

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

ORIGINAL APPLICATION No. 519 of 2007

Dated the 11<sup>th</sup> July, 2008

**C O R A M:**

HON'BLE Dr.K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER

T.X. Sebastian,  
S/o T.O. Xavier, Chief Engineer Gr.II,  
Central Institute of Fisheries Nautical &  
Engineering Training (CIFNET), Vizag,  
Permanent Residence at Thekkeveetil House,  
Near Govt. Ayurveda Hospital,  
Nayarambalam PO, Ernakulam Dist.  
Pin 682 509.

Applicant


( By Advocate :Mr. TC Govindaswamy and Ms Rajitha )

-Versus-

1. Union of India,  
Represented by the Secretary to the  
Government of India, Ministry of Agriculture,  
Department of Animal Husbandry,  
Dairying & Fisheries, Krishi Bhavan,  
New Delhi.
2. The Director,  
Central Institute of Fisheries Nautical &  
Engineering Training (CIFNET),  
Foreshore Road, Cochin-682 016.

Respondents

(By Advocate :Mr TPMI Khan, SCGSC and Ms Jisha)

 The application having been finally heard on 8<sup>th</sup> July, 2008,  
the Tribunal delivered the following on 11-07-08.

**ORDER**

(Hon'ble Dr. KBS Rajan, JM)

The short question involved in this case is whether consideration of applicant's case for grant of A.C.P. benefit could be deferred on the ground that at the material point of time (2001), CBI investigation report is that on 06-04-1999 the applicant had been reported to have found guilty for having excess quantity of HSD Oil and Lub. Oil on board the vessel and disciplinary action was contemplated during the year 1999 against the applicant.

**2]** Brief facts of the case with terse sufficiency are as under:-

(a) The applicant was initially appointed as Engine Driver Class on 17-10-1977; was promoted to the grade of Chief Engineer Gr. II on 03-06-1991. He had completed 24 years of service by 16-10-2001.

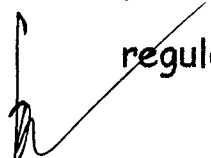
(b) Provision exists for grant of 2<sup>nd</sup> ACP on completion of 24 years of service and according to the applicant he is entitled to the same as on 16-10-2001.

(c ) The respondents have, however, held that since there had been a CBI investigation against the applicant in respect of alleged possession of excess quantity of HSD Oil and Lub. Oil in 1999, and disciplinary proceedings were contemplated against him, the case of the applicant should be considered only after the proceedings (vide Charge Memo dated 15-04-2004) are over. Annexure A-1 order

dated 09-07-2007 refers. This order has been passed in pursuance of a direction by this Tribunal in OA No. 355/07 filed by the applicant, whereby the respondents had been directed to consider the pending representation of the applicant.

3] The main ground of challenge of the rejection of the case by the respondents is that according to condition 11, *"In the matter of disciplinary/ penalty proceedings, grant of benefits under the ACP scheme shall be subject to rules governing normal conditions. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules 1965 and instructions thereunder."* According to the ratio laid down in the case of ***Shri K. V. Jankiraman (1991) 4 SCC 109*** disciplinary proceedings will be deemed to have commenced only when actual charge sheet is issued. As such, in the case of the applicant, as on the date when the case of the applicant for grant of ACP was to be considered i.e. July, 2001 (as per para 6.3 of the scheme), no proceedings were pending.

4] Respondents have contested the O.A. According to them, their decision not to consider the case of the applicant in 2001 for grant of ACP due to contemplated disciplinary proceedings is fully within the provisions of the rules and regulations.



5] Applicant has filed his rejoinder reiterating his contentions as contained in the O.A. Of course, both the applicant as well as the respondents have raised various factual contentions relating to the proceedings in their pleadings.

6] Counsel for the applicant has contended that the law is clear. What is to be seen is whether there is any disciplinary proceedings pending against the applicant at the time of consideration of his case for grant of 2<sup>nd</sup> ACP and if the answer is in negative, and that proceedings are only contemplated, the same would not lead to deferment of consideration of the case of the applicant for grant of 2<sup>nd</sup> ACP. The counsel has cited the following authorities in this regard:-

AIR 1990 SC 1308  
 AIR 1991 SC 2010  
 2008 (1) SLJ 84 (SC)  
 2008) 1 SLJ 100 (SC)  
 2008 (1) SLJ 270 (CAT)

7] Counsel for the respondents contended that the alleged incident related to 1999 and the CBI Report was already available at the time of consideration of the case of the applicant for grant of 2<sup>nd</sup> ACP. As such, deferment of the case of the applicant is fully justified.

8] Arguments were heard and documents perused. The rule is that when disciplinary proceedings are pending, for promotion, sealed cover procedure has to be adopted and as regards ACP, since no sealed cover procedure is provided for, the

case would be considered only after the proceedings are completed. The question is whether by virtue of the fact that the CBI has given a report about an alleged incident of 1999, which was available at the time of consideration in 2001 of the case of the applicant, consideration to grant ACP could be deferred.

9] In *U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon*, (2008) 2 SCC 41 : the Apex Court held, - "25. Reference was also made to a leading decision in *Union of India v. K.V. Jankiraman In Jankiraman*, the question which came up for consideration before this Court related to promotion of an officer and adoption of "sealed cover procedure". It was held that consideration of case of an employee for promotion could not be withheld merely on the ground of pendency of any departmental inquiry/criminal investigation against him. It could, however be resorted to once charge memo/charge-sheet is issued.

10] Again in *UCO Bank v. Rajinder Lal Capoor*, (2007) 6 SCC 694, the Apex Court held :-

"The departmental proceeding, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued (see *Union of India v. K.V. Jankiraman*). This aspect of the matter has also been considered by this Court recently in *Coal India Ltd. v. Saroj Kumar Mishra*—wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a charge-sheet is issued

would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in *Coal India Ltd.* this Court held: (SCC p. 631, paras 12-13)

*"12[13]. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the Vigilance Department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a charge-sheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.*

*13[14]. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed, there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."*

It was furthermore observed that: (SCC p. 632, para 18)

*"18[20]. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."*

(See also *Union of India v. Sangram Keshari Nayak*)

From the above decisions, law is clear that pendency of proceedings would be only when charge sheet stands issued. Mere CBI investigation report would not be sufficient.

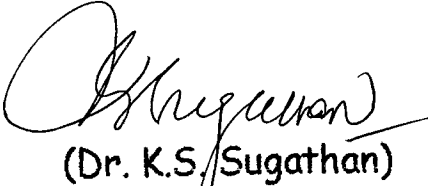
**11]** It would have been a different matter, if the CBI has filed an FIR in a court of Law prior to the date of holding of the DPC for ACP benefits. In that case, the decision as held by the Apex Court in the case of *Union of India v. Kewal Kumar, (1993)*

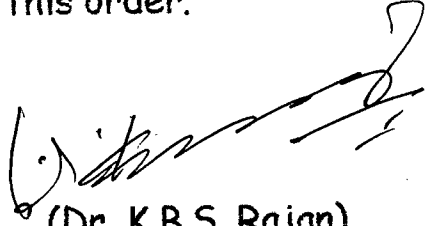
3 SCC 204, may apply. The Apex Court has, in that case, held as under:-

*3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.*

12] In the case of the applicant all that the CBI did was to file a report to the respondents on the basis of which the disciplinary authority had decided to proceed against the applicant but this decision was only as late as in 2004. Admittedly, at the time when the case of the applicant was to be considered for grant of ACP, action against the applicant was only at the 'contemplation stage'. Thus, the requirement as contained in condition No. 11 of the ACP scheme is not fulfilled for deferment of the case of the applicant.

**13]** In view of the above, the OA succeeds. Respondents are directed to consider the case of the applicant for grant of 2<sup>nd</sup> ACP w.e.f. 17.10.2001 and if found fit, the applicant be given the benefit of the same. Interest @ 9% shall be paid on the amount due, calculated from 1<sup>st</sup> September, 2007 (the month succeeding that when this OA has filed) All payments due shall be paid within three months of communication of this order.

  
(Dr. K.S. Sugathan)  
Administrative Member

  
(Dr. K.B.S. Rajan)  
Judicial Member

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