

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 2582/90
T.A. No.

199

DATE OF DECISION 8.10.1991

Shri S.K. Sharma

Petitioner Applicant

Shri P.P. Khurana

Advocate for the Petitioner(s) Applicant

Union of India through Secy.,
Miny. of Finance & Another

Respondent

Shri R.S. Aggarwal

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? /No
4. Whether it needs to be circulated to other Benches of the Tribunal? /No

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The question whether 'sealed cover' procedure can be adopted while considering the suitability of an officer for promotion to the next higher grade when no charge memo in a disciplinary proceeding or charge-sheet in a criminal prosecution has been initiated against him, is in issue in a batch of applications pending in this Tribunal. The Supreme Court has given its authoritative judgement on this issue in Union of India Vs. K.V. Jankiraman, reported in J.T. 1991 (3) S.C. 527. It is, therefore,

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proposed to dispose of these applications finally in the light of the aforesaid judgement.

2. In Janakiraman's case, the Supreme Court had before it several appeals filed by the Union of India challenging the findings recorded by the different Benches of this Tribunal in regard to the 'sealed cover' procedure. The Supreme Court has held that it is only when a charge memo in a disciplinary proceeding 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.

3. The Supreme Court further observed that the normal rule of "No work, no pay", is not applicable to such cases where the employee although he is willing to work, is kept away from work by the authorities for no fault of his. When an employee is completely exonerated, meaning thereby that he is not found blameworthy in the **least and** is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he

would have normally been promoted but for the disciplinary/
criminal proceedings.

4. The aforesaid observation regarding the entitlement
of arrears of pay is relevant in cases where criminal/⁹departmental
proceedings have concluded. In the cases before us,
there had been no disciplinary/criminal proceedings at the
time of the meeting of the D.P.C. for promotion. Where
'sealed cover' procedure was resorted to when there was no
disciplinary/criminal proceeding pending against an employee,
after the opening of the 'sealed cover' pursuant to the
aforesaid pronouncement of the Supreme Court, he would be
entitled to arrears of pay and allowances from the date his
immediate junior was promoted.

5. Even before the aforesaid decision was given by the
Supreme Court, the same views had been expressed by the
Supreme Court in its decisions in C.O. Arumugam Vs. State
of Tamil Nadu, 1990 (1) SLR 288 and in State of M.P. Vs.
Bani Singh, A.I.R. 1990 S.C. 1308. It may be mentioned
that the Department of Personnel & Training have issued
O.M. No. 22011/1/91-Estt.-A on 31.7.1991, reviewing the
instructions of promotion of Government servants whose
conduct is under investigation. The said O.M. refers to
the earlier O.M. dated 12.1.1988 and states that in view
of the various judicial pronouncements subsequent to the
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issue of the aforesaid O.M., the question of applicability of 'sealed cover' procedure in respect of Government servants against whom investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise, as envisaged in para.2 (iv) of that ~~O.M.~~ ^{has been reviewed.} It was clarified, inter alia, that all cases kept in 'sealed cover' on account of conditions obtainable in para.2 (iv) of the O.M. dated 12.1.1988, will be opened. If the official had been found fit and recommended by the D.P.C., he will be notionally promoted from the date his immediate junior had been promoted. The pay of the higher post would, of course, be admissible only on assumption of actual charge in view of the provisions of F.R.17(1).

6. In the light of the aforesaid legal position, we may consider the facts of the instant case. The case of the applicant, who is working as Deputy Commissioner of Income Tax, was considered by the D.P.C. for promotion to the post of Commissioner of Income Tax at its meeting held on 20.9.1990. At that point of time, no disciplinary/ criminal proceedings was pending against him. The respondents adopted the 'sealed cover' procedure. The applicant challenged this before us. On 21.12.1990, an interim order was passed directing the respondents that

the case of the applicant for promotion as Commissioner of Income Tax be considered, and that the results shall not be kept in a 'sealed cover'. In case it has been kept in the sealed cover, it should be opened and that the findings of the D.P.C. should be given effect to, pending the final disposal of the application.

7. At the time of the final hearing of this case on 23.9.1991, the learned counsel for the respondents stated that the case of the promotion of the applicant is pending with the Appointments Committee of the Cabinet. The learned counsel for the respondents also stated that nobody junior to the applicant has been promoted.

8. In the light of the foregoing, we allow this application and make the interim order passed on 21.12.1990 regarding the promotion of the applicant to the post of Commissioner of Income Tax absolute. In addition, he would also be entitled to all consequential benefits.

9. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) S/177,
Administrative Member

P.K. Kartha
(P.K. Kartha) 8/16/91
Vice-Chairman (Judl.)