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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.494/92

DATE OF DECISION: 20.05.1992.

J.P. JAIN

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:-

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

MS. PUSHPA RAJAN WITH SH. V.K.JAIN,
COUNSEL.

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to
see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes.*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

May 20, 1992.

T.S. Oberoi
(T.S. OBEROI)
MEMBER(J)

(9)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri J.P. Jain, working as Director (Selection Grade) in the office of the respondents, has filed this Original Application, under Section 19 of the Administrative Tribunals Act, 1985, as despite his representations dated 5.7.1991, 20.9.1991 and 21.10.1991 he has not been appointed to the grade of Chief Engineer (Rs.5900-6700) in Central Water Commission (CWC), Ministry of Water Resources.

2. The principal point for adjudication raised in the O.A. is whether the sealed cover, containing the recommendations of the Departmental Promotion Committee (DPC) for promotion to the post of Chief Engineer (Rs.5900-6700) in respect of the applicant should be opened and applicant promoted to the said post, in case he is recommended by the DPC, in view of the fact that the date when the DPC met, no charge memo was served on the applicant.

3. The applicant joined the Central Water and Power Commission (CWPC) on 14.10.1985 and progressed to the post of Director (Selection Grade) w.e.f. 1.1.1986. In the meantime, the CWPC was bifurcated in CWC and CPC and the applicant was

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allocated to CWC where had has been serving since 1976. He was considered for promotion to the post of Chief Engineer (Rs.5900-6700) by the DPC in January, 1991. Before, however, he could be promoted he was served with the memorandum No.7-(11)/87-Vig.Vol.I dated 22.3.1991 under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965. The said memorandum was received by the applicant on 31.3.1991. We are not concerned in this OA with the disciplinary proceedings against the applicant. His grievance is that having been considered by the DPC, recommendation in respect of him has been kept in the sealed cover when there was no disciplinary case pending against him. He contends that the action of the respondents in adopting the sealed cover procedure is illegal, malafide, arbitrary and is violative of Articles 14 and 16 of the Constitution. In support of his case he relies on **Union of India Vs. K.V. Jankiraman & Ors. JT 1991 (3) SC 527** wherein their Lordships held 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/chargesheet has already been issued to the employee."

He further draws support from the observation of their Lordships in respect of **Civil Appeal No.3108 of 1987 in K.V. Jankiraman** (supra). The applicant has prayed for the following reliefs:-

- "i) The respondents be directed to consider the case of the applicant for promotion to the post of Cheif Enginner by opening the sealed cover wherein the recommendations of the DPC are contained and if the applicant is found fit for promotion he be promoted from the date his immediate junior was promoted and all the consequential benefits be afforded to him.
- ii) The applicant be made eligible for cost of this Application."

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4. While the broad facts of the case are not disputed by the respondents they submit in their counter-affidavit that the applicant was appointed as Director on regular basis w.e.f. 29.5.1985 and not January, 1984, as stated by him. They affirm that a memorandum dated 22.3.1991 on the charge that the applicant had endorsed a cheque dated 13.6.1986 for Rs.2858/- in his favour and had had it credited to his saving account was served on him. The said memo was amended by the memorandum dated 25.9.91 to include one additional document and one additional witness in the list of witnesses. The disciplinary proceedings however, have not yet been finalised.

They further affirm that the DPC was held on 25.1.1991 in the office of Union Public Service Commission and that the applicant was considered for promotion to the grade of Chief Engineer alongwith other eligible officers. At the time when the DPC was held, RC No.61(2) had been registered by the Central Bureau of Investigation and the case was being investigated by the said Agency against the applicant. The respondents contend that the sealed cover procedure was rightly adopted in the case of the applicant in terms of Department of Personnel and Training's OM No.22011/2/86-Estt.(A) dated 12.1.1988 according to which the respondents are authorised to adopt the sealed cover procedure in the following cases:-

- "(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 allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

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They further contend that the instructions in the said OM have not been commented adversely by the Hon'ble Supreme Court in **K.V. Jankiraman** (supra).

5. We have heard the learned counsel for both parties and perused the material on record carefully. In **S.K. Tyagi Vs. Union of India OA 528/92 decided on 1.5.92** an identical formulation in similar circumstance (reproduced below) had been put forth by the learned counsel for the applicant:-

"The formulation projected by the learned counsel for the applicant is that since there was no chargesheet pending on the date, the applicant was considered for promotion by the DPC and recommendation in respect of him cannot be kept in the sealed cover and that he has the right to be reinstated in service not as Deputy Commissioner of Income Tax but as C.I.T. as he is in the approved select list of C.I.T. According to him, his view is in consonance with the order dated 1.8.1991 passed by the Hon'ble Supreme Court."

After carefully considering the matter we had come to the following conclusion:-

"6. It is apparent from the above that the revocation of suspension order is not on the ground that the case against the applicant has been finalised leading to his being cleared of the charges. Further the applicant had never been promoted/held the post of Commissioner of Income Tax before his suspension and, therefore, the question of reinstating him as C.I.T. on the ground that he was recommended by the D.P.C. for promotion as C.I.T. and that his name figured in the Select List approved by ACC appears to be lacking conviction.

Similarly, Shri A.C. Choudhry, the next junior to the applicant was placed in the Selection Grade (Non-functional) Rs.4500-5700 with effect from 1.1.1986 vide order dated 23rd August, 1990 retrospectively. Here,

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again the applicant was under cloud on 23.8.1990. From the above appreciation of the case it is observed that although on the date the DPC was held in April 1988 no charge memo was served on the applicant and the adoption of Sealed Cover procedure was not justified under the settled law, yet he was admittedly under cloud when he came up for promotion on 16 December, 1988. The question, therefore, is not whether the respondents were right in placing recommendations of the DPC in the sealed cover in respect of the applicant. The more germane issue is whether the promotion of the applicant should have been withheld after he had been placed under suspension and served charge memo on the crucial date. In the Full Bench Judgement in OA No.849/86 etc. K. Ch.Venkata Reddy & Others V/s Union of India & Others decided on 2.3.1987, it has been held that "withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are pending against him cannot be treated to be a penalty under Rule 11 (2) of Central Civil Services (Classification Control & Appeal) Rules, 1965." The respondents, therefore, cannot be faulted for withholding promotion of the applicant on the date his next junior was promoted on 16.12.1988. Since the applicant was never promoted as C.I.T. on 16.12.1988, but was under suspension w.e.f. 24.10.1988, he cannot claim reinstatement to a post which he never held. In our opinion, he can be/and was rightly reinstated in the post of Dy. C.I.T."

Accordingly, we are of the view that although there was no chargememo issued to the applicant on the date the DPC was held, the chargememo infact had been served on the applicant by the time he came up for promotion in accordance with the DPC

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recommendations. The respondents, therefore, cannot be faulted for withholding the promotion of the applicant till the disciplinary proceedings are finalised.

It would, however, have been another matter if on the date the applicant became due for promotion, he had not been served the chargememo. There can be no mechanical application of the law that if there is no chargememo served on the date when the DPC is held the employee shall be entitled to promotion irrespective of the situation on the ground on the date on which the promotion actually falls due. In our opinion, if on the date the promotion falls due, the applicant has been served chargememo and the disciplinary proceedings as such are pending against him, there is no case for judicial interference in the matter. In such cases the employee has to wait till the disciplinary proceedings are completed and the employee is completely/partially exonerated or held guilty as the case may be for claiming his benefits as due in accordance with law.

In that view of the matter the Application is bereft of merit and is dismissed.

There will be no order as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 20/5/1992

T.S. Oberoi 20.5.92
(T.S. OBEROI)
VICE-CHAIRMAN

May 20, 1992.

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