

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 423 of 1991

Date of Decision: 16.11.1993

D.K.Sengupta

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *NO*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *NO*

  
MEMBER (ADMINISTRATIVE)

16 NOV 93

  
VICE-CHAIRMAN

6

5

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No.423 of 1991

Date of Decision: 16.11.1993

D.K.Sengupta

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.C.V.Murty  
C.M.K.Murty  
S.Kr.Rath,  
Advocates

For the Respondents

Mr.Ashok Mishra  
Sr.Standing Counsel  
(Central Government)

...

C O R A M:

THE HONOURABLE MR.K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to the opposite parties to open the sealed cover containing the performance of the petitioner assessed by the Departmental Promotional Committee while considering the case of the petitioner along with others for promotion to the next higher post.

2. Shortly stated the case of the petitioner is that while he was working as a Surveyor Assistant Gr.I in the Office of the Chief Engineer (Range) Chandipur Balasore a set of charges were delivered to the petitioner (contained in Annexure 5 dated 10th September, 1990) alleging that during his incumbency as S.A. Grade-I in

*fn*

Office of the ~~SC~~ (AF) Kalaikunda during the period from 17.5.1992 to 9.3.1986 the petitioner has misconducted himself by committing certain irregularities. Due to the pendency of this proceeding the petitioner was denied promotion and his performance assessed by the DPC has been kept in a sealed cover. Though the disciplinary proceeding initiated against the petitioner has <sup>ended with</sup> ~~rendered~~ conviction and punishment of the petitioner, by passing an order of censure on 12.8.1991 contained in Annexure-7, as yet the case of the petitioner is not being <sup>re-reviewed</sup> ~~revived~~ for ~~the~~ purpose of promotion to the next higher post. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that law on the subject was strictly followed by keeping <sup>opinion regarding</sup> the performance of the petitioner in a sealed cover. No illegality has been committed by the opposite parties on this account; and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.C.M.K.Murty, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel.

5. In the case of Union of India vs. K.V.Janaki Raman reported in AIR 1991 SC 2010 Their Lordships confirmed the view taken by the Full Bench of the Central Administrative Tribunal in the case of K.C.Venkat Reddy and others vs.Union of India & Others that the delivery of chargesheet is the deem<sup>d</sup> date of initiation of the proceeding. But, later in another case reported in Judgment Today 1993 (2) SC 695

(Delhi Development Authority vs. H.C.Khurana) Their

8  
Lordships further considered the views propounded in the case of K.V. Janaki Raman and held that date of issue of chargesheet is the deem date of initiation of the proceeding.

In the present case, the admitted position is that chargesheet was issued on 10.9.1990 as found from Annexure.5.

Admittedly promotion was given to the juniors of the petitioner on 8.3.1990 and therefore, the Departmental Promotion Committee would have certainly met and kept the ~~opinion~~ <sup>opinion regarding</sup> performance of the petitioner in a sealed cover prior to

8.3.1990, at a time when there was no proceeding pending against the petitioner. Therefore, in our opinion there was no necessity of keeping the opinion of the DPC regarding performance of the petitioner in a sealed cover.

However, admittedly an order of censure having been passed against the petitioner (which <sup>has</sup> ~~is~~ resulted from a disciplinary proceeding) vide order dated 12.8.1991 contained in

Annexure-7, we are of the view that an order of punishment of censure is no bar for considering the case of the petitioner for promotion. Here is a case, where the petitioner had been considered for promotion, but opinion of the DPC regarding his performance has been kept in a sealed cover. We would direct the Engineer-in-Chief, Army Headquarters, DHQ, New Delhi (OP No.2) and the Chief Engineer HQ, Eastern Command, Fort William, Calcutta (OP No.3) to convene a review DPC which would assess the performance of the petitioner afresh and express opinion about the suitability of the petitioner for promotion with effect from the date on which the juniors of the petitioner were promoted. The review DPC should consider the suitability of the

petitioner from year to year starting from the date on which DFC had met (prior to 8.3.1990) to assess the performance of the petitioner along with others and this procedure will be adopted if the petitioner is found to be unsuitable for the year 1990 and suitability of the petitioner would be considered for all the years after 1990 till 1993. If the petitioner is found to be suitable for the year 1990, then further exercise need not be taken. In case the petitioner is found to be suitable for the year 1990, promotion should be given to him with effect from the date on which his juniors were promoted and the petitioner will not be entitled to all backwages, because he has not absented himself from duty out of his own volition. That is the view taken by Their Lordships in the case of Venkat Reddy and K.V. Janaki Raman. Thus the application is accordingly disposed of. No costs.

  
MEMBER (ADMINISTRATIVE)

16 NOV 93

  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 16.11.1993/B.K.Sahoo

