

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1303/1991

DATE OF DECISION 26.9.1991

SHRI D.V. SRIVASTAVA

.....APPLICANT

VS.

UNION OF INDIA & ORS.

.....RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI D.R. GUPTA

FOR THE RESPONDENTS

.....SHRI R.S. AGGARWAL

1. Whether Reporters of local papers may be allowed to see the Judgement.
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Assistant Commissioner of Income-Tax, C.I.D., Delhi, filed the application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by not being promoted from the grade of Assistant Commissioner of Income-Tax (Junior Scale) to the grade of Assistant Commissioner of Income-Tax (Senior Scale). The applicant has challenged the letter dt. 16.3.1990 (Annexure A-1) by which the applicant is informed by the Chief Commissioner (Administration) of Income-Tax that the decision of the D.P.C. in his case has been kept in a sealed cover.

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2. The applicant claimed the following reliefs :-

- (i) To direct the respondents to promote the applicant as Assistant Commissioner of Income-Tax (Senior Scale) w.e.f. the date the immediate Junior to the applicant was promoted after quashing order at A-1.
- (ii) To issue such other and further directions or orders as deemed fit and proper by this Hon'ble Tribunal in the circumstances of the case to meet the ends of justice.

3. The facts detailed in the application are that the applicant was never communicated any adverse remark and was in the zone of consideration for promotion to the grade of

→ Assistant Commissioner of Income-Tax (Senior Scale) which is a non-functional post and promotion to which is given on the basis of seniority-cum-fitness. The respondents issued a notification dt. 15.3.1989 (Annexure-II), but the name of the applicant was not in that list. The name of the applicant also did not figure in the subsequent notification issued on 19th January, 14th June of 1990 and 3rd April, 1991, promoting Assistant Commissioner to the senior time scale w.e.f. October, 1988, October, 1989 and October, 1990. The applicant made a representation, but he was informed by the impugned letter that the matter has been kept in a sealed cover. The applicant was surprised and shocked to learn that the name of the applicant did not figure in the promotion list though the applicant was never served with a chargesheet nor any

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disciplinary proceedings were pending or contemplated against him at that time. He challenged this impugned order being arbitrary, discriminatory and being against the principle of natural justice, violative of Articles-14 and 16 of the Constitution of India.

4. Subsequently, the applicant filed an amended petition which was filed on 22.2.1991 and the copy was furnished to the learned counsel for the respondents, Shri R.S. Aggarwal. On 14.8.1991, the amended application was admitted. In the meantime, the respondents were directed to consider the case of the applicant for opening the sealed cover in the light of Government of India's instructions contained in Ministry of Personnel, Public Grievances and Pension (DP&T), O.M. No. 22011/1/91-Estt. (A) dt. 31.7.1991.

5. The respondents contested the application. It is stated in the reply that the recommendations of the D.P.C. in the case of the applicant were kept in the sealed cover keeping in view the various serious irregularities committed by the applicant which were under investigation. The respondents have enclosed the O.M. dt. 12.1.1988 issued by the Department of Personnel & Training (Annexure-I to the

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counter) and referred to para-2(iv). They have also referred to the copy of the judgement in Tejinder Singh Vs. Union of India & Ors. (Annexure A-2 to the counter) decided on 26.9.1986. The relevant para is quoted below :-

"We are given to understand that the rights of the respondent are adequately safeguarded by the order of the Central Administrative Tribunal dt. March 3, 1986 passed in C.A. No.45 of 1986 directing that one post shall be kept vacant for him with consequential benefits. In view of this, we wish to add that there was no occasion for the Tribunal to make the impugned order directing the Union of India, Ministry of Finance to consider and promote the respondent as Commissioner of Income-Tax, Level-II, irrespective of whether departmental inquiry was contemplated or pending. This virtually amounted to pre-judging the whole issue before the Tribunal."

The applicant filed the rejoinder and annexed with the same a copy of the judgement dt. 18.7.1991 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in C.A. No.927/91-Dr.(Smt) Sudha Salhan Vs. Union of India & Ors., where the Hon'ble Chairman delivering the judgement observed :-

"In the result, therefore, we allow the C.A. and direct the respondents to open the sealed cover pertaining to promotion of the applicant to Specialist Grade-II (Senior scale officers in non-teaching Specialist sub-cadre) in pursuance of the recommendations of the DPC which met on 8.3.1989. Further, in case the recommendation of the DPC is in her favour, we direct the respondents that the applicant be promoted retrospectively from the date her immediate junior had been promoted and pay the salary and allowances to her. We further direct that she is entitled to consequential benefits like seniority and fixation of pay. This may be done within a period of two months from the date of receipt of this order.

There will be no order as to costs."

6. We have heard the learned counsel of both the parties at length and learned counsel for respondents Shri R.S. Aggarwal did not press this contention for not opening of the sealed cover. In view of the judgement of Hon'ble Supreme Court in Union of India versus K.V. Jankiraman reported in I.t. 1991 (3) SC P.527 in which it has been held-

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings 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. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-

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authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.....(C)onclusions nos. 1 and 4 of the Full Bench of the Tribunal .... read harmoniously ..... can be reconciled with each other. The conclusion no.1 should be read to mean that the promotion etc. cannot be withheld

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merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions".

7. In view of the above discussion as well as O.M. dated 31-7-1991 (Annexure A-4) to the rejoinder and judgement of the Hon'ble Supreme Court in Jankiraman case (*supra*) the application is allowed and the impugned order dated 16-3-1990 (Annexure A-1) is quashed with the following directions. The respondents are directed to open the sealed cover in regard to the promotion of the applicant to the grade of Assistant Commissioner of In-comes Tax (senior scale) and in case the findings of the D.P.C. in his case are favourable to give effect to the same from the date the immediate junior to the applicant was promoted. In the circumstance the parties are directed to bear their own costs. The respondents are directed to comply with the directions within three months from the date of receipt of this order.

J. P. Sharma  
( J. P. SHARMA ) 26.9.91  
MEMBER (A)

D. K. Chakravorty  
( D. K. CHAKRAVORTY )  
26.9.1991  
MEMBER (A)