

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 579/87
T.A. No.

198

DATE OF DECISION 20.8.1987

Shri R.D. Madan

~~Petitioner~~

Applicant

Shri Sant Lal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all the Benches ?

(BIRBAL NATH)
Member (A)

(J.D. JAIN)
Vice-Chairman

10

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PRINCIPAL BENCH NEW DELHI.

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REGN. NO. D.A. 579/87.

Shri R.D. Madan

... Applicant

Vs.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicant:

Shri Sant Lal, Advocate.

For the respondents:

Smt. Raj Kumari Chopra, counsel.

JUDGMENT

(delivered by Mr. Birbal Nath, AM).

The applicant, Shri R.D. Madan, joined service with the Posts and Telegraphs Department on 1.10.1956 as a Sorting Assistant in Delhi Postal Circle. Through successive promotions, he was promoted to the gazetted cadre of Postal Superintendent Service Group 'B' by the P & T Board vide order dated 2nd July, 1980 (Annexure A-2). The applicant has been working on the post of Assistant Director, Postal Services under the Post Master General, Delhi Circle, New Delhi since 16th January, 1981. He was asked to officiate in group 'A' in 1985 on ad-hoc (local) basis but was reverted to group 'B' post as Assistant Director, Postal Services in February, 1986 (Annexure A-9). He was in the zone of consideration for promotion to group 'A' of the Indian Postal Services. According to the applicant, the Departmental Promotion Committee had considered the case of the applicant alongwith others. His name was omitted from the appointment orders issued by the Department of Posts on 24.2.1986.

Another D.P.C. meeting took place in April, 1986 and the applicant was once again not promoted though several of his juniors were promoted.

In reality, the promotion orders of 19 officers were issued vide order dated 24th February, 1986 and of 36 officers vide order dated 30th April, 1986 respectively (Annexure A-11 and Annexure A-12) but the applicant was not promoted though several of his juniors were promoted. Per his application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 filed in April, 1987, the applicant has sought a direction to the respondents to open the sealed cover relating to the applicant and give effect to the D.P.C. recommendations for ^{his} promotion from the date his juniors were promoted to the Senior Time Scale of the Indian Postal Services Group 'A' and to grant consequential reliefs in respect of pay and allowances etc.

2. The ground on which the applicant has challenged his non-promotion to the Senior Time Scale of the Indian Postal Services Group 'A' is that ^{keeping} the recommendations of the DPC in a sealed cover in respect of his promotion is illegal and invalid as no decision had been taken to initiate disciplinary proceedings against him when the DPC had met in February and April, 1986. He was conveyed the decision of the appointing Authority to initiate disciplinary proceedings against him for a major penalty vide letter dated 15th April, 1987 (Annexure A-1). His contention is that as the decision to initiate disciplinary proceedings against him was taken much after the meeting of the D.P.C., his promotion could not be stopped on the basis of that decision. The learned counsel for the applicant relied on full Bench judgment of the Central Administrative Tribunal, Hyderabad Bench in the matter of K.Ch. Vankata Reddy & Ors. Vs. Union of India & Ors.¹

wherein Justice G.Ramanujam, Vice-Chairman, speaking for the Bench has given conclusion (4) as follows:-

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

It was vehemently argued by the learned counsel for the applicant that the sealed cover procedure could not apply to the applicant's case because he was served with a charge sheet only on 19th June, 1987, whereas D.P.C. had kept the results in the sealed cover in February, 1986. This contention was opposed by the learned counsel for the respondents on the ground that whereas the aforesaid judgment of the Tribunal had struck down paragraphs 2 and 3 (iii) second sub-para of the Instructions dated 30th January, 1982, in regard to sealed cover procedure, the said judgment had not struck down the procedure with regard to sealed cover in respect of persons against whom disciplinary action was contemplated.

3. To appreciate the rival contentions in detail, it will be necessary to take note of certain crucial dates in this matter. From the documents, it becomes clear that the CBI had registered case No. PE -18/84-DLI against the applicant on certain allegations of showing undue favour to one firm, namely, M/s. Star Glow Sign, by awarding works relating to manufacture/installation of glow signs at rates much higher than the prevailing market rates. The Department examined the case and it was noted as follows on 30.10.1985:-

"... The department finds justification for initiation of rule 14 proceedings...."

This office note was seen by the Secretary, Postal Service on 18.11.1985. The matter remained under scrutiny between the Postal

authorities and the Chief Vigilance Commissioner and ultimately, the advice of the Central Vigilance Commission for initiating disciplinary proceedings for a major penalty was submitted to the Minister of Communications by the Secretary, Postal Services on 11.3.1987 and the ^{same was} /approved by the Minister on 18.3.1987. It may be noted here that these proceedings were to be initiated not only against the applicant but also against Shri R.K. Saiyed, the then Post-Master General, Delhi Circle, who was of the rank of Additional Secretary and against whom the proceedings could be taken up only with the sanction of the Minister concerned. For the purpose of initiating disciplinary proceedings against the applicant, the Secretary, Postal Services was not only the Appointing Authority but also competent to impose penalties in terms of Schedule Part II of the Central Civil Services (Classification, Control & Appeal) Rules (for short called 'the CCS (CCA) Rules'). On the question of Appointing Authority, rule 9 of the CCS (CCA) Rules provides that all appointments to the Central Civil Services shall be made by the authorities specified in this behalf in the Schedule. The Schedule relating to Central Civil Services Group 'B' shows that in respect of the Postal Superintendents Service Group 'B', the Appointing Authority is competent to impose all penalties (The Schedule Part II page 148 of the Swamy's Compilation of CCS (CCA) Rules - 1985 Ed.). It will thus be clear that for initiation of disciplinary proceedings against the applicant, the case need not have been referred to the Minister but since it was decided to hold joint proceedings against the officer of the status of P.M.G. and the applicant and the Store Clerk in the PMG's Office, Delhi, the matter had to be referred to the Minister for Communications.

14

From the foregoing recital of facts, it is clear that the Secretary, Postal Services, who was the Director-General of the Posts and Telegraphs Board, had approved the office note of 30.10.1985 that the proceedings under Rule 14 of the CCS (CCA) Rules are called for against the applicant. However, since the applicant had to be proceeded against in a common/joint enquiry alongwith the PMG, the matter was referred not only to the C.V.C. but also to the Minister who had approved the same on 18th March, 1987. For initiation of proceedings against the applicant, sanction of the Minister was not required and the sanction accorded by him on 18th March, 1987 has to be construed as one against the P.M.G. only. The date on which the office note was approved by the Secretary, Posts in November, 1985, that is, 18th November, 1985, will be taken as the date on which it had been decided by the Competent Authority that action under Rule 14 of the CCS (CCA) Rules is called for against the applicant. Since the DPC met in February and April, 1986, it is clear that the DPC had met after the Competent Authority had decided to take action against the applicant under appropriate Rules. An analysis of the dates as made clearly shows that a decision had been arrived at to take action against the applicant under Rule 14 of the CCS (CCA) Rules as early as 18th November, 1985 and in terms of the Department of Personnel & Training O.M. No. 22011/1/79-Estt(A) dated 30.1.1982, the sealed procedure in respect of the applicant could be taken.

4. Now we note the legal contentions raised by the learned counsel for the parties in the matter. On behalf of the applicant, it was argued that in view of the judgments of the Madhya Pradesh High Court in B.P. Sharma Vs. Union of India & Ors.¹ and Andhra Pradesh High Court in V. Jagadiswara Rao Vs. the Post-Master General, Andhra Pradesh circle and others,² the applicant could not be

denied his promotion when the charge-sheet was served upon him in June, 1987 and the DPC had already met in February and April, 1986. The learned counsel for the applicant dwelt at length on the judgment delivered by the full Bench of the Tribunal in K.Ch. Vankata Reddy & Ors. Vs. Union of India & Ors. (supra).

In the case of B.P. Sharma Vs. Union of India & Ors. (supra), the learned Judge of the Madhya Pradesh High Court has observed as follows:

".... A pending departmental inquiry necessarily means inquiry which has started. The inquiry usually starts with the issuance of the charge-sheet. Unless a charge-sheet has been issued it cannot be accepted that a departmental inquiry is pending against the petitioner...."

In the case of V.Jagadiswara Rao Vs. the Post-Master General, Andhra Pradesh circle and others (supra), the Andhra Pradesh High Court has held that the pendency of disciplinary proceedings cannot be a ground for over-looking the petitioner. In the full-Bench judgment of the Central Administrative Tribunal in K.Ch. Venkata Reddy & Ors. Vs. Union of India & Ors. (supra), it has been held that the sealed cover procedure can be resorted only after a charge-memo. is served on the concerned official or a charge-sheet is filed before a criminal court and not before. The learned counsel for the respondents contested that the decision of the full Bench in the above case has been challenged in the Supreme Court by means of a Special Leave Petition though the operation of the judgment has not been stayed. She argued that the full Bench judgment of the Tribunal has quashed para. 2 of the instructions contained in the Office Memorandum dated 30th January, 1982 issued by the Ministry of Home Affairs. The other instructions of the said O.M. have not been struck down by the full Bench and, as such, are intra-vires and in force. The relevant portion of the full Bench judgment striking down the instructions

reads as follows:-

"To make the sealed cover procedure quite valid and beyond attack under Arts. 14, 16 and 20(2), we strike down that portion of para 2 of the instructions dated 30th January, 1982 which says, "but no arrears are allowed in respect of the period prior to the date of actual promotion" and direct that on exoneration, the salary which the person concerned not been subjected to disciplinary proceeding, should be paid along with the other benefits such as proforma promotion and would have received on promotion if he had fixation of increments etc. We also strike down that portion of paragraph 3(iii) second subpara which says "If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the finding in the sealed cover shall not be acted upon" and direct that if the proceedings end in a penalty, the person concerned should be considered for promotion in a review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions."

(page 563 - ATR 1987(1) CAT 547).

To appreciate the judgment of the full Bench, it is necessary to consider the instructions contained in the Office Memorandum dated 30th January, 1982 issued by the Department of Personnel, relating to the sealed cover procedure, which have to be read with the instructions contained in O.M. dated 14th July, 1977 issued by the Department of Personnel & A.R. and the instructions prior to that issued in 1960 etc. The following portion from para. 2 of the O.M. dated 14th July, 1977 is reproduced below to bring out the Government decision with regard to the officers whose conduct is under investigation:-

".... The mere fact that a PE or a RC has been registered by the Central Bureau of Investigation against an officer or complaints are being looked into in a preliminary departmental inquiry or otherwise but no conclusion has been reached about the prima facie guilt of the officer should not be a ground for treating the said official as one whose conduct is under investigation

Therefore, it is clear that the Government never had any intention that mere registration of a preliminary inquiry or a regular case should result in denial of promotion to an officer. The rationale behind those instructions has been dealt with in detail by the

Delhi High Court in S.S. Karir Vs. Delhi Administration and Anr.¹

The following portion from paras. 8 and 9 of the judgment is

extracted below to bring out the purport behind the Ministry of

Home Affairs instructions in this regard:-

8. "...The bad character of a person may either consist of bad reputation or some material serious enough to call for an investigation or enquiry of an official should not debar such an official from consideration for promotion. On the other hand, it is equally arguable that a person against whom such material exists should not be considered for promotion until he is exonerated by the investigation or enquiry inasmuch as a high standard of character is essential for appointment or promotion in Government service. The instructions issued by the Ministry of Home Affairs have struck a golden mean between these two opposing views. The need for maintaining a high standard of honesty in Government service is to be balanced against possible injustice to an individual official. The two opposing interests should be reconciled. But the public interest should not be allowed to be sacrificed for individual gain. The Government have, therefore, decided that it would be dangerous to the interests of the public service to consider a person for promotion if he is under suspension or if an investigation or an enquiry is pending against him. He should, therefore, be passed over till the investigation or enquiry exonerated him. After such exoneration, however, his consideration for promotion should be retrospective so that he would have the benefit of having been considered when he ought to have been considered but for the pendency of the investigation or enquiry. The seniority of such an official would not thus suffer. A further balance has to be struck. Should such an officer get the pay of the promotion post or the original post during the period he could not be considered due to the pendency of the investigation or enquiry against him? On the one hand, it could be said that for no fault of his he could not be considered. On the other hand, it would be difficult for Government to pay him the pay of the promotion post as he did not actually serve in that post at all. Government accounts are liable to audit and such a payment could not be justified from the audit point of view. The Home Ministry instructions, therefore, stop payment of arrears of pay to such an official on the basis as if he had actually acted on the promotion post though he did not so act.

9. Shri Anthony for the petitioner contended that these instructions are unreasonable. They discriminate against an official facing an investigation, or an enquiry and are, therefore, unconstitutional as being contrary to Article 16 of the Constitution. Acceptance of this contention would mean that even if the material against the honesty of the official is prima facie serious enough to warrant an investigation or an enquiry, the Government should be powerless to pass over such an official in consideration for promotion. The risk in denying such a power to the Government is so great that it would be unreasonable for any Court of law to lay down a rule of thumb that unless and until a definite finding of guilty has been given against an official, he should be considered for promotion. In such matters, the Government is the best judge and a Court of law ought not to substitute its own view of administration in place of the view of the Government. The instructions issued by the Government are reasonable as they are a compromise between two opposing views....."

The above extract fully brings out the rationale behind the instructions issued by the M.H.A. on the subject.

Though there is weight in the argument of the learned counsel for the respondents that the instructions contained in the O.Ms. of 1977 and 1982 issued by the Department of Personnel had not been expressly struck down except para. 2 and para. 3 (iii) of the said O.M. of 1982, yet the fact remains that the Full Bench has concluded that the sealed cover procedure can be resorted to only after a charge memo. is served on the concerned official. The rationale behind this conclusion in the words of the learned Vice-Chairman is as under:-

"In the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo. is served on the official and the charge sheet is filed before the court."

5. The contention of the learned counsel for the respondents that the Full Bench judgment has been challenged in the Supreme Court does not put an embargo on the operation of the Full Bench judgment because no stay order against the operation of this judgment has been obtained. Though we find that decision to take departmental action on charges of corruption against the applicant had been taken as early as on 30.10.1985, yet the fact remains that in order to carry out a joint enquiry against the applicant, his superior, P.M.G. and the Store Clerk, the Department took a long time in initiating the proceedings and the charge was served upon the applicant in June, 1987, whereas the DPC had met in February and April, 1986 when the promotion case of the applicant was kept in a sealed cover.

6. In view of the Full Bench judgment of the Tribunal, we hold that resorting to sealed cover procedure in respect of the applicant before the charge was served upon him cannot be legally sustained. As such, the action of the respondents in keeping the promotion case of the applicant in sealed cover in February and April, 1986 has to be quashed. In view of the position of law as obtaining, it is directed that the respondents will open the sealed cover as soon as copy of this judgment is received by them and consider the advice of the D.P.C. with regard to the promotion of the applicant.

7. The counsel for the respondents seeks time for implementing our order. She states that the respondents-Union of India have already filed an appeal against the Full Bench judgment and they would also challenge this order by way of Special Leave Petition. So, as prayed, the respondents are allowed four months time for implementing our order.

There will be no order as to costs.

22/8/87
(BIRBAL NATH)
Member (A)

J.D. Jain
(J.D. JAIN)
Vice-Chairman