

Central Administrative Tribunal
Principal Bench: New Delhi.

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Regn.No.RA-92/90
in OA-2320/89

Date of Decision: 31.8.90.

Union of India & Ors.

... Applicant/respondents.

Vs.

H.L.Maggo

... Respondents/applicant.

For the applicants

... Shri P.H.Ramchandani,
Sr. counsel.

For the respondents

... Shri R.R.Rai,
Advocate.

CORAM: Hon'ble Shri T.S. Oberoi, Member(Judicial).

Hon'ble Shri I.K.Rasgotra, Member(Administrative).

JUDGEMENT

(Delivered by Hon'ble Shri I.K.Rasgotra)

This RA has been filed by the Union of India & Ors. in OA-2320/89(respondents in the main application), seeking review of the Judgement dated 6.4.1990. The Tribunal had directed that the recommendations of the DPC held on 5.5.89 contained sealed-cover in respect of the applicant should be opened within 15 days from the date of communication of this order and the recommendations made by the DPC implemented with effect from the date his juniors were promoted in case he has been found suitable.

2. It has been contended that :

- i) the Tribunal's reliance on the case of C.O.Arumugam and Ors. Vs. State of Tamil Nadu and Ors. J.T.(4) 1989 SC 377 was an error apparent on the face of record.
- ii) the operation of the judgement in the case of K.Ch.Venkata Reddy and Ors. Vs. Union of India and Ors. CAT (Full Bench) has been stayed by the Hon'ble Supreme Court in the S.L.P. filed by the respondents. This fact was brought to the notice of the Tribunal and, therefore, the reliance on the case of Venkata Reddy also is an error on the face of record.
- iii) the Tribunal has erred in not appreciating the different circumstances obtaining in the case

of Shri S.C.Gulati and H.L.Maggo. The former case of promotion was considered on the basis of instructions dated 14.7.1977, while the latter was considered on the basis of instructions dated 12.1.88. It has been argued that unless the Tribunal strikes down the instructions contained in the Department of Personnel's O.M. dated 12.1.1988, being bad in law, the Tribunal cannot provide relief to the applicant in the original application.

3. The main issue before us in the OA was that there were no judicial or departmental proceedings pending against the applicant when the D.P.C. was held and the applicant was considered for promotion. Admittedly, the applicant had been suspended consequent to the registration of a regular case by the C.B.I. by R.C. No.39/85 dated 28.5.1985 but the suspension was rescinded in accordance with the directions of the Tribunal in OA.1623/87, and the period of suspension was considered as duty with all benefits. Later, on 5.5.1989, the DPC considered the applicant for promotion and placed its recommendations in the sealed-cover. Even though, the case was registered by the C.B.I. in the year 1985, no charge had been framed in disciplinary proceedings against the applicant nor any charge-sheet filed as was apparent from the material before us.

4. In the case of C.O.Arumugam and Ors. Vs.The state of Tamil Nadu and Ors., their Lordships of the Supreme Court observed:

"As to the merits of the matter, it is necessary to state that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Art.14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable,

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they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

The principle articulated by the Hon'ble Supreme Court is that the promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in a criminal case, may be deferred till the proceedings are concluded. The Hon'ble Supreme Court then proceeded to examine the cases of respondents 3 to 5, in C.O.Arumugam's case(Supra). In the case of Thiru A.Andi, respondent 3, the Hon'ble Supreme Court came to the conclusion that since he has been acquitted by the criminal court,"he must now be considered for promotion from the date on which his junior was promoted and if he is found suitable, he should be promoted with all consequential benefits. In the case of Thiru L.V.Srinivasan, respondent 4, the Hon'ble Supreme Court directed that he be considered for promotion as and when the panel was prepared and approved. There was no charge framed against him. He was again to be given all consequential benefits, from the date his junior was promoted if he is found suitable for promotion. The case of respondent 5, however, was different as against him a charge-sheet had been filed and the enquiry was pending when the panel was prepared. The contention of the applicant in the RA, therefore, seems to be inappropriate.

5. Admittedly, the Full Bench Judgement has dealt with the case of K.Ch. Venkata Reddy and Ors. Vs. Union of India and Ors. in the context of the instructions issued by the Department of Personnel dated 30.1.1982 and certain portion of paragraph 2 and 3(iii) second sub-para were struck down. Our primary concern however, is with the decision that the sealed-cover procedure can be resorted to only after a charge-memo is served on the concerned official or the charge-sheet filed before the criminal court and not before.

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This principle has been elaborated vide paragraph 31 and 32 of the Full Bench Judgement (Supra) which reads as under:

- "31. At this stage we have to consider as to when exactly the sealed-cover procedure is to be followed. In O.M. dated 14.7.1977, it has been decided by the Government that the sealed cover procedure should be followed in those cases where, after investigation the evidence collected indicates a prima facie case against the officer concerned and not when the preliminary investigation is pending and no conclusion is reached about the prima facie guilt of the officer as at that stage there is no ground for treating the said officer as on "whose conduct is under investigation". An officer can be said to be under investigation only when a charge sheet filed in a criminal court or charge-memo under CCA Rules is issued to the official.
32. 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."

The Full Bench of the Tribunal decided that the date of initiation of proceedings is the date when the charge-memo is served on the official or the charge-sheet is filed before the Court. At this point of time alone an officer can be said to be under investigation or having a disciplinary case pending against him and if he comes up for consideration for promotion the sealed-cover procedure should be followed. It is not the validity of the sealed-cover procedure which is in question and therefore, the question of striking down O.M. dated 12.1.1988 does not arise. We are aware that the operation of the Full Bench Judgement in the case of K.Ch. Venkata Reddy & Ors (Supra) has been stayed by the Hon'ble Supreme Court, however, this is only a interlocutory order and not final order of the Hon'ble Supreme Court which would

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be binding in dealing with the matter.

6. Similarly, the third ground justifying the seeking of the review does not persuade us to review, amend or modify our judgement. The facts and circumstances of each case have been duly considered by us.

7. Accordingly, we are of the view that there is nothing new and important matter or evidence which has been brought to our notice in the review application, nor there has been any error apparent on the face of record, providing sufficient ground for a review of the judgement. RA is disposed of accordingly.

I.K. Rasgotra
(I.K. Rasgotra)
Member (Admn.)
31/8/90

T.S. Oberoi
(T.S. Oberoi)
Member (Judl.)
31/8/90