

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 99 of 1988 ~~XXXXXX~~ 1988

DATE OF DECISION 24-06-1988

Shri M. L. Verma _____ Petitioner

Shri B. P. Tanna _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Shri J. D. Ajmera _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

JUDGMENT

(6)

OA/99/88

24-06-1988

Per : Hon'ble Mr. P. H. Trivedi : Vice Chairman

In this case the petitioner Shri M. L. Verma was due to cross the efficiency bar on 1-6-1985, in the pre revised scale of Rs.700-1300. His grievance is that no order has been passed either allowing him or refusing to allow him to cross the efficiency bar, or his representation on the matter has not been disposed of. He has been informed by communication dated 21st August, 1986 at Annexure '4' that the Departmental Promotion Committee has considered his case and its recommendation is kept in a sealed cover which will be opened after his clearance from the vigilence angle is received. The petitioner assails this communication and seeks relief in terms of declaration that he is entitled to cross the efficiency bar from 1-6-1985 with all resultant benefits and that he should be also declared to be entitled to promotion. His contentions can be summarised as follows :

- (1) On the due date 1-6-1985 no criminal case or departmental proceedings have been initiated against him, no charge sheet has been submitted. The mere fact that clearance of the vigilence authority has not been received, does not entitle the respondent from postponing the decision on his crossing the efficiency bar.
- (2) The procedure for keeping in sealed cover the recommendations of the Departmental Promotion Committee in his case is misconceived because that procedure only applies when proceedings have been initiated in terms of charge sheet having been framed against him.
- (3) The Government instructions clearly lay down the need for reviewing decisions in terms of Departmental Promotion Committee having to meet frequently and provide at 6 months interval a review of sealed cover cases. These instructions have not been observed.

2. The respondents have merely taken the plea that no adverse decision has been made against the petitioner and that he cannot be allowed to cross the efficiency bar. When vigilance clearance has not been given, his case can only be dealt with by keeping it and the recommendation of pending of Departmental Promotion Committee can be kept in the sealed cover.

3. Admittedly allowing the officer to cross the efficiency bar is not a routine matter. FR 24 and FR 25 prescribe that the increment after the efficiency bar shall not be given to a government servant without a specific sanction of the authority empowered to withhold the increment. Under Rule 24 or a relevant disciplinary authority applicable to the Government servant or any other authority whom the President authorises in this behalf. In Rule 24 it is provided that the ground for withholding the increment is that the conduct has not been good or work has not been satisfactory. The Government instructions provide for the record of the performance of the Government Servant being placed before the Departmental Promotion Committee for recommendation crossing of the efficiency bar. It also provides for meeting of the Departmental Promotion Committee being held 4 times in the year namely, January, April, July and October. The competent authorities are specially instructed to review the case of the officers held up for crossing efficiency bar in the light of the ^{progress} ~~process~~ made in the investigation or in proceedings against them and scrutinize the material collected in the investigation to take a decision as to whether there is a *prima facie* case for taking disciplinary action. The petitioner has cited several cases including decisions of this Tribunal to show that in the absence of any finding from the vigilance angle far less in the absence the charge sheet having been served ^{on} ~~from~~ him, there is no initiating of disciplinary proceedings even, and, therefore, the recommendation of the Departmental Promotion Committee in his case should not have been kept in sealed cover.

4. The question of the stage at which proceedings can be said to have been initiated and the procedure for sealed cover to be applied has been comprehensively discussed in the full bench of the Central

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Administrative Tribunal, Hyderabad Bench's decision in K.C.Venkata Reddy V/s. Union of India & Ors. It has been held that, "the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before". This decision has been referred to in the case of R.D.Madan V/s. Union of India and Ors. decided by the Principal Bench from which the following extracts show to clarify the rationale of the aforesaid decision. The rationale behind the conclusion in the words of the learned Vice Chairman is as under : -

"In the instruction in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, 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."

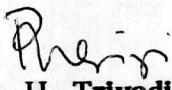
In the Office Memorandum dated 30-1-82 by the Department of Personnel relating to sealed cover procedure para-2 of the O.M. dated 14-7-1977 is reproduced below :

"..The mere fact that a PE or a RC has been registered by the Central Bureau of Investigation against an officer or complaints are being looked into a preliminary departmental inquiry or otherwise but no conclusion has been reached about the prima facie guilt of the officer, should not be a ground for treating the said official as one whose conduct is under investigation."

is the basis for the view that:

"Therefore, it is clear that the Government never had any intention that more registration of a preliminary inquiry or a regular case should result in denial of promotion to an officer."

5. In view of the judgment of the full bench of the Central Administrative Tribunal ^{Hyderabad Bench} in Shri Venkata Reddy's case we must hold that resorting to the sealed cover procedure by the Departmental Promotion Committee in the case of the applicant is not valid and cannot be upheld. This cannot be made a ground for refusing to the petitioner his claim for crossing the efficiency bar from 1-6-1985. We, therefore, direct that the petitioner's case be placed before the Departmental Promotion Committee which should open the sealed cover and take a decision on the basis of his record relevant for the period for his crossing the efficiency bar as on 1-6-1985 and the competent authority if so satisfied on the basis of the recommendations of the Departmental Promotion Committee aforesaid should allow to the petitioner all benefits of employments etc., as on that day i.e. 1-6-1985. We direct that this be done within a period of four months from the date of this order. We must also add that in the event of the petitioner being held liable to any departmental proceedings or other action as a result of vigilance report, the respondent authorities are free to start disciplinary proceedings ^{or} take ~~or~~ any other lawful action in the light of such reports. The petition is found to have merit subject to above observations and directions and is allowed accordingly. There shall be no order as to costs.


(P. H. Trivedi)
Vice Chairman