

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 667 of 1996

Allahabad this the 25/10 day of Sep 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. S. Dayal, Member(Admn.)

Sri B.P. Verma, Chief Commissioner of Customs and
Central Excise, Kanpur.

APPLICANT

By Advocate Sri B.B. Mandhyan.

Versus

1. Union of India through Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. Cabinet Secretary, Cabinet Secretariat, Government of India, New Delhi.
3. Secretary, Department of Personnel, Ministry of Personnel and Administrative Reforms, Government of India, New Delhi.
4. Central Board of Excise and Custom through its Chairman.
5. Under Secretary, Ad V, Department of Revenue, Government of India, Ministry of Finance, New Delhi.

RESPONDENTS.

By Advocate Sri N.B. Singh.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This O.A. has been filed challenging the Office Memoranda dated 14.11.94 (annexure-1) and dated January, 1996 (annexure-2) calling for the explanation of the applicant about the alleged irregularities in the disposal of two matters relating to unauthorised import of cloves and cassia and second hand Diesel Engines during the years 1992 and 1993 respectively. The applicant also sought the reliefs of restraining the respondents from proceeding further and taking any action in

pursuance of two memorandu~~m~~; direction to the respondents to promote the applicant as Member of Central Board of Excise and Customs(for short C.B.E.C.) w.e.f. 01.2.1996 when the post fell vacant ; restraining the respondents from promoting any Member junior to the applicant in the service on the post of the Member of C.B.E.C.; and direction to the respondents to produce the Record, file, and documents relating to two office memorandu~~m~~ and order of approval of the applicant to the post of Member of C.B.E.C.

2. The brief facts of the case are that the applicant had joined the post in Group 'A' as a probationer in the department of Customs and Central Excise on 23.7.1964. The applicant claims that he was promoted as Deputy Collector, Collector and Principal Collector in due course of time and on the basis of service records. It is averred that the respondent no.5 issued memorandu~~m~~(annexure -1) dated 14.11.94 to the applicant for taking up disciplinary proceedings for in-adequate fine and penalty in some adjudication orders relating to unauthorised import matters of Cloves and Cassia at the Port of Calcutta during the period from December, 1992 to May, 1993 when the applicant was posted there as Collector, Customs. The applicant submitted reply dated 03.5.1995 and 06.2.1996 annexure-3 and 4 respectively. The C.B.E.C. examined the case and in the meantime filed an appeal before the Central Excise and Customs, Gold Appellate Tribunal (for short C.E.G.A.T.) but, the said appeal was dismissed, vide order dated 03-8-95 (annexure-5). It is contended that feeling aggrieved by the order

in appeal, the Board filed a Reference Application before C.E.G.A.T. to refer the question of law, to the High Court but, the same was rejected on 02.1.96 vide order (annexure-6). It is pleaded on behalf of the applicant that in view of the orders being passed on judicial side upholding the validity of the action taken by the applicant, the memorandum dated 14.11.94, should have been withdrawn but, it was not done.

3. The claim of the applicant is that he is at serial no. 3 in the seniority list of eligible candidates for promotion to the post of Member, C.B.E.C.. It is also claimed that three vacancies had arisen in the Board on 01.1.1996 and 01.2.1996. The Committee of Secretaries was constituted on 07.12.95 and the names of 3 senior-most candidates including the applicant, were considered and approved. It is stated that the applicant had a personal meeting with the Principal Secretary to the Prime Minister on 22.12.95; and it was then that the applicant was informed about approval of his candidature for the appointment as Member of C.B.E.C. S/Sri S.D. Mohiley, R. Gopalanathan who were senior to the applicant, were promoted and had taken over the charge of the post of Members of C.B.E.C. in the January, 1996. The third post of the Member fell vacant on 01.2.1996 and the applicant was awaiting his appointment but, the orders were withheld by the Revenue Department illegally and with malafide intentions. The applicant avers that the respondents issued another memorandum in January, 1996 on learning about the approval of the applicant for the post and to justify their stand. This memorandum related to imposition of fines and penalty on the

import of second hand Diesel Engines. The applicant states that while exercising the powers as Collector of Customs, he had adjudicated upon the matters justly. The higher penalty and fine ^a then what was recommended by his subordinate official processing adjudication, was imposed by the applicant. The applicant has come with the plea that the appeal which was preferred against the orders of the applicant and was pending decision, the memorandum of January, 1996 was not needed. The issuance of the said memorandum smacks of bias- and because prejudice on the part of the Revenue Department, not only that the memorandum was issued in January, 1996 but, the matter was also referred to Central Vigilance Commission~~or~~ for advice. Anyway, the applicant claims that he had given reply of the said memorandum on 18.1.1996 and 13.2.1996 and had also sought personal hearing but, no action had been taken. Not only this, the promotion of the applicant was held back deliberately, firstly on the ground of general elections, and, secondly on the pretext that the matter was referred to the Vigilance for clearance. The applicant has come with the case that the Department of Revenue was not within its right to hold out the threat of disciplinary proceedings against the applicant because the legality and propriety of adjudication was subjudice before the C.E.G.A.T., and the memoranda were issued in violation of Section 155(2) of the Customs Act. The averment of the applicant is to the effect that no such action could be initiated after the lapse of such a long period.

4. It has been stated by the applicant about having learnt- the fact that the names of the juniors

had been proposed to the Committee of the Secretaries for the consideration about the appointment against the ~~vacant posts~~ of the Members of C.B.E.C., and it was apprehended that the promotion of the applicant to the said post of Member of C.B.E.C. would be withheld particularly when no departmental proceedings or criminal proceedings were pending against him. Feeling aggrieved by these acts of the respondents, the applicant filed this O.A. seeking the reliefs which were already mentioned.

5. The respondents contest the case on the grounds that the O.A. suffers from plurality of reliefs. It is pointed out that the case of the applicant for promotion to the post of Member of C.B.E.C. was considered by the Special Committee of Secretaries at the meeting held on 07.12.95. The Committee was informed by the Department of Revenue, that two ~~enquiries~~ relating to alleged gross misuse of quasi-judicial powers by the petitioner, were pending against him. It is further averred that when the matter was submitted to A.C.C., it desired that the nature of the charges against the applicant should first be examined by the Department of Revenue in consultation with the C.V.C. before a decision could be taken. According to the respondents, another meeting of Special Committee of Secretaries was held on 21.6.96 and considered the case of promotion of the applicant alongwith other officers including juniors to him for appointment to the post of Member of C.B.E.C. The Committee was informed by the Department of Revenue that a report from

C.V.C. recommending departmental proceedings for major penalty against the applicant was received.

6. The respondents objected to the relief of quashment of memoranda dated 14.11.94 and January, 1996, annexures 1 and 2 on the ground that those memoranda were merely internal office communication given with the object to gather certain information and explanation from the applicant. It is further averred that issuance of memoranda does not amount issuing any charge-sheet and starting disciplinary proceedings, and thus, the applicant does not get any legal right to challenge them. It is also pointed out that the department has not passed any order about taking any action on the basis of two memoranda. The explanation which was offered by the applicant in pursuance of two office memoranda, the department would consider and take appropriate action. Thus, it is claimed that filing of the present O.A. is premature and not maintainable.

7. Justifying the issuance of memoranda, it has been claimed by the respondents that the department had come to know of certain irregularities and illegalities in the assessment orders which were passed by the applicant in number of cases and, therefore, it had become necessary for the department to have sought the explanation of the applicant.

8. The respondents have come with the plea that the post of Member of C.B.E.C. is not a promotional post

but, it is an Ex-cadre post and filled in through selection by the A.C.C. on the basis of merit. The contention of the respondents, therefore, is that the relief number 8(iii) is beyond the purview of the Tribunal. On the same analogy, relief in para 8(iv) of the O.A. has been disputed. The respondents claimed privilege to show the record and documents as mentioned in para 8(v) of the O.A. because the documents were of confidential nature.

9. It is also contended by the respondents that filing of an appeal before C.E.G.A.T. and initiating departmental action ~~are~~ two different and independent proceedings and action of filing any appeal, will not debar the department from initiating the departmental proceedings. In order to justify the issuance of memoranda to the applicant, the respondents contended that the applicant had allowed undue benefit to the importers and thus, it was a loss of revenue to the Government.

10. The respondents have come with the plea that the proceedings of the Committee of the Secretaries are confidential in nature and thus, the applicant's allegation about favourable decision of the Committee of Secretaries in December, 1995 is without any basis. The respondents further showed ignorance if the applicant had any meeting with the Principal Secretary to the Prime Minister, and the disclosure made by the Principal Secretary about the decision of the Committee of Secretaries. The plea of the applicant that Section 155(2) of the Customs Act prohibited any action for the orders

passed in the exercise of the quasi-judicial powers has been disputed by saying that the said Section 155(2) of the Act did not prohibit initiation of the departmental proceedings. The respondents contend that the O.A. is not maintainable and the applicant is not entitled to any relief.

11. The applicant has also filed rejoinder in which all the facts which were reiterated in the O.A., have been restated. It is asserted that there is no bar under law to seek several reliefs in one petition. It is also claimed that holding back the promotion on the basis of some inquiry pending against the applicant, is totally illegal. It is denied that the memoranda are an internal office communication only and not a notice for initiating regular departmental proceedings. In order to substantiate this contention, para 10 of the first memorandum and the last part of para 3 of second memorandum are referred to. The applicant further contends that the post of the Member of C.B.E.C. may be selection post but, it is wrong to say that it is not a promotion post for the senior-most member of the Indian Customs and Central Excise Services. It is claimed that the promotion to the post of Member C.B.E.C. had been made on the basis of seniority and merit and for that reason, the applicant claims to be entitled for the same. It is also averred that the Special Committee of Secretaries consider the appointment for the post of Member, C.B.E.C. invariably taking into consideration the seniority of an officer apart from his merit. So far as the contention of the respondents

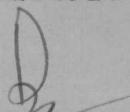
that the post of Member of C.B.E.C. is Ex-cadre post, is concerned, the applicant contends that the said post has never been filled up by an officer other than belonging to Indian Customs and Central Excise Services.

12. We have heard the learned counsel for the applicant Sri B.D. Mandhyan and Sri N.B. Singh, learned counsel for the respondents. We have also perused the record including the files relating to the proceedings of the Committee of Secretaries and A.C.C. Besides, we have also gone through the files relating to the inquiry allegedly going on against the applicant.

13. In this case, the facts as are set out earlier, give rise to the following issues :-

1. Whether the issue of office memorandum gives any legal right to the person whom it is addressed, to challenge the same and to seek its quashment;
2. Whether further proceedings based on the issuance of the office memorandum, be stopped;
3. Whether the promotion of the applicant under the facts and circumstances of the case, be directed to be made;
4. Whether the respondents may be restrained from promoting any member junior to the applicant to the post of Member of C.B.E.C.

14. The issues no. 1 and 2 which we have framed for adjudication, can conveniently be dealt with together; and therefore, they are taken up jointly for consideration. The applicant has come with the prayer that the two memoranda dated 14.11.94 and



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and January, 1996 (annexure 1 and 2) respectively be quashed. The contention of the respondents on the other hand is that office memorandum is not a charge-sheet, and therefore, there is no question of their quashment. In this connection, the definition of office memorandum, has given in chapter VI of the Central Secretariat Manual of Office Procedure, has been relied upon. In this manual, the term 'Office Memorandum' has been described. According to the learned counsel for the respondents, it is the definition of the office memorandum. It reads;

" Office Memorandum - This form is generally used for corresponding with other departments or in calling for information from or conveying information to its employees. It may also be used in corresponding with attached and subordinate offices. It is written in the third person and bears no salutation or superscription except the name and designation of the officer signing it. "

15. A perusal of this description or definition makes it clear that office memorandum is a form and is generally used-- for correspondence with other department. It is also --used in calling for information from or conveying information to the employees. It is contended by the learned counsel for the respondents that it neither amounts a charge-sheet nor does it carry any penal consequence. It is, therefore, urged that the Tribunal cannot entertain the relief by which quashing of the memoranda is sought by the applicant.

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16. In order to appreciate this argument, it becomes necessary to go through two memoranda annexure-1 and 2. In the first memorandum annexure-1, ^{is} the subject dealt with ~~the~~ the unauthorised import of cloves and cassia at Calcutta Port during December, 1992 to May, 1993. It further speaks about the contemplation of disciplinary proceedings against Sri B.P. Verma, Principal Collector of Customs and Central Excise, Kanpur. This memorandum runs into 10 paragraphs. The paragraphs 1 to 7 deal with the details of the alleged unauthorised import of cloves and cassia while para 8 deals with the opinion formed about the orders passed by the applicant. The paragraph 9 deals with the action taken by the C.B.E.C. about review of adjudication; and para 10 is dealing with the applicant who was called upon to explain within 10 days from the date of receipt of the memorandum as to why the regular departmental proceedings be not initiated against him. Similarly, the perusal of memorandum(annexure-2) deals with the unauthorised import of second hand Diesel Engines at Calcutta Port during April-May, 1993. The subject of the memorandum further speaks about examination of the orders passed by the applicant as Collector of Customs, Calcutta. This memorandum runs into several paragraphs but only 3 paragraphs have been numbered. All these 3 paragraphs disclose^s the description of the allegedly unauthorised import of second hand Diesel Engines. Subsequent thereto is a para disclosing the order of review of adjudication—a decision taken by the C.B.E.C.. The last but one

para requires the applicant to explain within 10 days from the receipt of the memorandum as to why the regular departmental proceedings should not be initiated against him. Thus, the perusal of these two memoranda go to show that no specific charge was framed. Mere narration of facts will not amount to a charge because the language of charge is specific and distinct. The intimation of taking action against the delinquent employee is clearly disclosed under some rule of C.C.S.(C.C.A.) Rules, 1965. The learned counsel for the respondents, as is already pointed out, has vehemently argued that by no stretch of imagination these memoranda can be equated either with the charge-sheet or with ~~a~~ penal notices. Our attention has been drawn towards para 33(3) of the Central Secretariat Manual of Office Procedure, in which it is described that office memorandum is a form which is used in correspondence with other departments or in calling for information from or conveying information to its employees. We are in full agreement with the learned counsel for the respondents that these memoranda cannot be termed either ~~a~~ charge-sheets or ~~a~~ penal notices. By issuing these memoranda, the department wanted to elicit information from the applicant as to how and under what circumstances, the orders which were under investigation, were passed. If any communication of the nature as shown above is made, it cannot amount to a charge-sheet.

17. The question, however, arises if these memoranda which cannot be termed as charge-sheet, can be quashed by the Tribunal. The applicant is seeking quashment of

these memoranda whereas the learned counsel for the respondents pleads that the Tribunal has got no jurisdiction because the memoranda are not in the nature of charge-sheets. Section 19 of Administrative Tribunals Act, 1985 lays down that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal, may make an application to the Tribunal for the redressal of his grievance. In this way, it is clear that there must be an order. The meaning of 'order', according to concise of Oxford Dictionary, is to ordain, command, bid, prescribe or direct. The term 'ordain' further means to appoint authoritatively, decree, inact etc. What comes out from the meaning given to the term 'order' therefore, is that any direction which is authoritatively given and finally disposes of the issue, shall be called an order. This question also arose before their Lordships of Supreme Court in the case 'J.B. Chopra Vs. Union of India and Others 1987(2) A.T.C. 344' and their Lordships held that the Administrative Tribunal being a substitute of the High Court, had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters, and included the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Article 14 and 16. Justice K.N. Goel in his book "Commentaries on the Administrative Tribunals Act, 1985" opined at page 329 that the word 'order' may be widely construed to include even a law including Statutory Rules and Acts of the Legislature.

The sum and substance, however, is that in the term 'order' is included anything which finally and authoritatively disposes of a matter. When viewed from this angle, we find that the office memorandum particularly the two memoranda annexure-1 and 2 are not disposing of the subject matter which was described therein, finally. The department of Revenue of Government of India, Ministry of Finance, simply required of the explanation from the applicant so that a final decision about the contemplated disciplinary proceedings (as is mentioned in the subject matter of annexure-1) may be taken. Consequently, we hold the view that the memoranda annexure-1 and 2 are not orders and, therefore, the applicant cannot have any legal right to challenge them.

18. With this finding that the memoranda are not included in the term of orders and they cannot be challenged before the Tribunal, the natural corollary is that further proceedings based on them, can neither be challenged nor be interfered with. In this connection, learned counsel for the respondents have relied on Union of India and Others Vs. Upendra Singh (1994) 3 S.C.C. 357¹. In this case of Upendra Singh, a memo of charge was served upon the delinquent officer and he approached the Tribunal for quashing the charge-sheet. The Tribunal stayed the proceedings. Their Lordships of Supreme Court therefore, held that the Tribunal ought not to have interfered with ^{at} an interlocutory stage because it had no jurisdiction to go into the correctness or truth of the charges. It was further held that the purpose of judicial review was to ensure that the

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individual received fair treatment. It was further observed that when a Court could not interfere with the truth or correctness of the charges even in a proceedings against the final order, it could not do so at the stage of framing of charges and thus, the order was not found sustainable. In the present case before us, the learned counsel for the respondents contends that the result ⁱⁿ issuing the memoranda to the applicant, may turn out to be issuance of charge-sheet to the applicant. He has shown the file in which inquiry is ~~contemplated~~ completed in regard to the allegations against the applicant and a charge-sheet has been prepared but, the said charge-sheet could not be served because of the pendency of this case. In view of these facts, the relief claimed by the applicant that the further proceedings against the applicant on the basis of issuance of office memoranda, should be stopped, is premature and legally not sustainable. We, therefore, answer issues no.1 and 2 accordingly.

19. Issues no.3 and 4 are inter-linked for the reason that in issue no.3, the point for consideration is whether the respondents may be directed to promote the applicant, and so long as the promotion of the applicant is not made, whether the promotion of juniors to the applicant, may be stayed. We, therefore, take both these issues together for their decision. The applicant has come with the case that he is the senior-most member of Indian Customs and Central Excise Service and thus, he is entitled for being promoted to the post of Member of C.B.E.C. It is also his contention that the Special Committee of Secretaries had considered his name for promotion, and thus, the respondents could not

deny the said promotion to the applicant. The averment of the respondents, on the other hand, is that the post of Member of C.B.E.C. is ex-cadre post and the applicant has no legal right to be promoted on the said post. It is also claimed that the post of Member of C.B.E.C. is a selection post and it is not necessary that the seniormost member of Indian Customs and Central Excise Service should invariably be promoted. As regards the consideration of the name of the applicant by Special Committee of Secretaries is concerned, the averment in the counter-affidavit is that the proceedings are confidential in nature and the information could not be divulged. The privilege of the documents is also claimed. The respondents also pleaded that no specific procedure particularly procedure of Sealed Cover is prescribed for the selection to the post of Member of C.B.E.C.; and, therefore, the law which is applicable in the case of promotion to the cadre post by adopting sealed cover process, was not applicable in the present case.

20. It is in view of these facts that these two issues have to be decided. There is no dispute that the post of Member of C.B.E.C. is ex-cadre post because both the parties admit this fact. The contention of the applicant, however, is that no doubt the post is ex-cadre post but, conventionally it was given to the senior members of the Indian Customs and Central Excise Service. It is specifically averred that never in the past, the post was

given to a member of any other service than the senior members of Indian Customs and Central Excise Service. The respondents also admitted this fact that the post of Member of C.B.E.C. was always given to the senior member of the service but it is reiterated that it is a selection post and the members of Indian Customs and Central Excise Service cannot have a claim for being selected on the post. Since the post of Member of C.B.E.C. is ex-cadre post and, therefore, the members of Indian Customs and Central Excise Service cannot claim promotion to the post as of right. It also emerges that conventionally the post had been held by senior members of the service but, on their selection on merits. The respondents are not averse to this convention, and it appears from the pleadings in the counter-reply as well as from the argument made by the learned counsel for the respondents that the convention is required to be maintained but, at the same time the post cannot be given to the senior members of the service simply on the basis of seniority if any of the members lack merit. It is well settled law that for promotion to the selection post, seniority alone is not the criteria. It is essentially merit which matters. In this connection, learned counsel for the respondents contends that the post of Member of C.B.E.C. is covered by the "Central Staffing Scheme" which provides systematic arrangement for the selection and appointment of the officers to senior administrative posts at Centre, excluding posts which are specifically encadred within the orgnaised group 'A' services

or filled by recruitment through the U.P.S.C. Under this Central Staffing Scheme, according to the learned counsel for the respondents, a panel of officers who are adjudged suitable for appointment as Joint Secretary or equivalent, is formed ; and the process of selection is based on the criteria of merit and competence has evaluated by the senior members of the Committee/Board on the basis of C.R. Dossires. The Central Staffing Scheme has been put up before us. We have gone through it. The Cabinet Committee of Appointment which is known as A.C.C. is constituted under Rule 6 (1) of the Government of India (Transaction of Business) Rules, 1961. The function of the Committee is to consider the recommendation and take decisions in respect of appointments specified in annexure-1 to the first schedule to Government of India (Transaction of Business) Rules, 1961; to consider of recommendations and take decisions in respect of the empanelment specified in annexure-2 of the first schedule of the said rules; and, to consider other matters which are not required to be elaborated for our purposes.

21. The procedure of selection for inclusion in the panel of officers adjudged suitable for appointment is given in para 14 of the scheme. According to this procedure, the panel of officers is approved by A.C.C. on the basis of proposal submitted by the Cabinet Secretary. In this task, the Cabinet Secretary may be assisted by a Special Committee of Secretaries for drawing up the proposals for consideration of A.C.C. Inclusion in the panel is done through the

process of direct selection and evaluation of such qualities as merit, competence, leadership and a flair for participating in the policy making process. Para 14 makes it quite clear that the posts at these levels at the Centre filled according to the Central Staffing Scheme, are not to be considered as posts for the betterment of promotion prospects of any service. It further lays down that while due regard would be given to seniority, filling up of any specific post would be based on merit, competence and specific suitability of the officer for a particular vacancy in the Central Government. There is no dispute that the post of Member of C.B.E.C. is covered by the Central Staffing Scheme. After going through various para~~s~~ of the Central Staffing Scheme and particularly para 14, as is disclosed above, it becomes quite clear that it is the merit which is of paramount importance for selection to the post of Member of C.B.E.C. In this way, the contention of the applicant that he is the seniormost member of the Indian Customs and Central Excise Service, carries no weight.

22. The applicant has also come with the case that he had worked during the whole of a service with full satisfaction of respondents and no adverse comment was ever made. He, therefore, projects himself as a person having merit besides being the seniormost member of the service. Learned counsel for the respondents, on the other hand, contends that merit is judged not only by the performance alone but, by other factors particularly the competence and integrity. In this connection, it has been

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pointed out that the applicant while he was working as Collector, Customs at Calcutta, he had disposed of some cases in which lesser amount of penalty or fine was imposed. It is further contended that those orders had been under scrutiny before the Central Vigilance Commission and it was in that connection that the explanation of the applicant was called for with respect to two memoranda. No doubt, the respondents have claimed privilege of certain documents but, during arguments some files relating to the inquiry by C.V.C. against the applicant and personal file of the applicant including the file in which the report of the Special Committee of Secretaries and consideration by the A.C.C. are kept, are shown to us. It appears from the perusal of these files that the applicant had imposed a penalty or fine only of 75 Lakhs as against the estimated fine by the department of Rs.4 Crores. It emerges from the perusal of these files that the charge against the said irregularities is ready but because of the pendency of this case, it could not be served.

23. The learned counsel for the applicant contends that the inquiry against him was started because the Revenue Department was biased against him. It is also pleaded that all this has been done so that the applicant may not be promoted. In this connection, it has also been pointed out that the orders which were passed by the applicant on judicial side, were appealed against and the appeal in one of the two cases, was dismissed. The contention of the learned counsel for the applicant

therefore, is that the inquiry which was done by C.V.C. had no meaning when his order was upheld by the Appellate authority. In our opinion, taking of disciplinary action is quite separate and independent of what has been done on the judicial side. The disciplinary inquiry is started or done for a mistake. The applicant shall have opportunity to establish his innocence if the department goes to the extent of charging him. Anyway, we want to make it clear that even if an order of a particular employee passed while exercising quasi-judicial powers, may be upheld by the Appellate or Superior authority but, it will not debar the department from initiating any departmental action against him provided *prime facie misconduct is shown*. *the misconduct is shown.*

24. The learned counsel for the applicant contends that the applicant was cleared for promotion by the Special Committee of Secretaries on 07.12.95, and the Sealed Cover procedure was not adopted. Thus, it is argued that the promotion of the applicant could not be withheld. The applicant avers that this information was gathered by him from the Principal Secretary to the Prime Minister. The respondents showed ignorance in the counter-reply on the plea that the proceedings of the Special Committee of Secretaries and the A.C.C. were confidential. It was also contended that what talk had taken place between the applicant and Principal Secretary to the Prime Minister, was not known to them. Anyway, the file relating to the proceedings before the Special Committee of Secretaries and A.C.C., has been shown to us. It appears from the perusal of the file that the name of the applicant was under consideration. The fact that there were

certain allegations against the present applicant, was brought to the notice of the Committee but, those allegations were brushed aside on the ground that the orders passed by the applicant, were upheld by the Appellate authority. The factual position is that only one appeal relating to the case of cloves and cassia was decided and reference was still pending. Other appeal relating to unauthorised import of Diesel Engines was still pending. The matter was referred to A.C.C. which did not find favour with the view of the Special Committee of Secretaries.

25. It may also be mentioned that the Special Committee of Secretaries was also held on 21.6.96 when again the name of the applicant was considered but, was not recommended. In view of this factual position, the question arises as to what is the status of the Special Committee of Secretaries and whether the rule of Sealed Cover procedure was required to be adopted either by the Special Committee of Secretaries or by the A.C.C. In order to find out the answer of these questions, we will have to advert to the Central Staffing Scheme. This scheme prescribes the procedure but, there is no mention about the the status of the Special Committee of Secretaries or about the principle of Sealed Cover being applicable. The contention of the learned counsel for the applicant is that the promotion of the applicant cannot be withheld because the Sealed Cover procedure was not adopted by the Special

Committee of Secretaries which may be equated with the Departmental Promotion Committee. The learned counsel for the respondents, on the other hand, disputes this argument. His contention is that since the post of Member of C.B.E.C. is ex-cadre post and the Special Committee of Secretaries is not equivalent to the Departmental Promotion Committee; and also there is no specific rule for Sealed Cover procedure being adopted, the Special Committee of Secretaries and for that matter A.C.C. was free to adopt its own procedure of selection. It is true that the post of Member of C.B.E.C. is an ex-cadre post for the Member of Indian Customs and Central Excise Service. It is also true that no rules for promotion to the said post have been made. Whatever procedure is prescribed for such posts is given in Central Staffing Scheme, the reference of which is already made. What appears from the reading of various paragraphs of the Central Staffing Scheme is that the Special Committee of Secretaries is constituted for screening. After screening of the various officers, the names are forwarded to the A.C.C. which is competent to take decision in respect of appointments. This Central Staffing Scheme does not speak about the Sealed Cover procedure being adopted. The obvious reason appears to be that the posts which are covered under the Central Staffing Scheme are not cadre posts and, therefore, the members of particular service have no legal claim to be promoted on those posts. These are selection posts and selection is made keeping in view of the merit of a particular officer.

It appears that the Sealed Cover procedure is necessary only in the case of promotion to the cadre post. This fact finds support from the observation of their Lordships of Supreme Court in the case ' Union of India etc. Vs.K.V. Jankiraman etc. A.I.R. 1991 S.C. 2010'. It is observed "the Sealed Cover procedure is adopted when an employee is due for promotion, increment etc. but, disciplinary/criminal proceedings pending against him at the relevant time and hence the findings of his entitlement to the benefit are kept in a Sealed Cover to be opened after the proceedings in question~~ed~~, are over." It emerges from the view that first condition for the applicant of Sealed Cover procedure is that an employee should be due either for promotion or for getting increment. The second condition is that disciplinary/criminal proceedings are pending against him. We have already mentioned that the post of Member of C.B.E.C. is an ex-cadre post and the applicant or any member of the service of Indian Customs and Central Excise Service had no right to be promoted. In view of these facts, even if the procedure of Sealed Cover which is not prescribed, was not adopted by the Special Committee of Secretaries, it did not vitiate the conclusion of A.C.C. Even if Special Committee of Secretaries is equated with Departmental Promotion Committee, its role is limited to screen the officers and to forward the names to the Appointing Authority. Here in this case, A.C.C. has got the power to take the decision in respect of appointments. There is another aspect of the situation and it is that no doubt the Special Committee of Secretaries had considered the name of the applicant in the meeting of 07.12.95 and forwarded

the name of the applicant but, the same Committee when again considered the name of the applicant in its meeting on 21.6.96, did not find him fit. For these reasons, we find that the principle of Sealed Cover procedure was not applicable and, thus, the consideration of the name of the applicant by the Special Committee of Secretaries in its meeting on 07.12.95, does not entitle the applicant to have acquired any right.

26. The learned counsel for the applicant argues that even if the principle of Sealed Cover procedure was not specifically prescribed, the said principle flows from the principle of natural justice. He furthers that when the department has not taken a final decision for serving a charge-sheet, on the applicant, the promotion of the applicant who is otherwise eligible for the post of Member of C.B.E.C., should not be denied to him. The reliance was placed on Jankiraman's case (supra) which is already referred to above. In this case, their Lordships had mandated the adoption of Sealed Cover procedure in the case of promotion or increment, if due, to an employee. It is also pointed out as to when the Sealed Cover procedure is to be resorted to. On this account, it has been held that such a procedure should be resorted 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. The conclusion drawn is that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings is pending against him. We may again refer to our

view point that this matter relates to a situation where- the promotion to a particular post cannot be claimed as of right. Their Lordships have also observed in Jankiraman's case that the promotion to a post and more so to a selection post depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. The concept of the decision in Jankiraman's case was considered in another case 'Delhi Development Authority Vs, H.C. Khurana 1993 (2) S.L.R. 509' in which their Lordships considered O.M. no. 22011/-4/91-Estt.(A) dated 14.9.92 which was issued in supersession of earlier O.M. dated 12.1.1988. In both the O.M.s, the guide lines which were required to be followed for promotion of Government servant against whom disciplinary/criminal proceedings were pending, were discussed. According to sub-para (iv) of para 2 dealt with the Government servants against whom an investigation of serious allegations of corruption, bribery or similar grave misconduct was in progress either by the C.B.I. or any other agency departmental or otherwise, was discussed. This principle was further elaborated in the case "Union of India Vs. Kewal Kumar 1993 (2) S.L.R. 554" in which the following observation was made ;

"It is obvious that when the competent authority takes the decision to initiate a disciplinary proceedings 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 D.P.C., being found suitable otherwise."pg.27/-

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27. It means that even if D.P.C. has recommended for the promotion of a Government servant but if he is charge-sheeted, the promotion can be withheld. In the present case, the applicant is going to be charge-sheeted as is clear from the file of inquiry of C.V.C. and his name for promotion was deferred by the A.C.C., we do not find that any direction can be given to the respondents about his promotion.

28. The collateral issue no.4 comes up whether the respondents be restrained from promoting juniors to the applicant. In view of the fact as are discussed above, we do not find any substance in this prayer. Besides, in this case interim order was passed on 25.6.96 directing the respondents that no-one junior to the applicant should be promoted against the post of Member of C.B.E.C. This order was challenged in S.L.P.no. 15488/96 Union of India and Others Vs. B.P. Verma which was decided on 26.8.96 whereby the stay was vacated. It was observed by their Lordships that the effect of the stay order was to keep certain important office vacant which was detrimental to public interest. In view of all these facts, we do not find any substance in the prayer by which the juniors to the applicant are required to be stopped from being promoted. The issues no.3 and 4 are also decided accordingly.

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29. On the consideration of the facts and circumstances of the case and the legal position as discussed above, we do not find any merit in the O.A., which is dismissed. No order as to costs.

Harold
Member (A)

D. D. Lawrence
Member (J)

/M.M./