

CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

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Date of Decision : 03.04.92

DA 1511/91

R.C. MEHTANI ... APPLICANT.

Versus

UNION OF INDIA & ORS.  
... RESPONDENTS.

CORAM:

THE HON'BLE MR. S.P. MUKERJI...VICE CHAIRMAN.

THE HON'BLE MR. J.P. SHARMA...MEMBER (J).

FOR THE APPLICANT ...SHRI U.S. BISHT, COUNSEL.

FOR THE RESPONDENTS ...SHRI M.L. VERMA, COUNSEL.

1. Whether Reporters of local papers may be allowed to see the judgement ?

2. To be referred to the Reporters or not ?

JUDGEMENT

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

The applicant, joined the Military Engineering Service in 1958 and was promoted as Superintendent Grade-I in 1963 and Assistant Surveyor of Works in 1983. The grievance of the applicant is that though he has been empanelled on the recommendations of the DPC in the panel declared on 8.3.1990 but the said

panel has not been given effect to and the applicant has also not been allowed to cross the E.B. with effect from 1.8.1988 on the basis of the disciplinary enquiry against him though he was served with the charge memo on 4.4.1990 and persons junior to the applicant in the panel have since been given benefits of the aforesaid panel on 8.3.1990.

2. The applicant, in this application has prayed that the respondents be directed to give effect to the selection of the applicant as per the panel dated 8.3.1990 from the date his immediate juniors have been promoted in the Grade of ASW on a regular basis. It is further prayed that the respondents be directed to grant increment after across EB w.e.f. 1.8.1988.

3. The case of the applicant is that he has been duly considered by the DPC and has been promoted as ASW on regular basis along with several other colleagues against the vacancy of the year 1986 and the DPC has not placed the assessment pertaining to the applicant in the seal cover as no disciplinary case was pending against the applicant on the date of DPC. The said DPC was presided over by the members of UPSC. It is further stated that the applicant was served with a charge memo on 4.4.1990 and because of this the applicant

has not been given the benefits of the recommendation of the DPC in the panel dated 8.3.1990.

4. The respondents contested the application and stated that the application is barred under Section 20 and 21 of the Administrative Tribunals Act, 1985. It is further stated that the applicant has been working as ASW (Adhoc) and has been charged for lapses relating to non-issue of timely notice to the Bank resulting into non-enforcement of Bank Guarantee Bonds. The draft charge-sheet was sent to the Ministry of Defense on 7.9.1989 and the charge sheet was issued on 27.2.1990. The charge-sheet was served on the Officer on 5.4.1990 through Departmental Channel. The promotion of the Officer has been withheld as he was involved in a disciplinary case in terms of para-7 of Department of Personnel & Training memo dated 12.1.1988. (letter No. 22011/2/86-Estt.(a). Thus, it is stated that the applicant is not entitled to any relief.

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

6. The learned counsel for the applicant has placed reliance on the cases of Union of India etc. Vs. K.V. Jankiraman etc. reported in Judgement Today 1991 Vol.3

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SC page 527. The learned counsel has also placed reliance on the Full Bench Decision of K.Ch. Venkata Reddy & Ors. Vs. UOI. The ratio of both these cases is to the effect that if the charge-memo has not been served on an employee then his promotion cannot be withheld and if the recommendations have been kept in a sealed cover the same has to be opened. The Full Bench (supra) 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 an employee, it can be said that the departmental proceedings/criminal prosecution is initiated against the employees. 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. In the case of K.V. Jankiraman the Hon'ble Supreme Court upheld the findings of the Full Bench. Thus, it is evident that the promotion cannot be withheld 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.

7. The learned counsel for the applicant also referred to the judgement of the CAT in D.Krishnan Vs. UOI & Ors. reported in 1991 (2) SLJ page 220 where phrase, charge-sheet issued means when it was communicated. In the present case as also stated in the counter by the respondents, the panel was published on 8.3.1990 and the applicant has been served with the charge-memo on 5.4.1990. Thus, in view of the above facts and circumstances the regular promotion to the applicant cannot be denied, stressed by the learned counsel.

8. However, during the course of the arguments, memo dated 15.3.1990 issued by the Army Headquarters, New Delhi has been filed showing the postings of the promoted ASW. Most of the postings are at the same place where the concerned ASW including the applicant has been working on adhoc basis. This order, however, in the end has a note that before the above promotions are effected and placed in their higher appointment, it be ensured that they are not involved in any disciplinary case in which officers have been served with a charge-sheet or the competent disciplinary authority has decided to charge-sheet the officer. It appears that because of this, subsequent letter dated 15.3.1990,

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the regular promotion of the applicant has been deferred.

9. In the Jankiraman's case (supra) where a bunch of Appeals were decided there was almost similar appeal and at page 539 in para 36 to 39 the Hon'ble Supreme Court considered a case where a formal charge-sheet was issued to the employee in December, 1987 or August, 1987 while DPC met in July, 1986 and had put assessment of such a person in the sealed cover, notwithstanding with the fact that no charge-sheet was served on him when DPC met in July, 1986. The Hon'ble Supreme Court set aside the directions of the Chandigarh Bench of the CAT where the respondents were directed to give promotion to the employees on the basis of recommendations, if any, of the DPC on July, 1986 kept in a seal cover. This leads to the inference that each case has to be seen on the facts & circumstances attending an employee under consideration of DPC for promotion, before or after the date DPC met. Though in the present case in hand, record of the disciplinary proceedings has not been in the knowledge of the DPC and that came subsequently to the knowledge of the Administration. So, the benefits of the panel of 8.3.1990 has been deferred in the case of the applicant. In Jankiraman's case, while considering another Civil Appeal from the Principal Bench observed as follows :-

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46. The peculiar facts in this case are that at the relevant time the respondent-employee was working as Superintending Engineer since July 1986. When earlier he was working as Garrison Engineer in Bikaner Division, there was a fire in the Stores in April 1984 and there was also deficiencies in the Stores held by the Store-keeper during the period between 1982 and 1985. Hence, disciplinary proceedings were commenced in February 1988 and the respondent was served with a charge-sheet on February 22, 1988. By an order of August 19, 1988 a penalty of withholding of increment for one year was imposed on the respondent as a result of the said disciplinary proceedings.

47. On June 3, 1988, the DPC met for considering the promotion to the Selection Grade. Pursuant to this meeting, by an order of July 28, 1988 some juniors were given the Selection Grade with retrospective effect from July 30, 1986. The respondent-employee's name was kept in a sealed cover and was, therefore, not included in the list of promotee officers.

48. The Tribunal has found fault with the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986, the DPC should not have excluded the respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the respondent his promotion to the Selection Grade as that amounted to double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the respondent's case for promotion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records upto 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time

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met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunals finding is accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which against the was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be no order as to costs.

10. In fact, the applicant has prayed that the panel be given effect to in his case also because he will be denied consideration for the promotion to the post of Surveyor of Works if he remain only as adhoc ASW. If the DPC is held in near future his juniors will be considered and the applicant will be superseded. The applicant has a right to be considered for promotion only. It is for the respondents to give promotion taking into account that fact existing at the time when the applicant is actually promoted. It means that after the panel is drawn up but before the applicant is awarded the promotion on regular basis, if something adverse like disciplinary or criminal proceedings or any other material hurdle materialises promotion may have to be deferred. Otherwise this may amount to rewarding the applicant while remains under a cloud. The promotion in such circumstances can be deferred till such a clog is cleared. The same compulsion of circumstances which obliges the DPC to put the case of a candidate under

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a cloud in a sealed cover till the conclusion of disciplinary/criminal proceedings, would oblige the appointing authority to put off promotion of a candidate recommended by the DPC who is found to have come under a cloud between the date of recommendation and the date when the recommendation comes up for acceptance. In either case the promotion is considered after the conclusion or clearance of adverse shadow, so that the candidate does not suffer materially because of pendency of the proceedings at the time of meeting of the DPC or when the appointing authority considers the recommendations. The applicant in the instant case has already been working on adhoc basis and there is no pecuniary loss to the applicant if his promotion on regular basis is deferred.

11. The applicant has also claimed the relief for crossing the E.B. with effect from 1.8.1988. Since the applicant has been cleared for promotion by DPC held on 8.3.1990. So, withholding of EB w.e.f. 1.8.1988 is unjustified and the applicant shall be entitled to increment which have been withheld along with the arrears.

12. In view of the above discussion, the application is disposed of in the following manner :

(a) The applicant's prayer for the grant of relief for regular promotion on the basis of the

panel of 8.3.1990 is disallowed at this stage but that would be subject to the final result of the disciplinary proceedings pending against him on the basis of charge memo served on him on 5.4.1990.

(b) If any meeting of the DPC is held in future for the post of Surveyor of Works, without prejudice to the right of the applicant under (a) above, he should be considered along with his juniors but the assessment of the applicant shall be kept by the DPC in a sealed cover.

(c) After the conclusion of the Disciplinary proceedings referred to above, the sealed cover shall be opened and the applicant's promotion considered on the basis of the outcome of the disciplinary proceedings and the assessments available under (a) and sealed covers under (b) above.

The other reliefs prayed by the applicant are disallowed leaving the parties to bear their own costs.

*J. P. Sharma*  
( J.P. SHARMA ) MEMBER (J) 3.4.92

*S.P. Mukerji*  
3.4.92  
( S.P. MUKERJI ) VICE CHAIRMAN