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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 327 OF 1998
Cuttack this the 21st day of September/2000

Sk. Gulam Mustafa

...

Applicant (s)

-VERSUS-

Union of India & Others

...

Respondent (s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.327 OF 1998
Cuttack this the 21st day of September/2000
J.Jem

CORAM:

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

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Sk.Gulam Mustafa,
aged about 55 years,
Son of Late. Sk.Ataullah, at present
Sr.Trunk Supervisor, Telephone Bhawan
Rourkela-2, Quarter No.PT-127, Sector-6
Rourkela-2

Applicant

By the Advocates -

...

M/s.S.K.Mohanty

-VERSUS-

1. Union of India represented through
Secretary, Ministry of Communications
in the Department of Tele-communications,
Sanchar Bhawan, New Delhi
2. Chief General Manager, Telecommunications,
Bhubaneswar
3. Director (HQ), Office of the Chief General
Manager, Telecommunications, Bhubaneswar
4. Telephone District Manager, Rourkela,
At/PO: Rourkela
5. Sri D.P.Nanda,
Chief Trunks Supervisor, Telephone Bhawan
Rourkela

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Respondents

By the Advocates -

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Mr.S.B.Jena
Addl.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER(JUDICIAL): The sole point for determination
in this Original Application is whether the Departmental Promotion
Committee (D.P.C.) meeting held on 31.3.1998 to consider promotion
of the applicant, a Senior Trunks Supervisor under Rourkela
Division to the post of T.O.A.(P) Grade-IV was justified in
keeping its findings in a sealed cover and thus withholding his
promotion.

2. Pursuant to the Department of Telecommunications letter dated 16.10.1990 and by the order of the Chief General Manager, Telecommunications, Bhubaneswar (Respondent No.2) in letter dated 4.1.1995 (Annexure-3), 10% of B.C.R. posts in the scale of Rs.1660-2660/- were upgraded in the scale of Rs.2000-3200/- (Grade-IV) for promotion of the eligible officials in the scale and in that process for Rourkela Division two such posts were upgraded. Though the applicant had eligible seniority for promotion during that year, i.e., 1995, the same had not been taken into account in order to maintain equilibrium in Rourkela Division between the total sanctioned strength of B.C.R. Gr.III posts and justified strength of 10% B.C.R. Gr.IV posts, as per D.O.T. letter dated 18.1.1994 (Annexure-R/3). This averment in the counter as to Rourkela Division has not been denied in the rejoinder. Hence the first prayer in the Application for promotion to Gr.IV w.e.f. the date when the two posts were sanctioned under Annexure-3 fails.

3. It is not in dispute that no such upgraded post was sanctioned during the year 1996 vide letter dated 16.10.1996 (Annexure-R/4) of Respondent No.2. On sanctioning of the post in letter dated 14.10.1997 (Annexure-R/5) the case of the applicant, who was by then the senior most in that Division was taken into consideration by the D.P.C. which met on 31.3.1998.

4. The grievance of the applicant is that as no disciplinary proceedings against him was pending on 31.3.1998, the D.P.C. could not have resorted to sealed cover procedure and recommended promotion of his junior, i.e. Res. No.5. in stead of him. In fact charge sheet under Rule-14 of C.C.S.(CCA) Rules, 1965 was framed against him a month later vide Annexure-7 dated 1.5.1998 and the charges relate to the period from 30.11.1991 to 15.6.1992.

5. The stand of the Department is that by 31.3.1998, a

vigilance case was pending against the applicant and as such the D.P.C. dealt the matter in accordance with Rule 156 of P & T Manual, Vol-III (Annexure-R/6) and kept the findings in a sealed cover. Thereafter on 1.5.1998, the applicant with some other officials were charge-sheeted under Rule-14 of the CCS(CCA) Rules, 1965 on the ground that from 30.11.1991 to 15.6.1992 the applicant unauthorisedly connected trunk calls to different places of India for personal use.

6. In the rejoinder the applicant pleads that in view of the decision of the Apex Court in Janakiraman's case reported in AIR 1991 SC 2010 sealed cover procedure can be resorted to only after the charge sheet is issued and this has been reiterated by the same Court in the case of Dr. Sudha Salhan's case reported in 1998(1) SC SLJ 353. Further this Bench in Original Application No.419/92 held that sealed cover procedure could not be adopted prior to issue of charge-sheet.

7. We have heard Shri S.P. Mohanty, learned counsel for the applicant and Shri S.B. Jena, learned Addl. Standing Counsel appearing for the departmental respondents. Also perused the records, as well as records of O.A.419/92 and the two Apex Court judgments cited by the applicant.

8. The main contention of the applicant is based on the three Judges ruling of the Apex Court in K.V. Janaki Raman case. In that case Office Memorandum dated 30.1.1982 of the Deptt. of Telecommunications in regard to sealed cover procedure was under interpretation. The relevant portion of this Memorandum as quoted in Para-4 of that judgment is that cases of officers: (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the

disciplinary competent/authority to initiate disciplinary proceedings or (c) against whom prosecution has been launched in a Court of Law or sanction for prosecution has been issued, or can be considered for promotion by the D.P.C. at the appropriate time but the findings of the Committee are to be kept in a sealed cover to be opened after the conclusion of the disciplinary/Court proceedings. A several bunch of Civil Appeals were a common order in disposed of by the Apex Court through this Janaki Raman case. As the facts reveal, in all those appeals neither cases of suspension nor cases of prosecution in Court of Law were involved. Only cases of disciplinary proceedings were the subject matter of those appeals. Hence question arose in most of these appeals at what stage a disciplinary proceeding was initiated. In Para-6 the Apex Court ultimately held that sealed cover procedure was to be resorted only after the charge-memo/charge-sheet was issued. Pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. Yet, at a later stage, the Apex Court while interpreting this Memorandum dated 30.1.1982 held that sealed cover procedure can even be resorted to in respect of an employee against whom a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings. This is all the more clear in their discussion in Para-14 to 17 in respect of Civil Appeal Nos. 51 - 55/90. In those cases the D.P.C. met in July/86 and resorted to sealed cover procedure against the concerned employees in view of pendency of disciplinary proceedings against them, though formal charge sheets were issued in August/December, 1987. The Tribunal directed the Department to give promotion to the employees on the basis of recommendations, if any, of the D.P.C.

The Apex Court observed that the Tribunal had taken a mechanical view because by the time the D.P.C. met in July/86, the Committee had before it record of refund of the amount by the respondents-employees and the consequent withdrawal of prosecution without prejudice to the authorities' right to institute the departmental proceedings. Hence according to Apex Court, the D.P.C. was justified in resorting to sealed cover procedure notwithstanding the fact that the charge sheets were issued subsequently in the year 1987.

9. In State of Madhya Pradesh v. Syed Naseem Zahir reported in AIR 1993 SC 1165, the Apex Court though followed the ruling in Janaki Raman case that the sealed cover procedure has to be adopted after the date of issue of charge-sheet, that being the date from which the disciplinary proceedings can be said to have been initiated and confirming the Tribunal's view that adoption of sealed cover procedure by the D.P.C. was not justified yet observed that it is difficult to ignore glaring facts in a given case and apply the ruling of Janaki Raman case mechanically.

10. In Delhi Development Authority v. H.C.Khurana reported in AIR 1993 SC 1488, the Apex Court had to interpret the Office Memorandum dated 12.1.1988 issued in regard to sealed cover procedure superseding it's earlier instructions. In Para-4 of the judgment the relevant portion of this Memorandum finds place which reads as under :

" At the time of consideration of the cases of Government servants for promotion, details of Government 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 disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;

- iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution
- iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise".

In this case charge-sheet was framed on 11.7.1990 against the respondents-employee. On 13.7.1990 it was despatched for being served on the employee, but the employee avoided by remaining on leave and ultimately it could be served personally on him only on 25.1.1991. But in the meanwhile on 28.11.1990, the D.P.C. met and kept its findings in the sealed cover. Hence the question for interpretation before the Apex Court was as to when can a charge sheet be said to have been issued, i.e., whether it implies personal service of the same on the concerned employee. The Apex Court held that issue of a charge-sheet means its despatch to the Govt. servant, and the further act of its actual service on the concerned Govt. servant is not a necessary part of its requirement. Even otherwise the Apex Court held that in view of the guidelines of Office Memorandum dated 12.1.1988 were in force, the procedure adopted by the D.P.C. was not unjustified.

11. In Union of India v. Kewal Kumar reported in AIR 1993 SC 1585, the Apex Court, while interpreting Office Memorandum dated 12.1.1988 held that when the competent authority takes the decision to initiate a disciplinary proceedings or steps are taken for launching a criminal prosecution against the Govt. servant, he could not be given promotion, unless exonerated, even if Govt. servant is recommended for promotion by the D.P.C. being found suitable otherwise. In Para-2 of the judgment it was

observed that in Janaki Raman case itself it has been pointed out that the sealed cover procedure is to be followed where a Govt. servant is recommended for promotion by the D.P.C. but before he is actually promoted, if he is either placed under suspension, or disciplinary proceedings are initiated against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched, or sanction for such prosecution has been issued or decision to accord such sanction is taken.

12. Recently in Union of India v. R.S.Sharma reported in 2000(2) SLR 428, three Judges of the Apex Court had again an occasion to interpret Office Memorandum dated 12.1.1988, specially Paragraph-7 of the Office Memorandum which runs as follows :

"Sealed cover applicable to officer coming under cloud before promotion : - A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para-2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also".

Interpretation of this Paragraph had to be necessary in that case because on 31.07.1991, Clause IV of the 2nd Paragraph of the Office Memorandum dated 12.1.1988 with an instruction that all cases kept in sealed cover on that date on account of conditions obtainable in Para-2(iv) of the O.M. dated 12.1.1988 would be opened. This Clause iv relates to Govt. servant against whom an investigation of serious allegation of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any agency, departmental or otherwise. In that case

respondent-Engineer was suspended on 10.3.1988 as an F.I.R. was registered and the C.B.I. took up the investigation. Though the suspension was revoked six months thereafter, the C.B.I. continued its investigation. At that stage the D.P.C. kept the findings in respect of respondent in the sealed cover. The CBI completed the investigation and sought for sanction for the prosecution on 7.5.1991. The concerned Minister approved the sanction on 9.7.1991 and ultimately a formal order of granting sanction was issued by the President only on 13.9.1991. As the sealed cover was not opened pursuant to the instructions dated 31.7.1991, the question arose whether the sealed cover would be opened or not. By interpreting Paragraph-7 of the O.M. dated 12.1.1988, the Apex Court agreed with the contention advanced on behalf of the appellant - Union that in spite of deletion of Clause - iv, the recommendations of the DPC must remain in the sealed cover on account of the conditions specified in Clause-(iii), Paragraph 2 of the O.M. dated 12.1.1988, by virtue of the operation of Paragraph-7 thereof. This clause iii relates go Govt. servant in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution. The earlier decision of the Apex Court in Dr.Sudha Salhan case (relied on by the applicant in this case also) though cited, was not followed with an observation that the facts mentioned therein warranted application of the ratio contained in Janaki Raman case.

13 At this stage it cannot be overlooked that this O.M. dated 12.1.1988 has been superseded by G.I. Dept. O.M. dated 14.9.1992. Though Paragraph-7 of this latest O.M. is same as

that of O.M. dated 12.1.1988, the relevant conditions requiring adoption of sealed cover procedure have been mentioned in Para-2 which are as follows :

- i) Govt. servants under suspension;
- ii) Govt. servant in respect of whom charge sheets has been issued and the disciplinary proceedings are pending; and
- iii) Govt. servant in respect of whom prosecution for criminal charge is pending

In other words, Clause - IV of Para-2 of O.M. dated 31.3.1988 relating to pendency of investigation of serious allegations of corruption and bribery or similar grave misconduct either by the C.B.I. or any agency, departmental or otherwise, has been completely deleted.

14. In this Original Application by the time the D.P.C. met on 31.3.1998, a vigilance case was pending against the applicant. Though pleadings are not clear whether this vigilance ^{is} case/in the shape of a criminal prosecution, from the arguments during hearing it could be understood that this vigilance case pertains to the vigilance enquiry conducted by the Department in view of the misuse of trunk calls by the applicant to different places of India for personal use from 30.11.1991 to 15.6.1992. Since pendency of such enquiry under 1992 O.M. is not a condition precedent to keep the findings of an employee in a sealed cover and since on 31.3.1998 charges in the disciplinary proceedings were not framed and in view of ruling of the Apex Court in Janaki Raman case, adoption of sealed cover procedure by the D.P.C. would prima facie appear to be incorrect. But the Apex Court in Janaki Raman case as well as Delhi Development Authority case cautioned that interpretation of ruling in Janaki Raman case should not be applied mechanically. It should

not be overlooked that by 31.3.1998 the vigilance case was still pending against the applicant and within a month thereafter charge sheet has been issued, which would imply that by 31.3.1998 the Department had taken a conscious decision to initiate a proceeding against the applicant.

15. But the guidelines in O.M. dated 14.9.1992 would not be applicable in the case of the applicant hailing from the Department of Telecommunications because a special departmental guidelines contained in P & T Manual Vol-III under Rule-156 (Annexure-R/6) are in force. The relevant Rule-156(2) lays down that if an officer within the zone of selection or promotion to the higher grade or of confirmation is under suspension or his conduct is under investigation, his suitability for promotion or confirmation should be assessed at the relevant time by the D.P.C. or other authority, as the case may be, and the findings in this connection should be kept in a sealed envelope. Thus as per the departmental guidelines, sealed cover procedure can be adopted by the D.P.C. in respect of an officer within the zone of selection for promotion when his conduct is under investigation. The conduct of the applicant in misusing of trunk calls to different places of India was under investigation by the time the D.P.C. met. Hence the D.P.C. was not unjustified in keeping its findings in a sealed cover. Thus the departmental guidelines being applicable to the departmental employee concerned will prevail over the guidelines issued in O.M. dated 14.9.92 ~~12.4.1988~~. 14-9-92

16. Shri S.P.Mohanty, the learned counsel for the applicant placed reliance on the Apex Court decision in the case of Dr. Sudha Salhan case and the decision of this Bench in O.A.419/92 disposed of on 19.3.1999. Respondent in Dr.Sudha Salhan's case

does not belong to Telecom Department. In that case on 8.3.1989 the D.P.C. met and adopted the sealed cover procedure in respect of respondent. On 16.4.1991 respondent was placed under suspension followed by charge sheet on 8.5.1991. Relying on the decision in Janaki Raman's case it was held that sealed cover procedure should not have been adopted and direction was given to open the sealed cover. However, the guidelines in O.M. dated 12.1.1988 were not dealt in this decision. This decision was also dealt and not followed in the recent three Judges' decision of the Apex Court in R.S.Sharma case (Supra) where the guidelines in O.M. dated 12.1.1988 were the subject matter of interpretation.

In O.A. 419/92 disposed of by this Bench on 19.3.1999 the D.P.C. met on 31.12.1991 and kept its findings in respect of the applicant in the sealed cover. But the disciplinary proceeding was initiated in order dated 7.10.1992 under Rule-16 of CCS (CCA) Rules for imposition of minor penalty due to supervisory lapses on the part of the applicant therein. The Department justified the adoption of sealed cover procedure as he was identified as a subsidiary offender in a fraud case and because of this a decision was taken to initiate disciplinary proceedings against. Following the ruling in Janaki Raman's case it was held that procedure adopted in the disciplinary proceedings was wrong and the Department was directed to open the sealed cover and act on the recommendation of the D.P.C. The pleadings are silent as to the date on the period when this decision was taken to initiate the departmental proceedings. Moreover, the guidelines of O.M. dated 12.1.1988 which were in force by the date of D.P.C. meeting were not brought to the notice of this

Bench. Hence on these grounds this decision is distinguishable.


17. Recently in O.A.149/95 disposed of on 31.7.2000, this Bench had the occasion to deal with decision of the D.P.C. meeting on 1.7.1992 in adopting sealed cover procedure. Though the disciplinary proceeding was initiated on 23.3.1993, it ultimately ended in imposition of punishment of stoppage of one increment for three months by order dated 3.5.1993. By the date of disciplinary proceedings, guidelines issued in O.M. dated 14.9.1992 were not in force. After referring to the aforesaid decision of the Apex Court, this Bench ultimately held that the D.P.C. was justified in adopting the sealed cover procedure.

18. Recently a Division Bench of C.A.T., Mumbai in Ramachandra S. Bhaskar v. Union of India reported in 2000(2) AISLJ(CAT) 68 had the occasion to deal with the sealed cover procedure with reference to O.M. dated 14.9.1992. The applicant in that case was placed under suspension on 20.9.1995. He was due for promotion to the next higher post of Appraiser. Two DPCs were held on 30.10.1995 and 26.6.1995 and findings in respect of the applicant were kept in the sealed cover. The suspension order was revoked on 8.10.1996. The 3rd D.P.C. was held on 25.6.1997 when again applicant's case was not considered for promotion. Departmental charges were issued on 8.7.1997. The applicant's case therein was that since suspension was revoked on 8.10.1996 his case for promotion should have been considered by opening the sealed cover kept in first two DPCs. Further, at least on 25.6.1997, when the 3rd DPC was held, he being not under suspension and no departmental charge sheets having been issued, he should have been considered for promotion by referring to the guidelines issued in O.M. dated 14.9.1992 and the

decisions of the Apex Court in K.V. Janaki Raman, Syed Naseem Zahir and Kewal Kumar cases (all cited above). The case of the applicant was dismissed with an observation that principle and spirit of the sealed cover procedure is that a person under cloud ~~could~~^{with} not be rewarded ⁱⁿ promotion and as long as the very cloud speaks of integrity and conduct of the petitioner, he cannot be promoted unless the cloud is cleared by his exoneration in a departmental enquiry or criminal proceedings, as the case may be. Hence mere revocation of suspension would not show that the applicant was innocent.

19. After discussing the legal position enunciated by the Apex Court in various decisions and with reference to guidelines issued in O.M. dated 12.1.1988 and 14.9.1992 so also the guidelines under Sl. 156 of P & T Manual, Vol-III (Annexure-R/6), it cannot be said that the D.P.C. was not legally justified in keeping its findings in respect of the applicant in the sealed cover on 31.3.1998, the date of its meeting and on which date the applicant was still under cloud because of pendency of vigilance case against him.

20. In the result Original Application fails and the same is, therefore, dismissed, but without any order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN

 21.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//