

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 177 of 2011

Wednesday, this the 09th day of November, 2011

CORAM:

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

D. Georgekutty,
S/o. P.M. Daniel (late),
Foreman (Gzt),
Naval Ship Repair Yard,
Naval Base, Kochi : 682 004,
Residing at Poikavila House,
Mulavarikkal Nagar, Konthuruthy,
Thevara P.O, Kochi : 682 013

... Applicant.

(By Advocate Mr. Ram Prasad Unni T)

v e r s u s

1. The Southern Naval Command,
Represented by the Flag Officer
Commanding in Chief,
Naval Base, Kochi
2. The Union of India, represented by
The Secretary to Govt. of India,
Ministry of Defence, Sena Bhavan,
New Delhi
3. The Commodore Superintendent,
Naval Ship Repair Yard,
Kochi – 682 004
4. The Chief Personnel (Navy),
Headquarters, Sena Bhavan,
New Delhi
5. The Principal Director of Civilian,
I H Q Sena Bhavan, New Delhi

... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)



This application having been heard on 25.10.2011, this Tribunal on 09/11/11.... delivered the following :-

ORDER

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

The applicant in this O.A. was empanelled for promotion to the grade of Technical Assistant (Engineering), Group 'B' Gazetted vide Annexure A-1 order dated 11.05.2010. The order for promotion was issued by the competent authority vide Annexure A-2 dated 27.12.2010. The promotion was to take effect from the date of assumption of charge of higher duties by the applicant. However, in view of a criminal case filed against the applicant on 30.04.2010, the 3rd respondent vide Annexure A-4 dated 03.02.2011 ordered that his case for promotion shall be deemed to have been placed in sealed cover as per para 7 of DoP&T OM No. 22011/4/-91-Estt.A dated 14.09.1992. Aggrieved, the applicant has preferred this O.A for quashing Annexure A-4 order and for a direction to implement the order of promotion already issued to him and permit him to join duty forthwith.

2. The applicant contended that the DoP&T O.M dated 14.09.1992 cannot apply to him as he had already been found fit by the Departmental Promotion Committee and issued with the promotion order. The Annexure A-4 order denying the applicant the opportunity to join the promoted post is completely contrary to the principles evolved by the Hon'ble Supreme Court in the case of *Union of India vs. K.V. Janakiraman*, AIR 1991 SC 2010. At the time of holding the DPC, the applicant was not implicated in the criminal case. The orders at Annexure A-2 and Annexure A-3 were issued by the respondents



knowing fully well that he was involved in a criminal case. The respondents now cannot turn around and say that the sealed cover procedure has been initiated against the applicant and that he cannot be given promotion. All procedures relating to the promotion of the applicant have been fully completed except the actual assumption of the charge ~~of~~ the promoted post. If sealed cover procedure is applicable, there was no reason not to initiate the said procedure immediately after the intimation regarding his involvement in a criminal case was given. The applicant had on 18.05.2010 and 09.06.2010 apprised and explained the details of the criminal case against him to the respondents.

3. In the reply statement, the respondents submitted that the applicant was recommended by the DPC for promotion to the grade of Technical Assistant (Engineering). Though the promotion order was issued, the promotion was not effected and the applicant did not assume the charge of higher duties. After he was recommended by the DPC and before issue of the promotion order, the applicant was involved in a criminal case. Therefore, the case of his promotion is to be placed in sealed cover in accordance with Para 7 of the DoP&T OM No. 22011/4/-91-Estt.A dated 14.09.1992. On completion of the proceedings, further action will be taken in accordance with the instructions therein.

4. We have heard Mr. Ram Prasad Unni T, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC, appearing for the respondents and perused the records.



5. The short question to be decided in this O.A is whether the DoP&T OM No. 22011/4/-91-Estt.A dated 14.09.1992 is applicable to the case of the applicant herein or not. As per the said O.M, the sealed cover procedure is to be adopted when a Government servant is under suspension or when a charge sheet has been issued and the disciplinary proceedings are pending against him or when prosecution for criminal charge is pending against him. The applicant in this OA is not suspended. No disciplinary proceedings have been initiated against him. A criminal complaint has been filed against him.

6. The respondents relied on para 7 of the said O.M, which is reproduced as under :

"7. 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."

Evidently, the respondents held that the prosecution for criminal charge is pending against the applicant after the recommendation of the DPC was received. Although the promotion order is issued, he had not joined the promoted post. As he is not actually promoted, his case is to be placed in sealed cover only till he is completely exonerated of the charges against him. The point now to be decided is whether the prosecution for criminal charge is pending or not.

7. In AIR 1991 SC 2010, *Union of India vs. K.V. Janakiraman*, the Hon'ble



Supreme Court held as under :

"6. 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 commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings 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 issued. 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 charge-memo/charge-sheet, it would not be in the interest of the purity of the administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately 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 any 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....."

8. A criminal prosecution can be said to be pending against the applicant only when a charge sheet is issued to him. In the instant case, it is not the case of the respondents that the Court has framed charges against the applicant. The factual position is that at the E T South Police Station, Kochi City, a criminal case is registered vide Cr. 705/10 on 30.04.2010 against the applicant. As no charge sheet is framed against the applicant by the Court, as per the settled law, no criminal prosecution is pending against the applicant. Therefore, there is no justification for resorting to the sealed cover procedure in the case of the applicant.



9. In view of the above, the O.A. succeeds. The Annexure A-4 dated 03.02.2011 is set aside. The respondents are directed to implement the order of promotion already issued to the applicant and permit him to join duty forthwith on receipt of a copy of this order, if no charge sheet is issued to him as yet.

10. No order as to costs.

(Dated, the 09th November, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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