant has submitted that the GOI memo cited is not applicable to IAS officers and therefore, non grant of vigilance clearance based on a memo,

which is applicable only to central service officers, is arbitrary and irregular. We have perused the OM No.104/33/2005-AVD.I dated 29.10.2007 and it was issued by DOP&T, which is the cadre controlling authority for grant of vigilance clearance to IAS officers for consideration of their appointment and for various other purposes. Once the applicant has been appointed to the IAS cadre he is covered by the OM cited. We find a reference to this OM in OA No.2208/2017 adjudicated by the Hon'ble Principal Bench of this Tribunal in Babulal Agrawal vs M/o. Personnel, Public Grievances & Pension on 5 April, 2018 wherein vigilance clearance was denied based on the cited memo to the applicant therein, who too was an IAS officer. Therefore, for reasons of the memo having been issued by the cadre controlling authority and the same memo being applied to an IAS officer in the case dealt by the Hon'ble Principal Bench, the contention that the memo does not apply to the case of the applicant is not tenable. With the non availability of the vigilance clearance, the case of the applicant could not be considered for JAG.

III. Further, the relevant portion of clause I of Annexure I i.e. Principles regarding Promotion of Members of IAS & Composition of DPC annexed to DOPT OM 28.03.2000, which deals with grant of JAG, is reproduced hereunder to understand its relevance to the case on hand.

“An officer is eligible for appointment in the Junior Administrative grade on completing 9 years of service. This grade is non-functional and shall be admissible without any screening, as a matter of course, to all the officers of the Senior Time Scale from 1st January of the relevant year, except in cases where any disciplinary /criminal proceedings are pending against the officer.”

As is seen from the above, grant of JAG is subject to there being no disciplinary case/ criminal case pending against the officer. Applicant claims that there is no disciplinary/ criminal proceedings pending against him as on the date of consideration i.e. 1.1.2014 and therefore he is eligible for JAG. He has also made a representation dated 19.5.2014 referring to clauses 11.1 & 11.2 of Annexure II of instructions of promotion guidelines which states as under:



"11.1 At the time of consideration of the cases of officers for promotion, details of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned screening committee:

- a. *Officers under suspension*
- b. *Officers in respect of whom a charge sheet has been issued and disciplinary cases are pending*
- c. *Officers in respect of whom prosecution for criminal charge is pending*

11.2 The screening committee shall assess the suitability of the officers coming within the purview of the circumstances mentioned above, along with other eligible candidates, without taking into consideration the disciplinary case/ criminal prosecution which is pending. The assessment of the committee including "Unfit" for promotion and the grading awarded by it will be kept in a sealed cover...."

IV. In the context of the applicant's submission that there was no disciplinary case/criminal case pending, we need to examine as to whether a decision to initiate disciplinary action/ criminal case has been taken before the cut off date for consideration for JAG. The decision depends on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. In the present case, ACB has registered a case against the applicant bearing the Cr. No. 25/ACB-CR/2009 under Prevention of Corruption Act, 1988. DG, ACB, after due investigation submitted a report on 22.10.2013 recommending inquiry by



the Commissioner of Inquiries, which was said to be pending when the counter was filed. Therefore, when the ACB has registered the case and the DG, ACB has recommended inquiry by the Commissioner of Inquiries, before the cut off date, it cannot be said that the sealed cover procedure has not been followed. It is these factors, which are material to adjudge the suitability of the applicant to be qualified for JAG in the context of understanding the aspect of any disciplinary case/ criminal case pending against the applicant. The clause 11.1 of Annexure II of instructions of promotion guidelines has its roots in Jankiraman case.

V. In *Jankiraman* itself, it has been pointed out that the sealed cover procedure is to be followed, where a Government servant is recommended for promotion by the DPC but before he is actually promoted if a decision has been taken to initiate disciplinary proceedings or criminal prosecution is launched. Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, or steps to criminally prosecute the applicant are taken. In the instant case, ACB registered the case and the respondents initiated the disciplinary process by the DG ACB recommending inquiry by the Commissioner of Inquiries before the cut off date.

VI. It is explicit that when the competent authority has taken the decision to initiate disciplinary proceedings or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise.

In the present case, the ingredient of ACB registering the case and based on the DG ACB report, inquiry by the Commissioner of Inquiries has been taken up, makes it evident that a decision to take disciplinary action/ criminal prosecution had been taken. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied by the registering of the ACB case which contains the allegations against the applicant. The requisite formulation of the charges, in such a case, is no longer unformulated, being crystallised in ACB Cr. No. 25/ACB- CR/2009 being registered on 11.01.2009 itself and, therefore, even if the charge-sheet was issued later to the cut off date, this fact alone cannot benefit the applicant.

We rely on the observations of the Hon'ble Supreme Court in ***Union of India v. Kewal Kumar, (1993) 3 SCC 204***, as under, in making the above observations.

2. *The question in the present case, is : Whether the decision in Jankiraman was correctly applied in the present situation? In Jankiraman itself, it has been pointed out that the sealed cover procedure is to be followed where a Government servant is recommended for promotion by the DPC, but before he is actually promoted if 'he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken'. Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, or 'decision to accord sanction for prosecution is taken' or 'criminal prosecution is launched or ... decision to accord sanction for prosecution is taken'. The object of following the sealed cover procedure has been indicated recently in the decision in Civil Appeal No. 1240 of 1993 — Delhi Development Authority v. H.C. Khurana pronounced on April 7, 1993, and need not be reiterated.*

3. *It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC,*





being found suitable otherwise. In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.

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 DPC 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 CBI had recorded the FIR; 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 FIR, 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.”*

VII. In view of the above observations of the Hon'ble Supreme Court, the contention made by the applicant that there was no disciplinary case / criminal case pending against him on the cut off date is not maintainable, since the decision to take disciplinary action/ criminal prosecution against the applicant was taken before the cut off date of 1.1.2014. Eventually, the charge sheet was issued to the applicant on 23.9.2014. The Ld. counsel for the applicant has cited the order of this Tribunal in OA 504/2007 dated 6.11.2008 in support of the contention that a similarly placed I.F.S officer was granted promotion. However, in view of the directions of the Hon'ble

Apex Court cited supra, the verdict in the cited OA would not be of any help to the applicant.



VIII. Thus, as can be seen from the above, primarily, the applicant was not issued vigilance clearance based on the OM dated 29.10.2017 issued by the Cadre Controlling Authority and secondarily, in accordance with the legal principle laid down by the Hon'ble Apex Court, once steps are taken to initiate disciplinary case/ criminal prosecution, the applicant would not be eligible for grant of JAG unless he is cleared of the charges. The decision of the respondents in not granting JAG is, thus, in accordance with the rules and law, as discussed supra.

IX. In view of the aforesaid circumstances, the OA being devoid of merit, merits dismissal and hence dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

evr