

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 29th Day of August, 2000.

Coram: Hon 'ble Mr. S. Dayal, A.M.

Hon 'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1470 of 1992.

Sri K.P. Bhowmik,
son of Late Sri N.R. Bhowmik,
Resident of Renukoot,
Distt. Sonbhadra.

. . . Applicant.

Counsel for the applicant: Sri Ashok Bhooshan, Adv.

Versus

1. The Union of India through
the Secretary, Ministry of
Finance, Department of Revenue,
New Delhi.
2. The Under Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

. . . Respondents.

Counsel for the Respondents: Kumari Sadhna Srivastava,

Order (Open Court)

(By Hon 'ble Mr. S. Dayal, Member (A.))

This application has been filed for
direction to the respondents to include the name

of the applicant in promotion order dated 5.9.92 and promote him from the date when his juniors have been promoted to the Post of Assistant Collector, Customs and Central Excise/ Senior Superintendent Central Excise and to grant all consequential benefits.

2. The applicant has claimed that the Government of India issued a promotion order dated 5.9.92 promoting several Superintendents of Customs and Central Excise in the next higher post of Assistant Collector, Customs and Central Excise. The respondents have promoted several junior officers to the applicant and the applicant has named seven of these. He has claimed that the impugned order is arbitrary and violative of the right of the applicant under Article 14 and 16. It is claimed that the work of the applicant was in no way inferior to that of his juniors. The applicant also states that order of promotion has been passed in compliance of some interim order of the Hon'ble Supreme Court. Since the applicant was not a party, he should not have been affected by the order of the Apex Court. The applicant claims that his services were exemplary and he had no adverse entry or punishment given to him.

3. The arguments of Sri R.C. Srivastava brief holder of Sri Ashok Bhooshan for the applicant and Kumari Sadhna Srivastava for the respondents have been heard.

4. The sole issue here is whether the applicant could have been overlooked while promoting other including his juniors to the post of Assistant

Collector. The respondents have mentioned in their counter reply that the Apex Court had permitted the filling up of vacancies in the junior time scale of Group 'A' Services by promotion of Group 'B' Officers on adhoc basis. The applicant was found eligible for adhoc promotion to Group 'A' service but since the competent authority had decided to initiate departmental proceedings against the applicant, the findings of the departmental screening committee ^{were} ~~was~~ kept in the sealed cover. It is mentioned that because of the disciplinary proceedings, the applicant could not be promoted on adhoc basis by order dated 3.9.92. The respondents have annexed copy of the order of the Apex Court dated 13.3.92 between A.K. Chatterji and others Versus Union of India. The Apex Court modified order dated 22.12.1989 and passed the following interim order:-

"Para 4 and 5

We, therefore, consider it necessary to modify the order dated 22.12.1989 so as to enable the Government to fill up all the vacant posts in the various cadres- purely on an adhoc basis taking all relevant circumstances into consideration and in particular, the need to remove the disparities and anomalies resulting from or experienced in the working out of the said earlier order for such adhoc arrangements and promotions. However, we make it clear that the adhoc promotion made till now on the basis of the directions and guidelines contained in the order dated 22.12.1989 should continue on adhoc basis and no reservation should be effected.

5. In the matter of filling up of the existing vacancies, both within 550 posts referred to in the said order dated 22.12.1989 and outside it, the Government shall be at liberty to make the promotions taking all relevant

circumstances and in a manner the Government may consider it and equitable in the circumstances. In carrying out this exercise, the Government shall not consider itself inhibited by the conditions and limitations contained in Clause (e) and (f) of the order dated 22.12.1989 nor the proportions indicated in that order be binding. It is proper also for the Government to take due account of the interest of the Scheduled Castes and Scheduled Tribes in the promotions. The promotions shall be purely on an adhoc basis and shall be subject to the final result of the proceedings in this court and subject to review and reversions if and wherever necessary. The orders of promotions shall specifically incorporate such an express condition.

5. The learned counsel for the applicant has placed reliance on the judgment of the Apex Court in Union of India Vs. K.V. Janki Raman (1991)4 S.C.C. The Apex Court has laid down that it was only when a charge memo in a disciplinary proceedings or a chargesheet in a criminal prosecution was issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated and the sealed cover procedure could be resorted to only after the charge memo/chargesheet was issued

"Para 16

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 the charge-memo/chargesheet 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."

Para 32.

In this case, no charge-sheet was served on the respondent-employee when the D.P.C. met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the D.P.C., to give him the promotion from the date his immediate junior Sri M. Raja Rao was promoted pursuant to the order dated April 30, 1986.

6. The learned counsel for the respondents relying on the judgment of the Apex Court in Delhi Development Authorities Vs. H.C. Khurana reported in 1993 Supreme Court Cases (L & S) 736 has laid down as follows in para 8:-

" These words clearly indicate that the sealed cover procedure was applicable, in cases where the 'disciplinary proceedings are pending' in respect of the government servant; or a decision has been taken to initiate disciplinary proceedings. Thus on a decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The reason is obvious. Where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion even if he is found otherwise suitable, would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations, against him, into which an inquiry has to be made according to the

decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests of the government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness.

The decision has been taken to initiate disciplinary proceedings, the guidelines regarding sealed cover shall be attracted. It was held that service of chargesheet on the government servant followed the decision to initiate the disciplinary proceedings. In laying down the above, the Court had analysed the decision of Union of India Vs. K.V. Jankiraman's case.

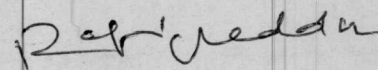
7. Learned counsel for the respondents was directed to keep the file regarding initiation of

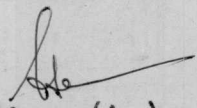
departmental proceedings ^{ready} ~~reached~~ vide order dated 29.1.95. She has brought the file and refers to the letter of the Collector Patna addressed to Collector, Allahabad dated 8.5.1992 in which the Collector Patna urged that the Collector Allahabad should take stringent disciplinary action against the erring officers including the applicant. There is another letter dated 18.5.92, which has been written by the Principal Collector, Kanpur to the Collector, Central Excise in which it has been mentioned that it appears to be a case of Vigilance and further investigation is required to be done through vigilance wherein also these two letters make it clear that no decision regarding initiation of departmental proceedings against the applicant has been taken. The matter was at the stage of preliminary inquiry. The decision to initiate departmental inquiry would have entailed spelling out the exact allegations against the delinquents. No such stage has been reached at the time the letter dated 8.5.91 and 18.5.92 had been written. The charge sheet was issued to the applicant on 12.3.1993. After receipt of advice of the Central Vigilance Commission on 12.1.1993 decision was taken to proceed against the applicant in a major penalty proceeding. Hence the contention of the learned counsel for the respondents that a decision had already been taken is not borne out by record. We find that the D.P.C. to promote officers from the post of Superintendent, Central Excise to Assistant Collector, Central Excise was held in July/August, 1992. Since neither any proceeding for disciplinary enquiry

nor any decision to initiate disciplinary enquiry was taken on that date, the respondents were not right in application of sealed cover proceeding to ~~these~~ cases of the applicant.

8. We, therefore allow the application and direct the respondents to open sealed cover and in case the applicant has been recommended for promotion with effect from 5.5.1992 on adhoc basis, ^{allow promotion} with consequential benefits. This shall be carried out within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs.


Member (J.).


Member (A.)