

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 557 of 2011

THURSDAY, this the 20th day of October, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Radhamani S. Menon,
Inspector of Central Excise,
Head Quarters, Cochin.
 2. Susamma Abraham,
Inspector of Central Excise,
Head Quarters, Cochin.
 3. Sushama Devi. A.,
Inspector of Central Excise,
Divisional Office, S.T. Nagar,
Thrissur.
 4. Usha A.,
Inspector of Central Excise,
Head Quarters, Cochin.
- Applicants

(By Advocate Mr. S. Ramesh Babu)

versus

1. Union of India represented by the Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
 2. The Commissioner of Central Excise and Customs,
Central Revenue Building,
I.S. Press Road, Kochi-18.
 3. Joint Commissioner of Central Excise and Customs,
Central Revenue Building,
I.S. Press Road, Kochi18.
 4. The Departmental Promotion Committee
for promotion from the post of Inspectors to the post of
Superintendent of Central Excise represented by its
Convener, Cochin Commiserate, Cochin.
- Respondents



(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 04.10.11, the Tribunal on 20-10-11 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicants in this O.A are Inspectors working in the Central Excise and Customs Department aspiring to the post of Superintendent of Central Excise and Customs. A meeting of the Departmental Promotion Committee was held on 31.05.2011 for promotion to the cadre of Superintendent of Central Excise against the vacancies of 2011-12. In the said DPC, the sealed cover procedure was adopted in respect of the applicants as there is a criminal case No. 7/2007 pending against them in the CBI Court, Ernakulam. While the applicants were working as Central Excise Inspectors at the Karippur Airport, Kozhikode, the CBI had carried out a surprise inspection on 02.11.2005 and the said criminal case was filed against them. The applicants contended that no departmental proceedings were initiated against them. No charges were framed against the applicants in the criminal case also. They are also not under suspension. Merely on the ground that they have been arrayed in a criminal complaint, they are not considered for promotion to the post of Superintendent of Central Excise. Commencement of criminal proceeding for the purpose of inviting the sealed cover procedure would arise only after issue of a charge sheet by the competent Court. Going by the dictum of Hon'ble Supreme Court in this regard, the applicants are entitled for promotion and keeping in abeyance their promotion on the basis of sealed cover procedure would not be sustainable in law.



2. The respondents in their reply statement submitted that vigilance clearance was not granted to the applicants and, therefore, the findings of the DPC in respect of them were kept in sealed cover in the light of DOP&T O.M. No. 222011/4/91-Estt.A dated 14.09.1992. The CBI has registered a case against the applicants in RC 26(A)2005 KER dated 21.07.2006. Sanction for prosecution of these officers was also granted. The CBI has also filed the charge sheet in the Court of Special Judge-II, Ernakulam. The applicants cannot resort to the judgement of Hon'ble Supreme Court in the case of *Union of India vs. K.V. Janakiraman*, AIR 1991 SC 2010, as the charge sheet has already been filed in the Court.

3. We have heard Mr. S. Ramesh Babu, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.

4. As per O.M. No.22011/4/91-Estt-A dated 14.09.1992 only the Government servants who are under suspension or the Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending or the Government servants in respect of whom prosecution for criminal charge is pending, the sealed cover procedure can be resorted to. DOP&T O.M. No. 22012/1/99-Estt(D) dated 25.10.2004 further clarified the matter as under :

"2. Considerable doubts also persist about the furnishing of the vigilance clearance and integrity certificate to the DPC. It is clarified that the DPC is required to consider the cases of all persons who are otherwise eligible in terms of the Recruitment Rules as on the relevant crucial date and are in the zone of consideration. If, however, case of an employee in the zone of



consideration is covered by any of the three situations, only this fact is to be furnished to the DPC so that the recommendations could be placed in sealed cover. Where none of the three situations has arisen, a simple vigilance clearance would need to be furnished. Vigilance clearance/status would have no other significance and would not be a factor in deciding the fitness of the officer for promotion on merit.

3. It is also clarified that there is no requirement of furnishing a separate integrity certificate to the DPC. In terms of the judgement of the Hon'ble Supreme Court in the case of Union of India vs. K.V.Janakiraman etc. (AIR 1991 SC 2010), no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/dereliction of duty etc., there is a serious complaint and the matter is still under investigation of CBI or otherwise, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

4. If the conditions indicated in para-2 of DoPT Office Memorandum dated 14th September, 1992, arise only after the DPC has made its recommendations and therefore, the recommendations could not be placed in the sealed cover, para 7 of the said Office Memorandum provides that the recommendations of the DPC shall be deemed to have been placed in the sealed cover and he shall not be promoted until he is exonerated of the charges. Therefore, after the recommendations of DPC have been approved by the competent authority, it is necessary to again seek the status position from the concerned vigilance division before issuing promotion order in respect of any officer included in the approved panel of names to ensure that there is no hindrance in issuing the promotion order in respect of the concerned officer."

(emphasis supplied)

5. In the light of the O.Ms cited above, in the instant case, sealed cover procedure is applicable only when prosecution for criminal charge is pending. As stated by the respondents, vigilance clearance was not granted to the applicants as a charge sheet has been filed against the applicants in the Court. As per O.M. dated 25.10.2004, a simple vigilance clearance would need to be furnished where none of the three conditions in O.M. dated 14.09.1992 has arisen. Therefore, the issue to be decided is whether a



criminal case is pending against the applicants. A criminal case can be said to be pending only after issuance of a charge sheet by the competent Court to the accused. The relevant extract from the judgement of the Apex Court in **Union of India vs. K.V. Janakiraman**, AIR 1991 SC 2010, is reproduced as under :

"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 been commenced, the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceeding 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 filed. 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 charges memo/charge sheet, it would not be in the interest of purity of administration to reward the employee with promotions, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases."

(emphasis supplied)

6. In the instant case, the CBI has filed the charge sheet in the Court. The respondents have not stated that the Court has framed charges against the applicants. As per settled law as cited above, prosecution for criminal charge can be said to be pending against the applicants only after the Court has framed charges against them. On 31.05.2011 when the DPC considered them for promotion, there was no criminal case pending against them. The respondents should have strictly followed the judgement of the Hon'ble Supreme Court as well as the instructions of the Government of India in



regard to adoption of sealed cover procedure. As they have not done so, resorting to sealed cover procedure in respect of the applicants cannot be sustained in law. Accordingly, it is ordered that the sealed cover in respect of the applicants shall be opened forthwith. Appropriate orders as per law in respect of promotion of the applicants, if they are found fit, should be issued within a period of 2 months from the date of receipt of a copy of this order, if no charge sheet is issued by the Court to the applicants, in the meanwhile.

7. The O.A is allowed to the extent indicated above. No order as to costs.

(Dated, 20th October, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.