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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO:22 OF 1989

Date of decision : September, 14, 1990

Banbir Das

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Applicant

- Versus -

Union of India and another ..

Respondents

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For the applicant

:

M/s C.V.Murty,  
C.M.K.Murty,  
S.K.Rath, Advocate

For the Respondents

:

Mr. Tahali Dalai, Learned  
Addl. Standing Counsel  
(Central)

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C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local paper may be allowed to see the Judgment ? Yes.
  2. To be referred to the Reporters or not ? No.
  3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

N. SENGUPTA, MEMBER (J),

The material facts, stated briefly, are  
as under:

The applicant was appointed as an Assistant Executive Engineer in Military Engineering Service . In 1978 he was recommended by the Departmental Promotion Committee for promotion to the rank of Executive Engineer and he assumed charge as Executive Engineer in 1979. Some applications concerning the promotion and seniority in the Military Engineering Service were filed before the Principal Bench of this Tribunal, and the Supreme Court of India, and in pursuance of the orders of the Supreme Court relating to the seniority, the service of the applicant as Executive Engineer from 1979 to 1981 was treated as ad-hoc. Against this, the applicant made some representations in 1987 those representations have not yet been disposed of. In December, 1988 a panel of Executive Engineers for promotion to the rank of Superintendent Engineers was drawn up, the applicant's name was not there vide Annexure-4. The applicant has averred that till the publication of Annexure-4 to the application he received no communication of any adverse remark, on the other hand he came out with flying colours in the M.E. (Structure) Examination of Roorkee University where he secured first

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position in the First Class.

2. The applicant's case further is that he understands that his case was considered for being included in the panel, Annexure-4 and had been referred to the DPC but due to some enquiry said to be pending against him, the seal cover procedure was followed, and this procedure, he understands, was resorted to in view of Government of India, Ministry of Personnel, Public Grievances and Pension, Circular No.22011/2/86 dated 12.1.1988. By this letter an attempt was made to whittle down the effect of the Full Bench decision of this Tribunal in the case of K.Ch.Venkata Reddy and others Vs. Union of India and others reported in 1987(2) SLJ 117(CAT) and as such is invalid. The applicant has prayed for stay of implementation of Annexure-4 for the purpose of promotion to the rank of Superintendent Engineer, for a direction to the respondents to include his(applicant(s) name in accordance with his seniority in the gradation list and for declaring that the aforesaid letter dated 12.1.1988 as ultravires in as much as it offends Articles 14 and 16 of the Constitution of India.

3. In the Counter, the respondents have maintained that in fact taking into account his seniority, the case of the applicant was sent to the D.P.C. held on 21st and 22nd and 30th November, 1988 but in view of the instructions contained in the letter dated 12.1.1988

Mr. Engineer  
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the seal<sup>ed</sup> cover procedure with regard to the applicant was followed. They have averred that against the applicant <sup>there was</sup> a proposal for initiating disciplinary action on charges of making excess payment to the tune of Rs. 10 lakhs 25 thousand to contractors without proper approval and sanction and without screening the document according to the Rules. With regard to the averments of the applicant relating to his seniority, respondents have made a detailed submission in paragraph 3 of their counter the substance of which is that the seniority list was prepared in accordance with the judgment of the Hon'ble Supreme Court in the case of A. Janardhan Vs. Union of India and according to that judgment the seniority list of all the Assistant Executive Engineers prepared by the Department till 1967-68 were valid and a readjustment of seniority of such Assistant Executive Engineers who joined after 1969 was to be made. In accordance with that judgment of the Hon'ble Supreme Court review D.P.Cs for the years 1974, 1976, 1977 and 1978 were held in 1984 but the applicant's case could not come up for consideration as his name could not come up for consideration as his name could not find place in the seniority list of 1967-1968. Further they have stated that in 1985 the case of the applicant was considered by the D.P.C. but he could not be promoted in view of the grading made by the D.P.C. of his performance. As the arguments addressed by learned Counsel for the applicant have been confined mostly to

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the question whether the sealed cover procedure in the facts and circumstances of the case was proper or not, other allegations in the reply in counter filed by the respondents need not be set out.

4. We have heard Mr.C.V.Murty, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel(Central) for the respondents at great length. Mr.Murty has contended that mere contemplation of initiation of a disciplinary proceeding is not enough, what is essential for following the sealed cover procedure is that a proceeding must have commenced and the date of commencement of the disciplinary proceeding is the date on ~~on~~ which the memo of charges is served on the officer concerned. The memo of charges was served on the applicant on 6.4.1989 whereas the Departmental Promotion Committee met in November, 1988 i.e. much prior to the service of memo of charges, accordingly sealed cover procedure was inappropriate in the circumstances of the case. Mr.Tahali Dalai, has contended that in view of the Office Memorandum No.22011/2/86 dated 12.1.1988 of the Ministry of Personnel, Public Grievances and Pensions, the sealed cover procedure had to be followed. It is the contention of Mr.Dalai that on 17th November, 1988 the Departmental Promotion Committee was informed of 9 persons including the present applicant to have been involved in disciplinary cases and from the second paragraph of the letter or the certificate it would be clear that integrity of these nine persons was in doubt.

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Therefore, paragraph 2 of the Office memorandum dated 12.1.1988 was attracted. If the purport of the Office memorandum dated 12.1.1988 is to defer the promotion of a Government servant before service of the memo of charges or before he is informed of his involvement in a disciplinary proceeding, definitely the sealed cover procedure is to be followed and the applicant can have no grievance. We have already stated above that the memo of charges is dated 6.4.1989 whereas the D.P.C. sat some time in November, 1988. Therefore, there cannot be any doubt about the fact of the memo of charges not having been served on the applicant by the time his case came up to be considered by the D.P.C. Mr. Dalai has very strenuously urged that as Clause (iv) of paragraph 2 of the above said office memorandum would show any Government servant against whom an investigation of serious allegations of corruption, bribery or similar <sup>grave</sup> ~~grade~~ misconduct is in progress by any agency, departmental or otherwise, the sealed cover procedure has to be followed. In this regard Mr. Murty has sought reliance on two decisions of the Chandigarh Bench of this Tribunal and one Full Bench decision of the Madras Bench. So far as the Full Bench decision of the Madras Bench in the case of K. Ch. Venkata Reddy vrs. Union of India and others is concerned, that having been rendered prior to the office memorandum of 12.1.1988, may not be very relevant except to a limited extent. The other two cases on which Mr. Murty has relied on are the cases of Ravinder Nath vrs. Union of India reported in 1989 (2) ATJ 264 and 1989 (2) SLJ 414 (Sital

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Singh vrs. Union of India and others ). In K.Ch.Venkata Reddy vrs. Union of India and others the Full Bench referred to the instructions of the Government of India, Ministry of Home Affairs dated 30.1.1982 and held that the pendency of a proceeding would be only from the date the memo of charge is served. In those instructions dated 30.1.1982 it was mentioned that the sealed cover procedure was to be resorted to in a case where a decision had been taken by the competent disciplinary authority to initiate a disciplinary proceeding and the Full Bench in the context of those instructions came to hold that the sealed cover procedure can be resorted <sup>to</sup> only after the charge memo was ~~be~~ served on the concerned official. In the case of Sital Singh a reference was made to the instructions dated 12.1.1988 and the Division Bench with regard to those instructions observed thus :

" Obviously, in the said instructions, there is nothing new and the same were already embodied in OM dated 14th of July, 1977 and repeated in OM dated 31st of January, 1982. "

As a precedent these observations are binding on us being those of a co-equal Bench and the meaning of those observations would be that unless a memo of charge is served on the concerned officer, the sealed cover procedure should not be followed.

5. From the copy of memo of charges it would appear that the applicant is being proceeded against for gross negligence, lack of devotion to duty but not for any bribery or corruption nor is there any reference to a

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similar charge in the memo of charges served on the applicant. A person may be grossly negligent, might have lacked devotion to duty yet he might not be a corrupt official nor could it be said that he accepted bribery. The expression "similar grave misconduct" must be read in the context of corruption and bribery i.e. it <sup>should</sup> ~~cannot~~ be read ejusdem generis. On reading of charges we find that it is not a case where the Department could resort to the Office memorandum dated 12.1.1983.

6. Accordingly, the applicant succeeds and we direct that the sealed cover be opened and the applicant's case for promotion be considered as recommended by the Departmental Promotion Committee and if the D.P.C. recommended the case of the applicant to be fit to be promoted, he should be given promotion when his juniors were so promoted. No costs.

*[Signature]* 14.9.90  
.....  
Vice-Chairman



*[Signature]* 14.9.90  
.....  
Member (Judicial)

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
September 14, 1990/Saranghi.