

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2867/2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.K. Naik, Member(A)**

New Delhi, this the 2nd day of June, 2005

**Ved Pal Singh Rana,
S/o Shri Charan Singh,
R/o Quarter No.9, S.I. Type,
P.S. Mandir Marg,
New Delhi**

.....Applicant

(By Advocate: Shri L.R. Khatana)

Versus

- 1. Union of India,
Through the Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block,
New Delhi-1**
- 2. Joint Secretary to the Govt. of India,
(UT Division)
Ministry of Home Affairs,
North Block,
New Delhi-1**
- 3. Lieutenant Governor,
Govt. of NCT of Delhi,
Raj Niwas, Delhi**
- 4. Commissioner of Police, Delhi,
MSO Building, Indraprastha Estate,
New Delhi.**

.....Respondents

**(By Advocate: Shri Duli Chand, for respondents 1 and 2)
None for respondents 3 and 4)**

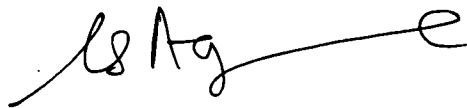
Order



Justice V.S. Aggarwal, Chairman

The applicant V.P.S. Rana by virtue of the present application prays that the impugned action of the respondents whereby he has been denied consideration for promotion/appointment to the entry grade of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Police Service (DANIPS) be declared as illegal, arbitrary and discriminatory. He seeks a direction to the respondents to consider his case for promotion/appointment to DANIPS with reference to his juniors and grant him all consequential benefits.

2. The facts which prompt the applicant to file the abovesaid application and claim reliefs to which we have referred to above are that the applicant was appointed as direct recruit Sub-Inspector in Delhi Police. He was promoted as Inspector on 2.1.87 and confirmed on 9.5.89. On 1.4.2003, the Additional Commissioner of Police had ordered a regular departmental enquiry against the applicant but no summary of allegation had been served on the applicant and thus it cannot be taken that departmental enquiry had been initiated. He challenged the order of 1.4.2003 and this Tribunal had disposed of the petition with the direction that applicant should submit a representation which should be decided within two months. He submitted the representation on 5.10.2004 but no action has been taken.



3. Applicant pleads that a departmental promotion committee meeting took place in May, 2004 for recommending names of the Inspectors to be promoted to the entry grade of DANIPS. The name of the applicant is stated to have been ignored. The said action of the respondents is challenged, contending that order initiating departmental enquiry is invalid. No departmental proceedings had been started against the applicant because no summary of allegation had been served.

4. Respondents 1 and 2 have contested the application. It is asserted that provisions of Rule 7 of National Capital Territory of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli (Police Service) Rules, 2003 regulate the appointments to the entry grade of NCT of Delhi. 50% of the posts in the entry grade are filled up by direct recruitment on basis of the Civil Services Examination and remaining 50% by promotion by 'selection' subject to the benchmark grade prescribed by the Government. Respondents plead that instructions have been issued by the Government on 14.9.92 that at the time of consideration of cases of the Government servants for promotion, certain criteria have to be taken note of particularly if the Govt. servant is under suspension, no charge-sheet has been issued and departmental proceedings are pending and against whom prosecution for a criminal charge is pending. The instructions further provide that departmental promotion committee is to assess the suitability of Govt. servants coming within the purview of the circumstances mentioned above.

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5. The names of the eligible candidates had been considered. Applicant was one of the eligible candidates but his claim was kept in a sealed cover because the Commissioner of Police did not certify his integrity and vigilance clearance had been withheld. The applicant's claim for promotion was not taken up as the recommendations of the DPC had been kept in a sealed cover.

6. We have heard the parties' counsel and have seen the relevant record.

7. Learned counsel for the applicant urged that when the DPC meeting took place, no charge-sheet had been served. The applicant had not been placed under suspension and, therefore, the question of keeping his claim in the sealed cover did not arise. According to the learned counsel, the action thus of the respondents is illegal.

8. The leading decision on the subject is that of Union of India v. K.V. Jankiraman, AIR 1991 SC 2010. The same arguments as are being floated had been considered by the Supreme Court. The Supreme Court held that sealed cover procedure is to be resorted only after charge-sheet/charge-memo is issued. Pendency of preliminary investigation will not be sufficient. It was further held that promotion cannot be withheld only because some preliminary investigation or criminal case is pending. The Supreme Court held:

"6. 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

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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-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 would 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. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2)

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"



There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. 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. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

9. Same view was expressed by the decision of the Supreme Court in the case of Union of India & ors. vs. Dr. (Smt.) Sudha Salhan, 1998 (2) AISLJ

265. In paragraph 4, the Supreme Court held:

"4. The question, however, stands concluded by a Three Judge decision of this Court in *Union of India and Ors. K.B. Jankiraman & Ors.*, 1991(4) SCC 109, in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is

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ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."

10. Identical indeed is the position herein. In the present case before us, on the date when the DPC meeting took place, it was only contemplated that disciplinary proceedings have to be initiated. No charge-sheet had been served. The applicant had not been suspended. Therefore, the sealed cover procedure could not have been adopted before the charge-sheet/charge-memo was issued. The same had been issued much later. In this view of the matter, the impugned procedure cannot be appreciated.

11. Resultantly, it is directed that denial of consideration to the applicant for entry into DANIPS is not valid. The claim of the applicant should be considered afresh in accordance with law regarding which we do not intend to give any further directions.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

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