

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA

O.A. No. 1078 of 1997

Dated Calcutta the 18 June 2002

Sailendra Nath Ghosh, son of late S.C.Ghosh, working for gain as A.O.(Works), Eastern Railway, under FA & CAO, Calcutta, at present residing at PO Rahimpur, Serampore, Dist. Hooghly.

.. Applicant

-versus-

1. Union of India, through the G.M., Eastern Railway, Calcutta.
2. General Manager, Eastern Railway, Fairlie Place, Calcutta-1.
3. Financial Adviser & Chief A/Os Officer, E.Railway, F.P, Calcutta-1.
4. Sri A.L. Lahiri, Sr.AO/Con/Malda
5. Sri P.K. Bhattacharjee, Sr.AO/Books/E.Cal.

.. Respondents

Counsel for the applicant ...Mr. B.C.Sinha

Counsel for the respondents ...Mr.P.K.Arora

P R E S E N T: The Hon'ble Mr. L.R.K.Prasad, Member (A)  
The Hon'ble Mrs. Meera Chibber, Member (J)

O R D E R

L.R.K.Prasad, Member (A):

1. This application has been filed with the prayer to direct the respondents to grant the applicant Senior scale from the date his next below junior has been promoted along with consequential benefits and costs of litigation.
2. The applicant is an employee of Accounts Department of Eastern Railway. At the relevant time, the applicant was posted as AO/AAO (Group 'B'). He was posted to the said post with effect from 8.4.1993. Panel of Assistant Accounts Officer was published on 30.1.1992 and the name of the applicant is at serial no.36(Annexure-A1). When he came to know that his juniors(private respondent nos.4 and 5) who were at serial no.38 and 39 of the seniority)

were promoted as A.O. vide office order No.A/52 dated 25.8.1997 (Annexure-A2), the applicant submitted a representation on 8.8.1997(Annexure-A3) to FA & CAO with the prayer to consider his case for promotion to senior scale on the ground that his juniors have already been given the said benefit. The applicant retired from service on 30.11.1997. Vice letter dated 21.8.1997 (Annexure-A4), the applicant was informed that as a Vigilance case is pending against him, his case for promotion to the senior scale could not be considered at this stage. Therefore, in view of the grounds mentioned at para 5 of the O.A., the applicant has prayed for certain reliefs which are contained in para 8 and referred to above.

3. While opposing the above application, the respondents have stated that the case of the applicant for ad hoc promotion to Group 'B' Officer of Accounts Department to senior scale was considered by a Selection Committee in its meeting held on 19.8.1997 along with other eligible candidates. However, in terms of Railway Board's letter No.E(D&A)92 RG 149(B) dated 21.1.1993 read with letter No.E(D&A)92 RG 149(B) dated 22.10.1993, the findings of D.P.C. have been kept in a sealed cover on the ground that a vigilance case is pending against the applicant. It is stated that only on the conclusion of vigilance/disciplinary proceedings, the case of the applicant will be considered on the basis of the findings of the D.P.C. The respondents have drawn our attention to paras 5 and 6 of the reply. According to them, the competent authority had approved initiation of D&A proceeding against the applicant on 27.11.1996, whereas, the D.P.C. met on 19.8.1997. According to respondents, the disciplinary proceedings were initiated with the approval to do so by the competent

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authority on 27.11.1996. In that view of the matter, the sealed cover procedure was followed as D.P.C. met after initiation of disciplinary proceedings, as stated above. The Vigilance Department had not given integrity clearance certificate in favour of the applicant for promotion to the grade of senior scale. It is admitted that some of the juniors of the applicant have been given senior scale as they qualified for the same and the promotion was given on the basis of recommendation of D.P.C, but the case of the applicant was held up due to disciplinary proceedings. A suitable reply was given to the applicant.

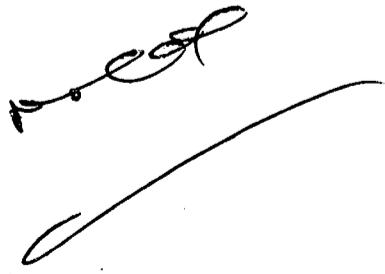
4. Further development in the matter is that a major ~~penalty~~ ~~charge~~-sheet No.DCAO(5)/D&A/Gaz/SNG dated 28.11.1997 was served on the applicant in connection with certain irregularities allegedly committed by the applicant in capacity as Accounts Member of the ~~Tender~~ Committee in Case No.N/TW/PNT/TQ/94-95 recommending exorbitant rates for acceptance without actually comparing and analysing the offered rates with those prevailing rates which led to financial loss to Railways. It is alleged that the applicant had refused to accept the charge-sheet and, therefore, the memo of charge-sheet was pasted on the office chamber of the applicant. The applicant had made appeal on 8.8.1997 and 21.8.1997 which were suitably replied vide respondents letters dated 25.8.1997 and 29.9.1997. The case of the applicant was considered by the D.P.C. in its meeting held on 19.8.1997. As departmental proceedings were initiated against the applicant with the approval of G.M. on 27.11.1996, much before meeting of D.P.C., the findings of D.P.C. with regard to the applicant had been kept in sealed cover.

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5. Heard the learned counsel for the parties and perused the materials on record. The fate of the case is dependant upon the definition of initiating departmental proceeding. While the respondents have categorically stated that in terms of prescribed instructions of the Railway Department, the departmental proceedings ~~can be~~ <sup>can</sup> initiated as soon as approval for such proceedings is given by the competent authority. In this regard, they have drawn our attention to various instructions of Railway Department which are contained ~~below~~ Rule 5 of RS(D&A) Rules, 1968. According to them, as soon as a decision is taken by the competent authority to initiate major penalty disciplinary proceedings, the disciplinary proceeding is supposed to have been initiated. Our attention was also drawn to Railway Board's letter dated 21.1.1993 (Annexure-R/1) with regard to promotion of ~~the~~ Railway servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated. The respondents have stated that disciplinary proceeding in respect of the applicant was initiated with the approval of the competent authority on 27.11.1996, even though the ~~the~~ major penalty charge-sheet was served on him on 28.11.1997. Therefore, according to the stand of the ~~respondents~~ as disciplinary proceedings have been initiated with the approval of competent authority on 27.11.1996, the sealed cover procedure was followed in the meeting of the D.P.C. which was held on 19.8.1997, which was actually later on, the date of initiation of departmental proceedings. Moreover, Vigilance Department has not given integrity certificate. While refuting the above stand of the respondents, the learned counsel for the applicant has stated that according to settled principle of law and various rulings

given by the Hon'ble Supreme Court, the disciplinary proceeding gets initiated only after the issue of charge-sheet and not from the date when a decision has been taken with the approval of the competent authority. During the course of argument, he drew our attention to the order of the Hon'ble Supreme Court dated 27.8.1990 passed in the matter of Union of India etc. vs. K.V. Jankiraman reported in AIR 1991 SC 2010, order of the Hon'ble Supreme Court dated 5.4.1990 in the matter of State of M.P. vs. Bani Singh and another (CA Nos. 3045 3046 of 1988) and the order of CAT, Guwahati Bench decided on 8.10.2001 in O.A. No. 241/2000 (reported in Administrative Total Judgments 2000(1) page 234). Before we proceed further in the matter, it would be relevant to reproduce the relevant portion of the judgment in the matter referred to above. In case of Jankiraman, it was held as follows:

"It is only when a charge-sheet in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee, 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. The plea 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. would not be tenable. The preliminary investigations take an inordinate 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 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. The authorities thus are not without a remedy."

(para 6)

"The promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee."

(Para 6)

In case of Bani Singh (supra), it is held if the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure is to adopt sealed cover procedure-but if the departmental enquiry had not reached that stage of framing of charges after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be merely withheld on the ground of pendency of disciplinary proceedings.

The placitum portion of the judgment of CAT, Guwahati Bench in the matter of one Mahendra Prasad Mehta vs. Union of India and others (supra) is reproduced below:

*[Signature]*  
"Promotion-Sealed Cover Procedure-Promotion made in 1997-Applicant was considered by the DPC but its findings were kept in sealed cover-Promoted in 1999-At the relevant time he was neither suspended nor there was any disciplinary proceedings-Even no prosecution for a criminal

charge-sheet was pending -Adoption of sealed cover procedure on the advice of CVC not justified-Direction given to antedate the promotion of applicant from 1997.

6. In the matter of Union of India vs. Kewal Kumar (AIR 1993 SC page 1585) decided on 12.4.1993, the Hon'ble Supreme Court has held as follows:

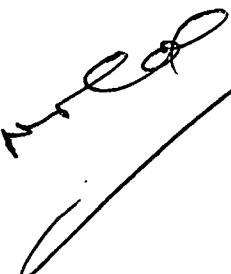
"Where a decision had been taken by competent authority to initiate disciplinary proceedings for imposition of major penalty on the basis of FIR registered by the Central Bureau of Investigation on the Govt. servant, Deputy Chief Electrical Engineer prior to the meeting of the Departmental Promotion Committee for considering him and some others for, promotion to the Senior Administrative Grade, the action of the Govt. in following the sealed cover procedure would be proper in order to avoid his promotion, unless exonerated of the charges." (paras 4,7)

7. The learned counsel for the respondents stated that the reliance has been placed on behalf of the applicant on certain judicial pronouncements, as referred to above, but the position has to be considered in the light of facts and circumstances of each case depending on its merit also. According to him, the facts and circumstances of the instant case and the cases relied upon on behalf of the applicant are different. He also pointed out that in the cases referred to on behalf of the applicant, there has been inordinate delay and the orders were passed in that light. This stand of the learned counsel for the respondents was hotly contested by the learned counsel for the applicant who relied on Jankiraman's case and Bani Singh's case, referred to above. We have to take a balanced view in the matter keeping in view the pleadings of the parties and the submissions made. It appears to us that initiation of disciplinary proceedings starts with the

*on their behalf*

issue of charge-sheet to the alleged delinquent employee and not before that. This principle has been clearly laid down in Jankiraman's case by the Hon'ble Supreme Court. It is held that only when a charge-memo in a disciplinary proceeding or charge-sheet in a criminal prosecution is issued to the employee, it can be said that the departmental proceeding/criminal proceeding is initiated against the employee. The sealed cover <sup>procedure</sup> is to be resorted to only after charge-memo/charge-sheet is issued. Pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. If the allegations are serious and the authorities are keen in investigating them, ordinarily, it should not take much time to collect the relevant evidence and finalise the charges. If the charges are serious, the authorities have the power to suspend the employee under relevant rules and suspension by itself permits to resort to the sealed cover procedure. The spirit and essence of the aforesaid judgment, which was delivered by 3-Member Bench of Hon'ble Supreme Court ~~and~~ very specific and clear in this regard which are required to be followed.

8. On the factual score, it is clear to us that a decision was taken by the competent authority to initiate disciplinary proceedings against the applicant on 27.11.1996. The D.P.C. met on 19.8.1997 for recommending the case of eligible candidates for promotion <sup>to the post/scale</sup> in question and the major penalty charge-sheet was issued on 28.11.1997. This clearly shows that the meeting of D.P.C. was held before issue of major penalty charge-sheet. As such, we are of the considered opinion that the case of the applicant in this regard is covered by the principle laid down by



Hon'ble Supreme Court in Jankiraman's case (Supra) in which it was clearly held that only when a charge-sheet in disciplinary proceeding or charge-sheet in a criminal proceeding is issued to the employee, it can be said that departmental proceeding/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. In the instant case, as already pointed out earlier, the D.P.C. met on 19.8.1997, whereas the charge-sheet was issued on 28.11.1997 and the ~~applicant is said to have retired from service~~ on 30.11.1997 (two days after issue of charge-sheet). It is clear from the submissions made on behalf of the respondents that since a decision was taken to initiate departmental proceeding against the applicant on 27.11.1996, the sealed cover procedure was followed in the case of the applicant by DPC which met on 19.8.1997 which, in our opinion, is contrary to the principle laid down by the Hon'ble Supreme Court in Jankiraman's case. In view of above, we feel that the case of the applicant is covered by the principle laid down by Hon'ble Supreme Court in Jankiraman's case (Supra) and the matter is, accordingly, required to be considered by the respondents in that light for passing appropriate suitable order.

9. In the circumstances, as explained above, we dispose of this O.A. by directing the concerned respondent to consider the case of the applicant for ~~consideration for~~ promotion to the post/<sup>scale</sup> in question in the light of the principle laid down by the Hon'ble Supreme Court in Jankiraman's case, as referred to above, and thereafter to pass suitable order in accordance with law and on the basis

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of recommendations of D.P.C. which met on 19.8.1997.

This exercise be completed within a period of four months from the date of communication of this order.

No order as to the costs.



(Meera Chibber)  
Member (J)



18.6.02

(L.R.K. Prasad)  
Member (A)

Mahto