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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 307/90

DATE OF DECISION: 31.8.1990.

A.K. SINGHAL

APPLICANT

VERSUS

UNION OF INDIA &

RESPONDENTS

ANOTHER

SHRI B.S. MAINEE &
MRS. RAJ KUMARI CHOPRA
SHRI P.H. RAMCHANDANI

ADVOCATE FOR THE APPLICANT

ADVOCATE FOR THE RESPONDENTS

OA NO. 314/90

B.D. BHAGAT

APPLICANT

VERSUS

UNION OF INDIA &
ANOTHER

RESPONDENTS

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANT

SHRI P.H. RAMCHANDANI

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

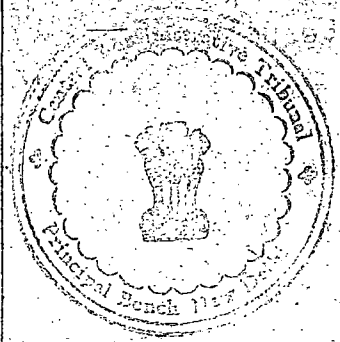
THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

JUDGEMENT

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER(A))

OA No. 307/90 and OA No. 314/90 both involve common points of law and cover similar grounds and it is therefore proposed to deal with both of them through this common judgement. The short point involved in these OAs to be decided is, if the promotion of the applicants to the next higher grade can be deferred when the charges have not been framed nor a chargesheet issued or a chargesheet filed in a court.

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2. A few of the relevant facts in the case of Shri B.D. Bhagat (applicant in OA-314/90) and Shri A.K. Singhal (applicant in OA-307/90) are given hereafter. The applicant is working as Superintendent, Central Excise Group 'B' since December, 1979. He came up for consideration for promotion to the rank of Assistant Collector on adhoc basis in accordance with the Hon'ble Supreme Court orders dated 22.12.1989. The respondents convened a DPC and issued orders promoting 528 Superintendents/- equivalent to the rank of Assistant Collector of Customs and Central Excise/Senior Superintendent of Central Excise (grade Rs.22004000). While many officers junior to the applicant were included in the promotion order, the name of the applicant is conspicuous by absence. The respondents have withheld the promotion of the applicant as the disciplinary proceedings are contemplated against him in accordance with the instructions contained in Department of Personnel & Training OM No.22011/2/88-Estt.A dated 12.1.1988. Although no disciplinary action has so far been initiated inasmuch as no chargesheet has been served, the recommendation of the DPC in respect of the applicant has been kept in the sealed cover in accordance with the procedure outlined in the instructions dated 12.1.1988.

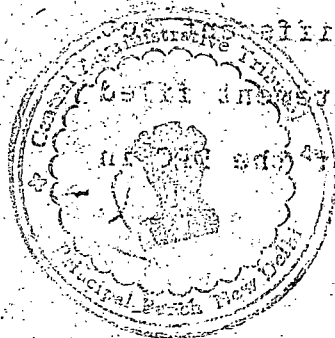
The applicant Shri A.K. Singhal (OA-307/90) is working as Custom Appraiser Group 'B' in the office of the respondents. He is also adversely affected by the respondents order dated 17.1.1990 in identical circumstances arising from a different set of facts. According to the written statement filed by the respondents, the recommendation of the DPC in

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respect of the applicant here too have been kept in sealed cover due to the contemplated disciplinary proceedings against him in accordance with Department of Personnel & Training OM No.22011/2/88-Estt.(A) dated 12.1.1988. No charge memo has been served nor any criminal proceedings instituted by filing a chargesheet against him in a Criminal Court so far.

3. The applicants in both the above OAs have cited the judgement of the Calcutta Bench of the Tribunal in OA-121/90 (Shri Shyamal C.H. Samaddar Vs. Union of India & Others) who was also aggrieved by the respondents' order dated 17.1.1990 in similar circumstances. The Tribunal in that case directed the respondents that the applicant should be considered for adhoc promotion subject to his seniority and eligibility within a period of 90 days from the date of communication of this order with all consequential benefits flowing from that selection in accordance with law. The case of the applicants is further sought to be fortified by relying on the Full Bench judgement of this Tribunal in the case of K.Ch. Venkata Reddy & Others Vs. Union of India & Others (ATR 1987 (1) CAT-547), where it has been held:

"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



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and specific. To ensure uniformity and certainty, the day 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."

Thus the date of serving the charge memo is to form the basis for applying the sealed cover procedure as the date of initiation of the disciplinary proceedings is the date when the memo is served on the official is filed before the court. It is not disputed that in none of the two cases a chargesheet has been issued or a chargesheet filed in a court. The withholding of the promotion of the officials is therefore in violation of the law laid down in the Full Bench Judgement (ATR 1987 (1) CAT-547) of the Tribunal.

4. The Senior Counsel, Shri P.H. Ramchandani, appearing for the respondents dwelt at length in distinguishing between the right to be considered for promotion and the actual act of promotion and contended that while the applicants had the right to be considered, and in fact they had been considered for promotion but the recommendations of the DPC relating to them have been kept in respective sealed covers. Thus, while the right to promotion have not been denied the actual promotion has not been ordered as the disciplinary action was contemplated against them. Thus, Articles 14 & 16 of the Constitution are not offended. The learned counsel further submitted that the operation of the Full Bench Judgement of this Tribunal in the case of Venkata Reddy (Supra),

on which immense reliance is placed, has been stayed by the Hon'ble Supreme Court and consequently the benefit of law articulated in the judgement (Supra) is not available to the applicants.

5. We have given our careful consideration to submissions made by the learned counsel and studied the material before us. It is our considered view that the effect of the stay granted by the Hon'ble

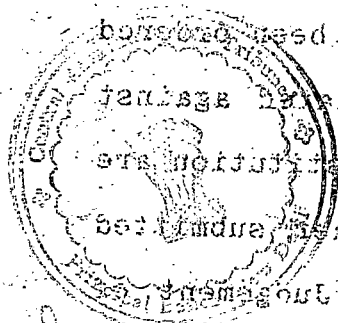
Supreme Court on 16.11.1987 would only mean that the respondents are not bound to implement that order.

It, however, does not mean that the law laid down therein by the Full Bench can be ignored by a Division Bench of the Tribunal. There is a catena of judicial pronouncements laying down that it is only the final judgement which is binding and not the inter-locutory order. There are also quite a few legal dicta which envisage that promotion can be deferred only after chargesheet is served on the official/filed in a Criminal Court. Their Lordships

of the Supreme Court in C.O. Arumugam Vs. Tamil Nadu

& Others) 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 chargesheet has been filed in criminal case may be deferred



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till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

The principle articulated above by the Supreme Court is that the promotion of persons against whom charge has been framed in the disciplinary proceedings or chargesheet has been filed in criminal cases may be deferred till the proceedings are concluded. Obviously, therefore, where the charges has not been framed in the disciplinary proceedings or chargesheet has not been filed in criminal cases deferring the promotion may not be reasonable and appropriate.

Another point raised by the learned counsel for the respondents is that the sealed cover procedure has been followed in accordance with Department of Personnel and Training instruction of 12.1.1988 and that the issues decided by the Full Bench of their judgement in Venkata Reddy case (Supra) were in the context of the Department of Personnel & Training instructions contained in OM dated 30.1.1982. That this is so need not detract us from the point under consideration i.e. the adoption of the sealed cover procedure would be warranted only when a charge memo has been served and or a chargesheet has been filed in a Criminal Court against the delinquent.

Admittedly in Venkata Reddy's case Department of Personnel & Training OM of 30.1.1982 was in question.

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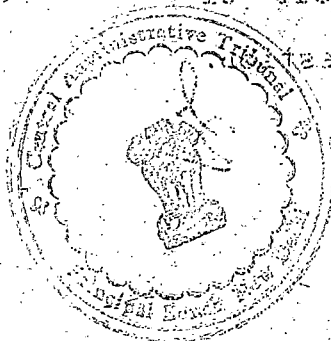
That OM, however, has been superseded and replaced by OM dated 12.1.1988 and the provisions struck down in OM dated 30.1.1982 have been retained in OM of 12.1.1988. Further the Tribunal had not struck down the OM of 30.1.1982 as such. Qualitatively there is no change affecting the effect and force of the Full Bench judgement. We are, therefore of the view that adoption of the sealed cover procedure and consequently withholding of the promotion of the applicants when no charge memo is served violates the provisions made in Article 14 & 16 of the Constitution of India.

The learned counsel for the respondents during the concluding phase of the hearing of the case had also mentioned that respondents are likely to close the case against Shri A.K. Singhal (Applicant in OA-307/90) while Shri B.D. Bhagat (Applicant in OA-314/90) has since been issued a charge memo. These developments, however do not change the legal position as on the relevant date when the DPC was held, there was no charge framed against any of the two applicants.

In the facts of the case we order and direct that the respondents shall open the sealed cover in respect of the applicants and promote them from the dates their juniors were promoted to the rank of Assistant Collector (Rs.2200-4000) if they have been found fit for promotion by the DPC, with all consequential benefits on adhoc basis in accordance with the interim order of the Supreme Court passed on 16.11.1987.

The OAs No. 307/90 and 314/90 are disposed of at the admission stage.

19.9.92
19/9/92
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(I.K. Rasgotra) Member (A)
(J) Member (J)



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Section Officer
Central Administrative Tribunal
Principal Bench, New Delhi