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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 589/92.

Date of decision. 23.3.1994.

THE HON'BLE SHRI N.V. KRISHNAN, VICE-CHAIRMAN (A)

THE HON'BLE SHRI B.S. HEGDE, MEMBER (JUDICIAL)

Shri Prabir Dass,
E8/F DDA Flat, Munirka,
New Delhi-67.
(Ms. S. Janani, counsel)

... Applicant

versus

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Personnel Office,
Head Quarters Office,
Baroda House,
New Delhi.

... Respondents

(By Advocate Shri I.C. Sudhir)

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(Hon'ble Shri B.S. Hegde, Member (Judicial))

The applicant is working as a Senior Clerk

in the personnel branch, Northern Railway Headquarters,

Baroda House, New Delhi. A selection was held for the

post of Welfare Inspector in the grade of Rs. 1400-2300.

The petitioner qualified in the written test and claims to
done

well in the interview. However, he was not selected

on the ground that at one stage, a disciplinary proceeding

was contemplated against the applicant.

2. The contention of the applicant is that no charge-

sheet is issued till the date the selections were held.

The denial of promotion on some contemplated enquiry is

contrary to judgement of the Apex Court in the case of

Union of India v. Jankiraman. Accordingly, he/ prayed for

has

the following reliefs:-

To direct the respondents to promote the applicant as Welfare Inspector Grade I in the payscale of Rs. 1400-2300 in the headquarters division with all consequential benefits and by way of interim order direct the respondents to keep one post of the Welfare Inspector vacant till the disposal of this O.A.

3. The learned counsel for the applicant Ms. S. Janani urged that till date, no charge-sheet has been issued to the applicant in any departmental proceedings nor any charges have been framed in the criminal case.

4. The Respondents, in their reply, denied the allegation of the applicant and further urged that the applicant has not specified the date of the impugned order. Therefore, there is no cause of action in his favour to invoke jurisdiction of this Hon'ble Tribunal. Further, it is stated that under the mandatory provisions of the extant rules, names of only those candidates/declared as successful who have qualified for placement on the panel and whose vigilance and D&AR clearance have been issued. Since, there is a criminal case under section 161 IPC read with Rule 5(2) of the Prevention of Corruption

Act is pending in the court of law against the applicant, result of the selection of the applicant is not declared. Further, the allegations against the applicant are of serious in nature and a case against the applicant is pending for the trial before the court of Kuldip Singh, Sub Judge, New Delhi as a charge-sheet under section 161 IPC read with section 5(2) of Prevention of Corruption Act has already been filed against the applicant on 19.2.1983. The trial of the criminal complaint against the applicant is now in progress. Therefore, the contention of the applicant that the Respondent has violated the judgment of the Supreme Court in Jankiraman's case is incorrect. Since the applicant is aware of the pendency of the serious charge against him, which is under trial before the court of Sub-Judge, the claimant cannot take advantage of the findings of the Jankiraman's case for the purpose.

5. In the rejoinder, dated 20.3.92, the applicant, except for stating that no charge has been framed in the said criminal trial as yet and, therefore, the stand of the respondents militates

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against the judgment of the Supreme Court, no other documentary evidence has been furnished by him denying the stand taken by the respondents in the reply.

6. We notice that in 1987, the applicant who was working in the Vigilance Department on deputation was placed on suspension in contemplation of disciplinary proceedings. By order dated 29.6.87, his suspension orders were revoked and he was repatriated to his parent department. Once again, without allowing him to join duty, he was placed on suspension on 7.7.87 in contemplation of disciplinary proceedings. The allegation against the applicant was that he had demanded illegal gratification. The applicant had filed an application under section 19 of the Administrative Tribunal Act, 1985 before the Tribunal and the Tribunal by its order dated 23.2.90, has quashed both the repatriation order and the suspension order dated 7.7.87. His tenure in the Vigilance Department had, in the mean while, run out so he was not sent to Vigilance Department. Thereafter, the respondents regularised his period of suspension as duty vide their order dated 12.10.90 (Annexure-J).

7. The only contention raised in this petition by the learned counsel for the applicant is that till date more

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than 5 years have elapsed, no charge-sheet has been issued to him in the departmental/disciplinary proceedings. Similarly, no charge has been framed against him in the criminal proceedings. Therefore, the non-selection of the applicant is violative of his fundamental right under Article 14 and 16 of the Constitution. In this connection, the learned counsel for the applicant relied upon the decision of the Apex Court in UDI v. Jankiraman ~~1 AIR 1991 SC 2010~~ wherein the court held "On the first question viz. as to when for the purpose 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 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 promotion increment etc. does not impress us. The acceptance of this contention would result in injuction to the employees in many cases. As has been the experience so far, the preliminary investigation 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 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.

jk 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 of 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 is 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 conclusions No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary criminal proceedings are pending against the employees. To do, 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

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two conclusions.

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

8. Apart from the Apex Court's judgment, the learned counsel for the applicant draws our attention to the Ministry of Railway's circulated dated 21.1.1993 containing instructions regarding promotions of employees against whom departmental or court proceedings are pending (Ann.V to MP 3640/93) The salient features of the instructions are reproduced below:-

" Inspite of the six-monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/ criminal prosecution against the Railway servant is not concluded even after the expiry of 2 years from the date of the original selection/formation of suitability list. In such a situation, the promoting authority may review the case of the Railway servant concerned, provided he is not under suspension, to consider the desirability of giving him adhoc promotion keeping in view of the following aspects:-

(a) Whether the charges are grave enough to warrant continued denial of promotion.

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- (b) Whether the promotion of the officer will be against public interest.
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future.
- (d) Whether the delay in the finalisation of proceedings, departmental or in a court of law is not directly or indirectly attributable to the Railway servant concerned.
- (e) Whether there is any likelihood of misuse of official position which the Railway servant may occupy after adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution."

Accordingly, he claims that he is fully eligible for promotion as WLI atleast on adhoc basis.

9. We have heard the parties and have perused the records. In the light of the above, the only question that survives for consideration is whether the respondent is justified in (denying the promotion) of the applicant in the selection not declaring the result of on the ground of pending criminal trial. In this connection it may be noticed that Tribunal vide its order dated 23.2.90 while quashing the suspension order in contemplation of disciplinary proceedings had observed that there is only the reference of the registration of a criminal case against the applicant. In Jankiraman's case, referred to above, it is observed that promotion etc. cannot be withheld merely because some disciplinary/

criminal proceedings are pending against the employee to deny the said benefit there must be at the relevant time pending at the stage when charge memo./charge-sheet have already been issued to the employee.

10. The Respondents, in their reply, categorically stated that they have already filed a charge-sheet under section 161 IPC read with section 5(2) of the Prevention of Corruption Act which have already been submitted against the applicant as on 19.2.1988 and the criminal complaint against him is under trial before the court of the Sub-Judge, New Delhi which has not been denied by the applicant except stating that more than 5 years have elapsed no charge-sheet has been issued to him by the Department in respect of any departmental proceedings or by the trial court in the criminal proceedings. Therefore, his promotion cannot be withheld on that ground alone.

11. After hearing the counsel on either side, we are of the view, that it is an undisputed fact that the charge-sheet has already been filed before the Court which is pending consideration since long. In Jankiraman's case itself the Supreme Court has upheld the Tribunal decision " the sealed cover

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promotion can be resorted only after XXX
the charge sheet is filed before the competent
Court."

12. In the instant case, it is apparent
that the criminal case is pending against the
applicant before a Sub - Judge which has not
yet concluded. Therefore, in the light of the
decision of the Supreme Court in Jankiraman's
case it would not be possible for us to accede
to the relief prayed by the applicant i.e. to
promote the applicant as Welfare Inspector till
the pending criminal case is disposed of.

13. In the facts and circumstances of the
case, considering the delay involved in the disposal
of the criminal case and keeping in view of the
Railway Board's instructions dated 21.1.1993,
it would be open to the applicant to make a suitable
representation to the competent authority to consider
his promotion on adhoc basis, keeping in view of the
guidelines referred to above, which *prima facie*, would
serve the ends of justice.

14. It is not the case of the Respondent, that the
delay in the finalisation of criminal case is attributable
to the applicant, nor any likelihood of the case
reaching any conclusion in the near future. Therefore,
we are of the view, that by promoting the applicant on

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adhoc basis on the basis of his performance in the written test, it would not in any way prejudice the interests of the department.

15. There is no dispute that the applicant has been qualified in the written test. However, he could not be considered for viva-voce in view of the pending criminal case against him. On his making representation, the respondents should dispose of the same in view of their guidelines dated 21.1.1993 and consider him for the post of Welfare Inspector on adhoc basis and pass a speaking order within a period of 2 months from the date of receipt of this order. The O.A. is disposed of in the light of the above. No costs.

(B.S. Hegde) 23/3/94

Member(J)


23/3/94
(N.V. Krishnan)

Vice Chairman(A)