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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1843/2004

New Delhi this the 14th day of February, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Ms. Ila Singh,
D/o Mr. M.P. Singh,
20/9, Lodhi Colony,
Near India Habitat Centre,
New Delhi-3.

-Applicant

(By Advocate Shri A.K. Behera)

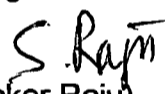
-Versus-

The Comptroller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi-1.

-Respondent

(By Advocate Shri Madhav Panikar)

1. To be referred to the Reporters or not? Yes / ~~No~~
2. To be circulated to outlying Benches? , Yes / ~~No~~


(Shanker Raju)
Member (J)

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O R D E R

Mr. Shanker Raju, Hon'ble Member (J):

Applicant seeks promotion to the Senior Administrative Grade (SAG) of Indian Audit and Accounts Service (IAAS, for short) w.e.f. 1.7.2004.

2. A brief factual matrix is that applicant joined Group 'A' Service of IAAS on the basis of Civil Service Examination. She was promoted to the Senior Time Scale along with officers of 1988 batch in August, 1992. Applicant was further promoted in JAG in 1996.

3. Applicant was also promoted to selection grade of JAG w.e.f. 1.1.2001 with her batch-mates. A DPC met to consider the case of 1988 batch for promotion to the SAG, applicant who found her name missing in the list of promoted officers on the website on 15.6.2004 later came to know that junior officers of 1988 batch had been promoted to the SAG w.e.f. 1.7.2002. A representation made on

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16.6.2004 when was not paid any heed the present OA has been filed.

4. Learned counsel for applicant Shri A.K. Behera contends by strongly placing reliance on a decision of the Apex Court in **Union of India v. Sudha Salhan**, AIR 1998 SC 1094, that sealed cover would apply only if the employee has been under suspension or departmental proceedings are initiated on the issue of the chargesheet. A further reliance has been placed to substantiate the aforesaid plea on the decision of the Apex Court in **New Bank of India v. N.P. Sehgal and another**, (1991) 2 SCC 220.

5. Learned counsel further relies upon the decision of the Apex Court in **State of M.P. v. Bani Singh**, AIR 1990 SC 1308 to contend that when there is no departmental enquiry initiated or chargesheet issued on the date of meeting of the DPC, sealed cover cannot be resorted to, particularly when juniors had been promoted.

6. On the other hand, learned counsel of respondents strongly rebutted the contentions and projected a case against applicant by contending that applicant while working on deputation as a Financial Adviser (Housing) of DDA from 1998-2001 certain irregularities were noticed and on the advice of the Central Vigilance Commission draft charge-sheets for major and minor penalties were prepared which were intimated to the parent department on 9.2.2004 and thereafter on consolidation of the chargesheet and the fact that DPC had met on 25.5.2004 due to draft chargesheet from DDA and for want of reply as clarification, deferred holding of DPC, but subsequently a review DPC met on 20.8.2004 to consider the case of applicant and as chargesheet was approved on 27.2.2004 promotion of applicant is not sustainable.

7. Learned counsel has brought to our notice decision of the Apex Court in **Union of India v. Kewal Kumar**, (1993) 3 SCC 204, to contend that sealed cover has to be adopted, which is done in the present case, when a decision has been taken to initiate disciplinary proceedings by the competent authority. Accordingly, it is stated that non-promotion of applicant cannot be found fault with and a legal procedure has been adopted by respondents to place promotion of applicant under sealed cover and would be re-opened on conclusion of the disciplinary proceedings.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. In **Union of India v. K.V. Jankiraman**, (1991) 4 SCC 109, it has been held that a sealed cover cannot be resorted to unless a chargesheet has been issued in pursuance of a contemplated disciplinary proceeding. However, the aforesaid decision has been distinguished and explained in **Kewal Kumar** (supra), by observing:

"3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. In a case like the present, where the First Information Report was registered by a Central Bureau of Investigation, and on that basis the decision has been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting

of the DPC, this fact alone cannot benefit the respondent."

4. The question to examine in each case is: Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that, in a case like the present, where the CBI had recorded the FIR; sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be faulted."

10. If one has regard to the above, sine qua non for adoption of sealed cover procedure is when the competent authority takes a decision to initiate disciplinary proceedings against the concerned government servant. The competent authority is the appointing/disciplinary authority of the person.

11. In the above backdrop the decision of the Apex Court in **Bank of India and another v. Degala Suryanarayana**, (1999) 5 SCC 762 is relevant to be highlighted wherein the following observations have been made:

"13. In the case at hand a perusal of the order dated 5.1.1995 of the disciplinary authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the enquiry officer and then assign reasons for taking a view in departure from the one taken by the enquiry officer. The disciplinary authority has then recorded its own finding setting out the evidence already available on record in support of the finding arrived at by the disciplinary authority. The finding so recorded by the disciplinary authority was immune from interference within the limited scope of power of judicial review available to the Court. We are therefore of the opinion that the learned single Judge

as well as the Division Bench of the High Court were not right in setting aside the finding of the disciplinary authority and restoring that of the enquiry officer. The High Court has exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by Bank of India deserves to be allowed to that extent."

12. In the light of the above it is no more res integra that a sealed cover would be resorted to only when there is a decision of the competent authority to initiate disciplinary proceedings and this should precede holding of the DPC or even on the date of the DPC, failing which it cannot be legally said that the person is facing a disciplinary proceeding or even if it is contemplated for which a resort to sealed cover can be resorted to.

13. In the present conspectus it is not disputed on either side that Comptroller and Auditor General of India (CAG) is the competent authority being the disciplinary authority of applicant.

14. We have perused the record produced by the learned counsel for respondents, where no privilege is claimed. While being repatriated from DDA draft chargesheet for major penalty was sent in view of other charges it was observed during the period February-March, 2004 to consolidate the chargesheet. Meanwhile, the DPC which has met on 25.5.2004 though considered officers of 1998 batch applicant against whom a draft chargesheet was prepared by the DDA the DPC decided to defer her case clearly shows that there was no consideration of the eligible officers. However, applicant sent a representation taking resort to decision in **Sudha Salhan** (supra) wherein it has been clearly observed that the competent authority, CAG was yet to take a decision to issue the chargesheet at the time when the DPC had met on 25.5.2004. In this conspectus a decision

was taken by the CAG to serve the chargesheet and to initiate proceedings against applicant only on 20.7.2004.

15. In the light of the above, when the facts are not disputed the decision to initiate disciplinary proceedings against applicant was issued by the competent authority only on 20.7.2004 whereas DPC had met on 24.5.2004 and the promotion orders were issued on 15.6.2004 and made effective from 1.7.2004. This includes promotion of juniors. As such, the sealed cover resorted to subsequently in a review DPC, cannot be countenanced and is not legally tenable. Applicant was not facing disciplinary proceedings and as such the condition for resorting sealed cover laid down in DoPT OM dated 14.9.1992 has not been satisfied.


16. As per OM dated 14.9.2002, which is reproduced as under, sealed cover procedure cannot be resorted to if no departmental proceeding was pending:


"OFFICE MEMORANDUM

The undersigned is directed to refer to the instructions on sealed cover procedure as contained in this Department's OM No.22011/4/91-Estt.(A) dated 14.09.1992 and to say that a question whether the sealed cover procedure is to be followed by a Review DPC has been under consideration of this Department in the light of the decision of the Central Administrative Tribunal in certain cases. The matter has been considered in consultation with the Ministry of Law and it has been decided that the sealed cover procedure as contained in the OM dated 14.09.1992 cannot be resorted to by the Review DPC if no departmental proceedings or criminal prosecution was pending against the Government servant concerned at the time of meeting of the original DPC or before promotion of his junior on the basis of the recommendations of the original DPC.

2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned these instructions are issued after consultation with the Comptroller and Auditor General of India."

17. In the result, for the foregoing reasons, the OA is allowed. The respondents are directed to open the sealed cover and to give effect to it. Applicant shall be considered for promotion in the SAG of IAAS from the date her junior(s) and colleagues were promoted with all consequential benefits. This shall be done within a period of one month from the date of receipt of a copy of this order. No costs.


(S.K. Malhotra)
Member (A)


(Shanker Raju)
Member (J)

'San.'