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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.419 OF 1992
Cuttack, this the 19th March, 1999

Sri Gopal Charan Sharma Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.3.99.

(11)

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Gopal Charan Sharma,
aged 50 years, son of
Sri Sudam Charan Sharma,
Vill-Gaintala,
P.S-Bolangir Sadar, Dist.Bolangir.....Applicant

Advocates for applicant - M/s S.K.Mohanty
S.P.Mohanty.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Superintendent of Post Offices, Bolangir Division, Bolangir.
3. The Director of Postal Services, Berhampur Region, Berhampur, Dist.Ganjam.
4. Chief Postmaster General,Orissa Circle, Bhubaneswar.
5. Sri R.M.Mishra, S.P.M., Titilagarh Bazar, Bolangir.
6. Sri A.C.Sethi, S.P.M., Jogimunda S.O., Dist.Bolangir.
7. Sri K.C.Mishra, S.P.M., Rugudipada NDTSO, Dist.Bolangir.
8. Sri R.P.Meher, S.P.M, Loisinga S.O., District-Bolangir.
9. Sri Parsuram Samal, S.P.M., Belpara S.O., District-Bolangir Respondents

Advocate for respondents 1 to 4-Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SJM
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the departmental respondents to promote him to the cadre of Higher Selection Grade-II under

Biennial Cadre Review Scheme with effect from 1.10.1991. There is also a prayer to declare him senior to respondent nos. 5 to 9.

2. Facts of this case, according to the applicant, are that he joined the postal service on 1.5.1962 as Postal Assistant and was promoted to Lower Selection Grade with effect from 8.10.1983. The postal authorities introduced a scheme known as Biennial Cadre Review Scheme in order dated 11.10.1991 which is at enclosure to Annexure-1. This BCR Scheme came into force with effect from 1.10.1991 and under the scheme a person who has completed 26 years of satisfactory service is entitled to be considered for promotion to HSG-II in the scale of Rs.1600-2660/-. By 1.10.1991 the applicant had already completed more than twenty-six years of service and was thus eligible for consideration for promotion to the above grade. It is submitted by the applicant that he had never been communicated with any adverse remarks and there was no stigma in his service for all these long years. Respondent nos.5 to 9 are junior to the applicant according to length of service. But they have been promoted to HSG-II whereas the applicant's case has been overlooked. The promotion order of respondent nos. 5 to 9 is at Annexure-2. The applicant filed a representation dated 24.2.1992 to Superintendent of Post Offices, Bolangir Division (respondent no.2). On the instruction of respondent no.2, he filed a further representation dated 10.3.1992 (Annexure-4) to Director of Postal Services, Berhampur (respondent no.3) who intimated the applicant in his letter dated 27.5.1992 that his representation has been gone into but has not been allowed. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

S. Jam

3. The departmental respondents in their counter have indicated that BCR Scheme came into force with effect from 1.10.1991 and under the Scheme, an official who has rendered 26 years of service in the cadre of Postal Assistants will be considered eligible for promotion to the scale of Rs.1600-2660/- provided he is otherwise eligible for promotion. The departmental respondents have stated that as the applicant had completed more than 26 years of service by 1.10.1991, respondent no.2 submitted all documents and papers in respect of fifteen officials with special reports and vigilance clearance. The applicant's name was included in this list and stood at serial no.6. It is submitted by the departmental respondents that as per clause (ii) of Sub-rule 11.1 which is the rule on the procedure to be followed by D.P.C. in respect of Government servants under cloud, when in respect of a Government servant a decision has been taken to initiate disciplinary proceeding, the DPC has to follow the procedure of sealed cover. Accordingly, the case of the petitioner was put in the sealed cover by the D.P.C. because he was identified as a subsidiary offender in a fraud case. Subsequently, chargesheet under Rule 16 of CCS (CCA) Rules for imposition of minor penalty had been issued to the applicant for his supervisory lapses. Because of this, the applicant was not promoted. It is further stated that even though the applicant had completed 26 years of service at the time of meeting of DPC, because of the decision to initiate disciplinary proceedings against him, his case was kept in sealed cover. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has pointed out that the departmental respondents have followed the sealed cover procedure in violation of the principles laid

down by the Hon'ble Supreme Court in the case of Union of India, etc., etc. v. K.V.Jankiraman, etc. etc., AIR 1991 SC 2010. It is also submitted that DPC meeting was convened on 31.12.1991 and promotion was given on the recommendation of DPC to respondent nos.5 to 9 who were junior to the applicant, with effect from 1.10.1991. But in the case of the applicant the finding of DPC was kept in sealed cover. It is also submitted in the rejoinder that proceeding against the applicant was initiated in order dated 7.10.1992 (Annexure-R/V). It is further submitted that minor penalty proceeding initiated under Rule 16 of CCS (CCA) Rules ended with a punishment of stoppage of one increment for six months without cumulative effect. Against this order of punishment, the applicant went up in appeal, and the appellate authority in his order dated 23.11.1993 (Annexure-6 of the rejoinder) modified the punishment from stoppage of increment to censure. It is further submitted that censure is not a bar for promotion. It is also submitted that in case of a similarly placed person Premananda Sahu who came up before the Tribunal in OA No.550 of 1993 the Tribunal in their order dated 9.5.1995 directed the departmental authorities to open the sealed cover and consider the recommendation made by D.P.C. and consider him for promotion with effect from 1.10.1991. The applicant has submitted that he was given promotion to the cadre of HSG-II with effect from 1.7.1993. But he is entitled to promotion and other service benefits including seniority with effect from 1.10.1991. In view of the above, the applicant in his rejoinder has reiterated his prayer in the O.A.

5. We have heard Shri S.P.Mohanty, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the departmental respondents, and have also perused the records. Private respondent nos.5 to 9 were served with notice, but they did

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not appear nor filed counter.

6. From the above recital of facts in the pleadings of the applicant and the departmental respondents, it is clear that by 1.10.1991 when BCR Scheme came into force the applicant had completed more than 26 years of service and was thus eligible to be considered for promotion to HSG-II in the scale of Rs.1600-2660/-. DPC considered his case, but put their recommendation with regard to the applicant in sealed cover and accordingly, he was not promoted even though respondent nos.5 to 9, who were junior to the applicant, were promoted to HSG-II.

7. The sole question for consideration in this case is whether DPC was right in putting the case of the applicant in sealed cover. In this case DPC met on 31.12.1991 and the chargesheet was issued against the applicant in order dated 7.10.1992 (Annexure-R/V) for imposition of minor penalty. From this it is clear that the date on which the DPC met no chargesheet had been issued to the applicant and no proceeding was initiated or pending against him and he was also not under suspension. The departmental respondents have stated that according to the procedure enclosed by them at Annexure-R/II sealed cover procedure has to be adopted in case of a Government servant in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings. On this basis it is argued by the learned Senior Standing Counsel for the departmental respondents that even though chargesheet was not issued against the applicant on the date the DPC met, a decision had been taken to initiate disciplinary proceedings against the applicant and therefore, DPC did the right thing by putting their recommendation in respect of the applicant in sealed cover. We are unable to accept the above stand because this goes directly against the decision of the Hon'ble Supreme

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Court in K.V.Jankiraman's case (*supra*). The relevant portion of the observations of their Lordships of the Hon'ble Supreme Court on this point are quoted below:

"6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. 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. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure...."

S. Salhan

This decision has been followed by the Hon'ble Supreme Court in the case of Union of India and others v. Dr.(Smt.)

Sudha Salhan, 1998 (1) SCSLJ 353. There the Hon'ble Supreme

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Court held that recommendation of the DPC can be placed under sealed cover only when departmental proceedings are pending on the date of consideration for promotion. The relevant portion of the observations of their Lordships of the Hon'ble Supreme Court are quoted below:

"6. The question, however, stands concluded by a Three Judge decision of this Court in Union of India and others v. K.V.Jankiraman and others, 1991(4) SCC 109, in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceeding been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority....."

In view of the above observation of the Hon'ble Supreme Court and the law as laid down by their Lordships in the above two decisions, it is clear that in this case the DPC should not have adopted the sealed cover procedure. In consideration of the above, we direct the departmental respondents to open the sealed cover and act on the recommendation of the DPC within a period of 90(ninety) days from the date of receipt of copy of this order. In case the DPC had recommended the applicant as suitable for promotion, then he should get promotion from 1.10.1991 with all consequential financial and service benefits including the benefit of seniority.

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8. In the result, therefore, the Original Application is allowed in terms of our order and direction given above but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

Somnath Som
19.3.99

AN/PS