

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

\* \* \* \*

O.A. NO. 1770/1991

DATE OF DECISION

24.12.71

SHRI A.K. CHATTERJEE

...APPLICANT

VS.

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM

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

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

FOR THE APPLICANT

...SHRI M.K. GUPTA

FOR THE RESPONDENTS

...SHRI P.H. RATHBUDANI

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 working as Assistant Collector (Legal and Judicial), Central Excise Collectorate, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 assailing the action of the respondents in not promoting him to Senior Time Scale (Grade - V) of the Indian Customs and Central Excise, Group-A Services, while many juniors to the applicant have been promoted to the said

scale vide order dt. 25.10.1990. The applicant also assails the action of the respondents in not promoting him to the post of Deputy Collector of Customs and Central Excise despite the fact that he is eligible and entitled to the promotion to both, i.e., Senior Time Scale (Grade - V) and Deputy Collector. The applicant has claimed the relief that a direction to the respondents be issued to open the sealed cover of the applicant in which the results have been kept by DPC's in 1990 and 1991 and to promote him as per the recommendation of DPC. A further direction to the respondents to constitute review DPC for promotion to the Senior Time Scale (Grade - V) and Deputy Collector of Customs and Excise and promote him as per rule on review DPC, if found fit by the DPC. He also prayed for the grant of these reliefs with effect from the due date with all consequential benefits of arrears of pay etc.

2. The respondents filed the reply and in the reply dt. 24.10.1991, it is stated that the applicant was considered for promotion to Senior Time Scale in due turn, but the findings of the DPC were kept in a sealed cover as disciplinary proceedings were contemplated against him. The applicant was also further considered for promotion to the grade of Deputy Collector of Customs and Central Excise, but the findings of this DPC were also placed in the sealed cover as disciplinary proceedings were contemplated against him.

The disciplinary proceedings contemplated against the applicant related to alleged irregularities in assessment of certain goods imported through foreign post office in January, 1989. However, in view of the modified instructions issued by Department of Personnel and Training in OM dt. 31.7.1991 (Annexure R-II), in terms of which sealed cover proceedings need not be adopted in the case of Government servant against whom an investigation on serious allegation of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise. If the officer, in view of the above instructions contained in the said OM, has been found fit and recommended by DPC, he will be notionally promoted from the date his immediate juniors have been promoted. The applicant, therefore, has since been promoted from Junior Time Scale to Senior Time Scale w.e.f. 1.11.1983 as per the recommendations of the DPC dt. 14.10.1991 (Annexure R-III). The applicant has also been promoted to officiate as Deputy Collector by Department of Revenue's Office Order No.322/91 dt.11.10.1991 (Annexure R-Iv).

3. According to the respondents, benefits arising from OM No.1770/91 dt.31.7.91 have been substantially granted. So the application has become infructuous.

4. We have heard the learned counsel for the applicant at length. The learned counsel for the applicant has only

contended that the applicant is entitled for promotion with retrospective date with all consequential benefits including arrears of pay alongwith the interest. The contention of the learned counsel is that the applicant should not be penalised for no fault of his. In support of this case, the learned counsel has referred to the decision of the Hon'ble Supreme Court in UOI vs.K.V.Janakiraman, reported in Judgement Today 1991 (3) SC 527. It is held that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, there must be departmental enquiry at the relevant time pending at the stage when charge memo/charge sheet has already been issued to the employee.

In this reported case, while passing order in the Civil Appeal No.3018/87, the Hon'ble Supreme Court observed in para 32 as follows :-

"In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M.Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant

to the respondent all the consequential benefits.

The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs."

5. In view of the above finding of the Hon'ble Supreme Court in Janakiraman's case, since the promotion of the applicant was withheld at a time when no disciplinary or criminal proceedings were pending against him, he is entitled to all the consequential benefits of arrears of pay etc.

6. In view of the above discussion, the application is allowed. The respondents are directed to give full monetary benefits of promotion to the applicant from the date junior to him has been promoted by them to Senior Time Scale as well as Deputy Collector, Central Excise as stated by the respondents in para-5 of their reply. In the circumstances, the parties are directed to bear their own costs.

*J. P. Sharma*  
(J.P. SHARMA) 24.12.91  
MEMBER (J)

*D. K. Chakravorty*  
(D.K. CHAKRAVORTY)  
MEMBER (A) 24/12/91