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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 543 OF 2004
Cuttack this the 30th day of Nov. 2004

K.C. Das ... Applicant(s)

- VERSUS -

Union of India & Ors. ... 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 Tribunal or not ? *NO*

M.R. Mohanty
(M.R. MOHANTY) 30/11/04
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

to be issued to Respondents to consider his case and to give him promotion before giving effect to the promotion of Res. 5 (Shri Y.B.Khurania) vide Annexure-3 dated 7.8.2004.

2. The facts of the case in brief are that a meeting of the Screening Committee which was held on 25.5.2004 for considering the cases of I.P.S. officers for promotion to the grade of D.I.G. of Police, had recommended the case of the applicant along with four others of his batch, one belonging to 1990 batch for promotion. Pursuant to the said recommendations of the Screening Committee, the State Government of Orissa, after accepting the recommendations, granted promotion in favour of S/Shri S.M.Narvane, Sukumar Panigrahi, A.M.Prasad and Smt.B.Radhika to the grade of D.I.G. of Police in the month of June, 2004. However, the case of the applicant although was under active consideration for promotion, it was held up on account of a disciplinary proceeding initiated against him in July, 2004. As the disciplinary proceeding was initiated against him, the findings of the Screening Committee in respect of the applicant's promotion was put in a "deemed sealed cover" allegedly in accordance with instructions contained in Para-7 of the O.M. dated 14.9.1992 issued by the Dept. of Personnel & Tr

3. It is in this background that the applicant could not be promoted whereas his junior, viz., Shri Y.B. Khurania was promoted in August, 2004.

4. We have heard the learned counsel appearing on behalf of the parties and also perused the records placed before us. The applicant had also submitted a written note of argument which has been taken on record.

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The contention of the applicant is that the promotion of his junior, viz. Shri Khurania, is bad in law, because, when the Screening Committee had recommended his case for promotion, there was no disciplinary case pending against him and therefore, under no circumstances, he could be denied of his promotion. He has also submitted that a disciplinary case was foisted on him on false and baseless allegations. He has assailed the decision of the Respondents to keep his name in the deemed sealed cover, as arbitrary, unilateral and hence the same is liable to be set aside.

5. The Respondents, on the other hand, have vehemently opposed the prayer of the applicant. In their counter, they have submitted that pendency of a disciplinary case at the time an officer is considered for actual promotion is a bar in view of instructions of DOP & T dated 14.9.1992. We have perused the said Govt. order, The relevant portion of the order as contained in Para-7 reads as under :

" 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 OM will be applicable in his case also".

6. From a perusal of the Govt. order dated 14.9.1992, it reveals that there could be two scenarios in which the case of a Government servant could be put in a sealed cover. The first scenario has been described under Para-2 and 2.1, which reads as under :

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" 2. 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 specially brought to the notice of the Departmental Promotion Committee :-

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

2.1. The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/ criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/ criminal prosecution against Shri'. The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover". The authority competent to fill the vacancy should be apparently advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover".

7. Thereafter, the sealed cover procedure has been laid down, in the 2nd ^{scenario, in para 7} if a Government servant, who is recommended for promotion by the Promotion Committee is found to be involved in a disciplinary case at the time of actual promotion. This position has been further clarified by the Government of India, Ministry of Personnel & P.G. and Pensions vide their order dated 23.10.2001, wherein it has been stipulated that 'notwithstanding the Supreme

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Court decision in the case of Union of India & Ors. vs. Dr.(Smt.) Sudha Salan Para-7 of O.M. dated 14.9.1992 (or Para-7 of the O.M. dated 12.1.1988) does not undergo any change as the Apex Court had not quashed Para-7 in either of the OMs^{ns}.

8. We see lot of force in the above contention of the Respondents and accordingly, we hold that Para-7 of the aforementioned O.M. having not been quashed by the Apex Court in the above referred case, nor its legality or validity having been questioned by the applicant herein, the same is unalterable and thereby it holds good. By virtue of the decision in the Janakiraman case, law has been settled that consideration of the Govt. servant by Departmental Promotion Committee can be held up only if a disciplinary/judicial proceeding has been initiated; and by virtue of Sudha Salhan case it has been settled that once ^{the} name of a Govt. servant has been included in the Select List/panel, promotion cannot be denied if a vacancy is available and no disciplinary proceedings are pending at that time. In the instant case, the name of the applicant though was included in the Select List but before a vacancy arose in August, 2004, he had faced a disciplinary proceeding in July, 2004. That being the position of law, we are of the view that the case of the applicant for promotion to the grade of D.I.G. of Police has been affected ~~due~~ to initiation of disciplinary proceeding against him before he could be given actual promotion. In the circumstances, the prayer of the applicant as made in this O.A. cannot be acceded to.

9. Before we part with this case, we would further like to observe that the applicant in this O.A. has brought

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to our notice the fact that he is on the verge of superannuation. Having regard to this fact, we would direct the Respondents, particularly, Res.2, to ensure that the disciplinary proceeding initiated against the applicant is completed expeditiously, preferably, within a period of 120 days from the date of receipt of this order, which in our considered view, would meet the ends of justice.

With this, the O.A. is disposed of. No costs.

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(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

28/11/04