

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No.172 of 1992

Jan Mohammed Khan

Petitioner

Versus

Union of India and Ors

Respondents

CORAM

Hon. Mr. Justice R.K. Varma, V.C

Hon. Mr. V.K. Seth, A.M.

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition under section 19 of the Administrative Tribunal's Act 1985 the petitioner has sought the relief inter alia of issuance of a writ, order or direction directing the Respondent No.2, the Senior Superintendent of Post Offices, Jhansi Division to open the sealed cover and if the petitioner is found to have been recommended for promotion by the Departmental Promotion Committee(DPC) held on 26.5.1987 to promote him under One Time Bound Promotion Scheme as Postal Assistant in the next higher grade of Rs.1400-2300 w.e.f the date on which he would have been promoted, with all consequential benefits as if no sealed cover procedure would have been adopted. The petitioner has complained of illegal denial of promotion on subsequent on the occasions also and has sought further reliefs in respect thereof.

2. The facts leading to this petition, briefly stated, are as follows:

The petitioner was appointed as Postal Assistant w.e.f. 5.5.1971 and has continued to work in the aforesaid capacity in the head post office at Jhansi.

3. A meeting of the Departmental Promotion Committee was held on 26.5.1987 to consider the case

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of promotion of Postal Assistants to the next higher pay scale under One Time Bound Promotion Scheme. The case of the petitioner was considered by the Departmental Promotion Committee(DPC) under the aforesaid Scheme, but the recommendations with respect to the petitioner was kept under sealed cover till the final decision of disciplinary/court case which is stated to have been pending against the petitioner. It transpires that factually on 26.5.87 when the meeting of Departmental Promotion Committee was held the disciplinary proceedings had not been initiated against the petitioner as no charge sheet was issued to him until 26.6.87 when the petitioner was served with the charge sheet through a special messenger.

4. The charge sheet(vide Annexure V to the petition) contained three articles of charge alleging that the petitioner filed a civil suit against the senior Supdt. of Post Offices, without exhausting the normal official channel for redressal of the grievance and that he filed the suit instead of approaching the Central Administrative Tribunal, Allahabad and that filing the suit by name he exhibited a conduct unbecoming of a Govt. servant. The Senior Supdt. of Post Offices was also the disciplinary authority and after the enquiry he found the petitioner guilty and awarded punishment of dismissal from service by order dated 24.12.87. The said punishment was ultimately modified to one of mere censure by order dated 23.5.89 passed by Member (personnel)of Postal Services(vide Annexure, A-VI to the petition). It was however, observed in the said order

"that there was certain amount of prejudice and high handedness on the part of the disciplinary authority in awarding penalty of dismissal after denying him a reply to his 18 applications and then reacting to his going to court."

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5. The learned counsel for the petitioner has submitted that the sealed cover procedure was not applicable to the instant case since the meeting of the Departmental Promotion Committee was held on 26.5.87 when there was no disciplinary proceedings initiated and it was only on 27.6.87 that a charge-sheet was issued to the petitioner who was served at his residence through a special messenger. The with-holding of the recommendation of the Departmental Promotion Committee with respect to the petitioner was in the circumstances, unjustified and illegal, being not in accordance with the rules. It has been submitted that the recommendation of the Departmental Promotion Committee in the petitioner's case was liable to be declared and must be disclosed and acted upon with effect from the date of recommendation with all consequential benefits and opportunities due to the petitioner till date. It has also been submitted that the disciplinary action, taken by the disciplinary authority against the petitioner for his having filed a civil suit against the disciplinary authority, was vitiated on account of bias. It has further been submitted that apart from the fact that the enquiry was vitiated, the charges were actually found to merit only a minor punishment of censure which can be no bar to the disclosure of recommendation made by the Departmental Promotion Committee for its implementation.

6. The learned counsel for the parties have cited before us three important decisions which lay down the law as to the stage when the sealed cover procedure should be followed.

(i) A Full Bench decision of the Central Administrative Tribunal (Madras Bench) in K. Ch. Venkata Reddy & Ors Vs. Union of India & Ors (vide Full Bench Judgments of Central Administrative Tribunals (1986-1989) Edition, by Mr. Justice Amitav Banerjee at page 158.

(ii) Union of India Vs. K.N. Janki Raman (A.I.R, 1991 Supreme Court 2010;

(iii) State of Madhya Pradesh and Another Vs. Syed Naseem Zahir and Others (1993) 24 Administrative Tribunals Cases 249.

7. In the aforesaid Full Bench Cases of Officers against whom a decision had been taken by the disciplinary authority to initiate proceeding and ~~those~~ ^{said} against whom sanction for prosecution was issued, it has been held that it is only when a charge memo in a disciplinary proceeding or charge sheet in a criminal prosecution is issued to the employee that it can be ~~sealed~~ ^{said} that the departmental proceedings/criminal prosecution is initiated against the employee.

8. 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. It has further been observed that

"to ensure uniformity and certainty, the date of initiation of the date of initiation of proceedings should

be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo is served on the official and the charge-sheet is filed before the court".

9. In the case of Janki Raman (Supra), the Supreme Court while noticing with approval the aforesaid Full Bench case observed that promotion etc cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employees. To deny the said benefit, they must be at the relevant time pending at the stage when charge-sheet has already been issued to the employee.

10. But in view of the peculiar facts obtaining in Janki Raman's case the Supreme Court held that

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"The D.P.C which met in July 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the Departmental proceedings was issued in August/December 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary".

The peculiar facts in Janki Raman's case were that when the D.P.C met in July 1986, the Committee had before it the record of the refund of the amount by the respondents-employees and the consequent withdrawal of the prosecutions without prejudice to the authorities right to institute departmental proceedings.

11. In the case of Syed Naseem Zahir(Supra) also the sealed cover procedure was followed much before Syed was served with charge-sheet. But the peculiar facts in ^{for} ~~this~~ ^{the} case were that a financial loss to the State Govt. to the tune of Rs.80 lakhs had allegedly resulted because of the irregularities committed by the respondent Syed and that it was not disputed at the hearing of the case that the Departmental enquiry had already been completed and the charges against Syed were found proved and the State Govt. had tentatively decided to impose major penalty upon him and for that purpose the proceedings were referred to M.P. PSC. In such circumstances, the Supreme Court held that it is difficult to ignore glaring facts in a given case and act mechanically and directed that in case Syed is completely exonerated the 'sealed cover' shall be opened and if the recommendation is in his favour he shall be notionally promoted w.e.f. the date when a person junior to him was promoted to the post of Chief Engineer.

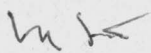
12. In the instant case, there are no peculiar circumstances of the kind stated in the two Supreme Court cases cited as above. On the contrary, the charges apparently were of no gravity, as is also evidenced by the fact that the case merited a punishment not more than 'censure'. Besides, the enquiry suffered from bias. In these circumstances, in our opinion, the Full Bench decision of the Madras Bench aforesaid is fully applicable in the facts and circumstances of this case and as such, the sealed cover procedure did not apply in the instant case since the proceedings of the petitioner were initiated after the Departmental Promotion Committee had made recommendations in the petitioner's case for promotion.

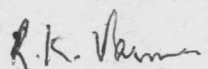
13. In view of the discussion aforesaid, non-declaration of the recommendations in petitioner's case for promotion must be held as unjustified and it is held that the petitioner is entitled to declaration of the recommendation made by the Departmental

Promotion Committee in respect of his promotion. In case the petitioner was recommended for promotion by the Departmental Promotion Committee, the petitioner shall be entitled to all consequential benefits and subsequent opportunities which would have been available to him had the Departmental Promotion Committee not withheld the declaration of recommendation.

14. As regards other reliefs claimed in respect of subsequent opportunities for promotion and the adverse entries recorded in the ACR of the petitioner without communicating the same to him, it is directed that the respondents shall reconsider the matter in the light of the representations already made and also such representations as may be made by the petitioner in that behalf after the declaration of the recommendation of the Departmental Promotion Committee with regard to the petitioner.

15. Accordingly, this petition succeeds and is allowed as above. There shall however, be no order as to costs.


Member


Vice Chairman

Dated 16th July, 1993

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