

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1473/91

DATE OF DECISION 26.7.1991

SHRI R.D. GANDHI

....APPLICANT

VS.

UNION OF INDIA & ANR.

....RESPONDENTS

CORAM

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

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

FOR THE APPLICANT

....SHRI P.P. KHURANA

FOR THE RESPONDENTS

....SHRI M.L. VERMA

JUDGEMENT

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

The applicant working as Enforcement Officer in the Directorate of Enforcement filed the application under Section 19 of Administrative Tribunals Act, 1985 being aggrieved by the act of the respondents in putting the recommendation of the D.P.C. held in January, 1991 in respect of the applicant in sealed cover relating to his promotion from the post of Enforcement Officer to grade of Chief Enforcement Officer.

2. By way of relief, the applicant has claimed that direction be issued to the respondents to promote him to the grade of Chief Enforcement Officer from the date his junior was promoted.

3. The brief facts of the case are that the applicant joined Enforcement Directorate as Assistant Enforcement Officer in FERA on 23rd March, 1973. He was promoted in November, 1978 as Enforcement Officer. The next promotion is to the post of Chief Enforcement Officer for which eligibility for consideration is three years regular service in the grade of Enforcement Officer. The name of the applicant in the seniority list as on 1-1-1988 (Annexure A-2) is at Sl.No.16 and that of one Shri S.P.Srivastva is at Sl.No.17. The respondents by the order dated 10th May, 1991 (Annexure A-1) promoted Shri Srivastva who was junior to the applicant and working as Enforcement Officer, Bombay to the post of Chief Enforcement Officer in Ahmedabad Sub-zonal office of the Directorate. The applicant learnt that he was considered alongwith others by the D.P.C. held in January, 1991 but the recommendation of the D.P.C. in respect of the applicant for promotion to the grade of Chief Enforcement Officer was put in sealed cover. It is stated by the applicant that at the time when the D.P.C. met in January, 1991 neither any disciplinary proceedings were pending against the applicant by way of issuance of the charge sheet nor any charge sheet has been filed in any court of law. A charge sheet dated 17-4-1990 (Annexure A-3) was issued by the office of the respondent No.2 informing the applicant that it was proposed to take action against him under Rule 16 of C.C.S. (CCA) Rules, 1965. The applicant was further informed by letter dated 24-8-1990 (Annexure A-7) that the charge memo dated 17-4-1990 was withdrawn as the charges against the applicant warrent issuance of a charge memo for major penalty proceedings under Rule 14 of C.C.S. (CCA) Rules, 1965. The applicant made representations (Annexure 8 & 9) in May, 1991 but to no effect. It is stated that till date no charge sheet has been served on the applicant under Rule 16 of C.C.S. (CCA)

Rules, 1965. The applicant, therefore, claimed the relief quoted above.

4. The respondents filed the reply stating that the application is barred by Sec.20 of the Administrative Tribunals Act, 1985 as the applicant has not exhausted the departmental remedies. It is further stated that the former charge sheet under Rule 16 issued to the applicant was withdrawn and fresh charge sheet for imposing major penalty was to be issued. It is stated by the respondents that the applicant on 3-8-1986 exhibited lack of devotion to duty and exhibited --- conduct unbecoming of a government servant thereby violating Rule 3 of the C.C.S. (Conduct) Rules, 1964. He was served with a charge sheet dated 17.4.1990 under Rule 16 but later, on scrutiny of those documents the disciplinary authority came to the conclusion that the charges against the applicant warrant issuance of fresh charge sheet under Rule 14 of the C.C.S. (CCA) Rules, 1965. Accordingly as per the Government of India instruction No.(9) below Rule 15 of the C.C.S. (CCA) Rules, 1965 the applicant was informed vide memo dated 28.4.1990 of the proposed issue of fresh charge sheet under Rule 16 of C.C.S. (CCA) Rules, 1965. It is stated that in view of the contemplated disciplinary action against the applicant, the matter was considered by the said D.P.C. and it decided put its recommendations in respect of the applicant in a sealed cover. The applicant has no right to be promoted to the post of Chief Enforcement Officer in view of the above pendency of proposed charge sheet against him. The application therefore, is devoid on merit.

5. We have heard the learned counsel of the parties at length and have gone through the record of the case.

6. A preliminary objection has been taken by the respondents that the present application is barred by Sec.20 (1) as the applicant has not exhausted the departmental remedies. The applicant made representations in May, 1991 (Annexures 8 & 9) but he did not wait for six months to know the outcome of the representations made by him. It was also held in 1988 (6) ATC P.714 G.S.Prabhakar Vs. Union of India and Anr. that two remedies cannot be pursued simultaneously by the applicant and the application in that case was dismissed. In this case the reliance was also placed on Bhagwandass Vs. Northern Railway Chief Engineer 1987 (2) ATC P.850. In that case of G.S.Prabhakar, who was placed under suspension had filed the application questioning the order of his suspension before the Hyderabad Bench. The applicant was suspended by the order dated 6-8-1987 and the applicant preferred an appeal to the Central Government on 28.8.1987 and filed the application before the Hyderabad Bench on 17.7.1987. The learned counsel for the applicant however rebutted the argument of the respondents' counsel. The learned counsel for the applicant argued that the representations made by the applicant in May, 1991 (Annexures 8&9) in which it was requested that the sealed cover containing the order of D.P.C. for his promotion to Chief Enforcement Officer be opened and though the applicant should have come six months thereafter, but the learned counsel for the respondents himself filed the memo dated 17.7.1991 indicating that order has already been passed on the representation of the

applicant. Thus, now it cannot be said that applicant has come prematurely to the Tribunal because as on the date of hearing the representation of the applicant stood disposed of. The principle of natural justice did not clamour that the person should be vexed twice for getting a relief which though in the course of the proceedings have been denied to him. Had the representation not been disposed of the respondents' counsel would have definitely a better case. In this cited case of G.S. Prabhakar the Bench has also referred to the judgment given in Purushottam Singh Vs. Union of India 1981(1) SLJ P.428. In this case it was held that there is no bar for judicial review even though departmental proceedings have not yet been decided. 1981(1) SLJ P.428 was distinguished by the Hyderabad Bench in Prabhakar's case on the ground that the writ petition has already been admitted and heard on merit. The present application has already been admitted on 2.7.1991. Thus the facts of the Prabhakar's case cannot be applied to the present case.

7. The other issue in the matter is whether the government servant who has not yet been charge sheeted can be promoted even though his case was considered by the D.P.C. and was ordered to be kept in sealed cover. The answer has been given finally by the Hon'ble Supreme Court in the case of C-0 Arumugam and Ors. Vs. State of Tamil Nadu and Ors. reported in 1991(1) SLR P.288. Their Lordships observed as follows:-

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

8. The learned counsel for the applicant also placed reliance on the case of State of Madhya Pradesh, versus Bani Singh and another reported in AIR 1990 SC P.1308-1309. Their Lordships observed as follows:-

"Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges after prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of

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pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on 26.11.1980 on this ground was therefore unsupportable".

9. In view of this facts and circumstances of the case the only objection of the respondents regarding the opening to the sealed cover was that by virtue of the memo dated 24.8.1990 (Annexure A-7) the disciplinary authority has already on consideration come to the conclusion that the charges against Shri R.D.Gandhi, Enforcement Officer, warrant issuance of fresh charge sheet under Art.14 of the C.C.S.(CCA) Rules, 1965. Thus it is clear that when D.P.C. met in January, 1991 there was no charge sheet issued or served on the applicant. The respondents could have informed the D.P.C. of the special circumstances only when the officer is under suspension or against whom the disciplinary proceedings are pending. The pendency of the disciplinary proceedings starts from the issuance of the charge sheet to the delinquent officer. The respondent No.2 cannot hold back promotion without lawful excuse which would amount to a penalty and which cannot be imposed without complying with the rigours of Art.311 of the Constitution of India.

10. In view of the above circumstances the application is allowed and the respondents are directed to open the sealed cover, within 4 weeks from the receipt of copy of

this judgment and promote the applicant from the post of Enforcement Officer to Chief Enforcement Officer if so recommended by the D.P.C. and to give effect to the promotion from the date from which the junior to the applicant was promoted. In the circumstances the parties will bear their own costs.

J. P. Sharma
(J.P. SHARMA) 26.7.91
MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 26/7/91