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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,
NEW DELHI.

OA.No.2737/91

Date of Decision: 14.8.92

Shri Kewal Kumar

Applicant

Shri R.K. Kamal

Counsel for the applicant

Versus

Union of India

Respondents

Shri P.H. Ramchandani

Counsel for the respondents.

CORAM:

The Hon'ble Mr. T.S. Oberoi, Member(J)

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

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

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed by Shri Kewal Kumar, Deputy Chief Electrical Engineer, Northern Railway, Tilak Bridge, New Delhi, under Section 19 of the Central Administrative Tribunal's Act, 1985, against the action of the respondents to keep in a Sealed-Cover, the recommendations of the DPC, even though the charge-sheet was served on him much later.

2. The applicant joined I.R.S.E.E. Group 'A' service on 20.6.72 and was given the Selection Grade of Rs.4500-5700 w.e.f. 1.1.87. After completion of 4 years in the

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Selection Grade, he had become due for promotion to the Senior Administrative Grade Rs.5900-6700. The DPC, to finalise the panel, was held in 1989 and the applicant came to know about it, when he found that his junior Shri Siva Swamy was promoted to S.A. Grade on 8.8.90. No charge-sheet proposing to initiate disciplinary proceedings had been issued before the meeting of the DPC. The applicant contends that the action of Railway Board is illegal and arbitrary, particularly, in view of the law, laid down by the Supreme Court, in the case of Union of India Vs. K.V. Janakiraman; JT 1991(3) SC 527. He prayed that the respondents be directed to get the sealed cover containing the result of the applicant's selection to S.A. Grade, opened, and promote the applicant, if found fit for promotion, w.e.f. the date his next junior was promoted with all consequential benefits. He has also prayed that the review DPC may be convened, to consider his case for promotion afresh, keeping out of consideration, the allegations contained in the charge-sheet dated 1.8.90.

3. The respondents have admitted that the selection for S.A. Grade was held by DPC on 23.11.89, but a junior of the applicant was promoted on 8.8.90 and that the case of the applicant was also considered, but in view of the serious allegations against him and a decision to initiate disciplinary proceedings for major penalty having been taken on 20.11.89, the findings were kept in sealed cover. It was alleged that, as he had committed serious irregularities in purchase of electric fans, a F.I.R. was registered on 30.9.88 by the C.B.I. and their report was received on 12.10.89. The charge-sheet was issued on 1.8.90

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which was
/received by the applicant on 17.8.90. The applicant
is facing another disciplinary case, wherein, serious
irregularities have been alleged against him and a
separate charge-sheet has been issued to him on 2.1.92.
The law laid down in Janakiraman's case is prospective
and would apply only after the judgement was pronounced
on 27.8.91.

4. We have gone through the records of the case and
heard the learned counsel for both parties. The
respondents have relied on the instructions contained
in Department of Personnel and Training OM dated 12.1.88
which specifically provide for assessment of the DPC to
be kept in the sealed cover, in case of the following
categories of Government servants:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary
proceedings are pending or a decision has been taken
to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution
for a criminal charge is pending or sanction for
prosecution has been issued or a decision has been
taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation
on serious allegation or corruption, bribery or
similar grave misconduct is in progress either
by the CBI or any agency, departmental or otherwise.

5. These instructions have been reiterated in the
Railway Board's circular dated 21.9.88.

6. The learned counsel for the respondents contended
that this case was distinguishable from that of K.V.
Janakiraman and drew our attention to the observations

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of the Supreme Court in the Civil Appeal Nos.51-55 of 1990, which were also disposed of, along with a batch of cases in Janakiraman's case. In the said Civil Appeals, the charge-sheet was issued much later than the meeting of the Departmental Selection Committee. The facts of the said appeals were peculiar. Disciplinary and criminal prosecutions were launched against the employees concerned. They were suspended from service on 15.7.83. They had admitted the guilt of lodging false L.I.C. claim and pleaded revocation of their suspension on depositing the amount of Rs.1600/-. They were reinstated in service in November 1983. Criminal proceedings were not pursued without prejudice to the departmental proceedings and charge-sheet was issued to them on 24.12.87. In the meanwhile, the DPC had met in July 1986 and it had adopted the sealed cover procedure in regard to the employees concerned. The Supreme Court upheld the action of the respondents in the above factual background.

7. The aforesaid cases are clearly distinguishable.

8. On the question, 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 in the case of Shri K.C.Venkata-Reddy Versus Union of India (ATR 1987 (I) CAT 547), 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. While

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deciding the SLP, against the judgement of the Tribunal, the Supreme Court in Janakiraman's case, agreed with the above views of the Tribunal.

9. In the conspectus of the facts and circumstances of the case, we hold that the applicant is entitled to succeed and issue following directions:-

- (i) Respondents shall get the sealed cover containing the result of the applicant's selection to S.A. Grade opened and promote the applicant, if the D.P.C. had found him fit, w.e.f. the date his next junior was promoted.
- (ii) The applicant would be entitled to all consequential benefits, including arrears of pay and allowances, from the date his immediate junior was promoted.
- (iii) The disciplinary proceedings shall be concluded expeditiously, preferably, within a period of three months, from the date of receipt of this order.
- (iv) We make it clear that the respondents will be at liberty to review the matter in the light of the ultimate outcome of the departmental proceedings initiated against the applicant.
- (v) There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

T.S. Oberoi 14.8.92
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MEMBER (J)

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