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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 1103 of 1993

Sri Padam Singh ... Applicant.

Versus

The General Manager  
N.E. Railway, Gorakhpur and others ... Respondents.

...

Hon. Mr. S. Das Gupta, Member (A)  
Hon. Mr. T.L. Verma, Member (J)

( By Hon. Mr. S. Das Gupta, Member (A) )

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the prayer that the impugned order dated 4.8.1993 (Annexure- A 5) promoting the respondent no. 4 be quashed and the applicant be promoted to the post of Deputy Controller of Stores, N.E. Railway, Gorakhpur w.e.f. 1.3.1993 with consequential benefits.

2. The facts which are not in dispute in this case are that the applicant is working as Divisional Controller of Stores, N.E. Railway, Izatnagar Bareilly. He is a promotee Class-I officer and is senior to respondent no. 4 who was directly recruited to Class-I service. A post of Deputy Controller of Stores, N.E. Railway, Gorakhpur fell vacant on 1.3.1993 on the expiry of the period of deputation and release of one Sri O.P. Sharma. The applicant was served a charge memo dated 19.7.1993 for major penalty. Thereafter, the respondent no. 4 was promoted to the post vacated by Sri Sharma on 4.8.1993 superseding the applicant who was senior to the respondent no. 4.

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- 2 -

3. The applicant's case is that he was fully eligible for promotion to the post of Deputy Controller of Stores by virtue of his performance as reflected in the A.C.Rs. but he was denied promotion illegally on account of malafide on the part of the respondent Nos. 1 & 2. The applicant alleges that the respondent Nos. 1 & 2 being directly recruited officers of the Indian Railway Service, are biased against the applicant who is a promotee officer and are in favour of the respondent no. 4 who is directly recruited officer. The applicant has further insinuated that it was because of such bias that the filling of the promotional post was held up until the applicant was served of charge-memo and only thereafter the respondents promoted the respondent no. 4.

4. In their written statement, the respondents have vehemently denied that the Respondent Nos. 1 & 2 had any bias against the applicant or that the filling up of the post was <sup>deliberately</sup> ~~vehemently~~ delayed on account of such bias. They have interalia averred that the seniority is not the only basis for promotion but the criterion for promotion is seniority-cum-suitability which is to be assessed after taking a vigilance clearance. They have admitted that the grading in the C.R. of the applicant varied between 'good' and 'very good' during the last 10 years. They have further contended that there was no deliberate delay on the part of the respondents in filling

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- 3 -

the promotional post but some time was taken in finalising the promotion and moreover, the head of the department of stores i.e. the Controller of Stores suffered heart attack during the relevant period and was under the treatment for some time. It was only after he joined his duties that the selection was finalised. The petitioner, they contend, could not be considered for promotion as there were serious charges of corruption against him. They have also taken a plea that the petition is barred by limitation.

5. The plea regarding non-maintainability of the petition on account of limitation has no force whatever. Suffice it to say that the cause of action arose on the issuance of the impugned order dated 4.8.1993 whereas, this application is filed on 10.8.1993. No further discussion on this point is necessary.

6. The applicant has alleged bias on the part of the Respondent Nos. 1 & 2. He has not, however, impleaded them by name so as to give them an opportunity to submit their reply to such allegation. In the absence of such impleadment by name, we are unable to accept that the respondent Nos. 1 & 2 had any bias against the applicant. Nor has the applicant been able to lay any firm foundation for this Tribunal to presume that any bias was there against him on the part of the Respondents. We have had an opportunity of perusing the noting relating to the selection of the respondent

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- 4 -

no. 4 for the vacant post of Deputy Controller of Stores. We find that considerable time was taken by the department in intra-departmental noting on whether the applicant should or should not be considered for promotion in view of certain investigation in-train regarding certain charges of corruption against the applicant. The settled position of law regarding consideration of Government Servant who is ~~under~~ cloud of disciplinary proceedings is quite clear. It is only when a disciplinary action has been initiated against a Government Servant by issue of a charge sheet that the Government Servant will not <sup>be</sup> promoted even if he is otherwise, found fit. It was clearly held by the Supreme Court in the case of Union of India Vs. K.V. Jankiraman AIR 1991 SC 2010, that the sealed cover procedure is to be resorted to only after charge-memo/ charge-sheet is issued to the employee. Pendency of preliminary investigation prior to stage of issue of charge-sheet is not sufficient to enable authorities to adopt sealed cover procedure. We find that in the instant case, nor even the procedure of sealed cover was adopted by the respondents in respect of the applicant. The applicant has annexed a copy of the Railway Board's letter dated 22.1.1993 (Annexure- R.A. 1) on the subject of promotion from Group-B to Group-A of Railway officers against whom the disciplinary/ court proceedings are pending and procedure and guide-lines to be followed, in supersession of earlier.

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- 5 -

instruction on this subject, it has been enjoined;

" At the time of consideration of the cases of Government Servants for empanelment, details of Govt. Servants in the consideration Zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee;

(i) Government servants under suspension;  
(ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending.

(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The Departmental promotion committee shall assess the suitability of the Government Servants coming within purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/ criminal prosecution pending. The Assessment of the D.P.C., including unfit for promotion and the grading awarded by it will be kept in a sealed cover. The cover will superscribed findings regarding suitability for promotion to the grade/ posts of ..... in respect of Shri .... ( name of the Government Servant). Not to be opened till the termination of disciplinary case/ criminal prosecution against Shri ..... The proceedings of the DPC need only contain the note. The findings are contained competent to fill the vacancy should be separately advised to fill the

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A2  
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- 6 -

vacancy in the higher grade only in an officiating capacity when the findings of the DPC .In respect of the suitability of a Government servant for his promotion are kept in a sealed cover."

We noticed that the provisions of this circular was in the knowledge of the respondents at the time the matter regarding consideration of the applicant for promotion was under consideration of the department. Since the vacancy arose on 1.3.1993 and the charge-sheet is dated 19.7.1993, there was sufficient time for the respondents to consider the applicant for promotion and since the applicant's A.C.R. gradings were admittedly good or very good, he would have been considered fit for promotion on the basis of the criterion of seniority-cum-suitability. We have noticed from the copy of the notings submitted to us by the respondents that neither the applicant nor the respondent no. 4 were considered by a D.P.C. for promotion to the post of Deputy Controller of Stores. The right course of action for the respondents was to hold a meeting of the DPC and consider all eligible officers in the zone of consideration including the applicant and thereafter  
v. <sup>Ambar</sup> a select list. The procedure of DPC should have been adopted even if the post was to be filled on adhoc basis. Incase the applicant had been given a charge-sheet at the time of consideration, the recommendation in his regard could have been

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A2  
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12

- 7 -

kept in the sealed cover ; this admittedly was not done and , therefore, the entire procedure adopted by the respondents in promoting the respondent no.4 would appear to be irregular.

7. The respondents have sought reliance on two Supreme Court cases. These are the cases of Union of India Vs. Kewal Kumar, AIR 1993 SC, 1585 and Union of India Vs. K.K. Dhawan, AIR 1993 SC, 1478. In the Kewal Kumar case, the Supreme Court ruled that where a decision had been taken by the competent authority to initiate a disciplinary proceedings for imposition of major penalty on the basis of F.I.R. registered by C.B.I. on the Government Servant prior to the meeting of the D.P.C. for considering him and some others for promotion to the Senior Administrative Grade , the action of the Government for following the sealed cover procedure would be proper in order to avoid his promotion unless exonerated of the charges. In the case before us, there was no F.I.R. registered by C.B.I. against the applicant and as such, this can be distinguished from Kewal Kumar's case on the basis of facts. In any case, even the sealed cover procedure was admittedly not adopted in this case.

8. In the K.K. Dhawan's case, it was ruled by the Supreme Court that the Government is not precluded from taking disciplinary action for violation of the conduct rules even with regard to exercise

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13

A2  
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- 8 -

of quasi judicial powers. This ruling is clearly not applicable to the case before us.

9. In the facts and circumstances of the case, it would appear that had the respondents acted with reasonable expedition in filling the vacant post of Deputy Controller of Stores, the applicant would have been promoted instead of the respondent no. 4 since there was no charge sheet against him until 19.7.1993. However, at this point of time, when the applicant is already facing disciplinary proceedings on major penalty charges, we cannot direct the respondents to promote the applicant. The sands of time have already run out. We cannot put the clock back. All that we can direct at this stage is that the respondents shall hold a review D.P.C. to consider the suitability of the applicant along with others in the zone of consideration and the recommendation in respect of the applicant be kept in a sealed cover to be <sup>opened</sup> ~~open~~ once the disciplinary action against the applicant is concluded. In case, the applicant is exonerated and the sealed cover shows that he is fit for promotion, he shall forthwith be promoted to the post of Deputy Controller of Stores which is presently being occupied by the respondent no. 4, in case the post still in existence at that time, and ~~and~~, the applicant shall be considered to have been promoted notionally

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- 9 -

to the post of Deputy Controller of Storesw.e.f.  
4.8.1993 with all consequential benefits except  
arrears of pay.

10. The petition is disposed of finally with the  
above directions. There will be no order as to costs.

*J. Sharma*  
Member(J)

*W. R.*  
Member(A)

Dated: 05 April, 1994

(n.u.)