

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 130 /2010

This the 5 th day of May, 2010

Hon'ble Mr.Justice Shiv Charan Sharma, Member (J)
Hon'ble Dr. A.K.Mishra, Member (A)

Gopal Krishna Shukla aged about 58 years son of sri R.S.Shukla r/o A-82, Keshav Vihar Colony, Kalyanpur , Ring Road, Lucknow.

Applicant

By Advocate: Sri A.P.Singh

Versus

1. Union of India through the Secretary in the Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax, CCA, Aayakar Bhawan, 5 Ashok Marg, Lucknow.
3. Additional Commissioner of Income Tax (Headquarters) Aaykar Bhawan, 5 Ashok Marg, Lucknow.

Respondents

By Advocate: Sri Deepak Shukla

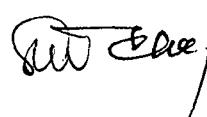
ORDER

Hon'ble Mr. Justice Shiv Charan Sharma, Member (J)

The instant O.A. has been instituted by the applicant with a prayer that the order dated 9th December, 2009 passed by Chief Commissioner of Income Tax, Lucknow (O.P. No.1) and communicated by Additional Commissioner of Income Tax (Headquarters) (O.P. NO.3) be quashed. Further prayer has also been made for issuing an order, direction and command to the Opposite Parties to open the sealed cover envelope containing the recommendations of Departmental Promotion Committee (later on known as DPC) for promotion of the applicant to the posts of Senior Tax Assistant and Office Superintendent made on 20.7.2001 and 29.6.2001 respectively by acting upon the recommendations of the DPC with all benefits of service from the date of recommendations of the DPC.

2. The pleadings of the parties in brief are as follows:-

It has been alleged by the applicant that initially he was appointed on the post of Lower Division Clerk (LDC) substantively by direct recruitment w.e.f. 25.3.1975. Subsequently confirmed on the post of LDC and promoted on the post of Upper Division Clerk (UDC) on 6.4.1985 and subsequently,



confirmed on the said post. On the basis of recommendations of the DPC he was promoted on the post of Sr. Tax Assistant on adhoc basis vide order dated 19th July 2006 issued by O.P. No.3 and consequently he joined on the said post on 19.7.2006 itself. By way of O.A. No. 274/2002, applicant approached the Tribunal for redressal of his grievance . Opposite parties filed Counter Reply pointing out the recommendations of DPC for promotion to the post of Sr. Tax Assistant and to the post of Office Superintendent and for keeping the recommendation in sealed cover on 20.7.2001 and 29.June, 2001 respectively on the basis of complaint pending in the Court of Special Judicial Magistrate,CBI, Lucknow.

3. The said complaint was challenged before the Hon'ble High Court in a petition U/s 482 Cr.PC by other persons and the same had been stayed. Copy of the order has been annexed as Annexure No. 4. The Tribunal vide judgment dated 15th December, 2008 in O.A. No. 274/2002 has been pleased to hold that the O.A. in the form of joint application seeking plural relief is not maintainable observing that the applicant if so advised may make a separate representation for redressal of his grievance. Annexure 5 is the copy of order. A large number of persons placed in similar circumstances and even junior to the applicant Sri S.C. Rai, K.N. Dubey, Jagdish Saran, P.N.Rai , A.K.Srivastava, S.P.L.Srivastava and more than 100 persons have been promoted to the post of Office Superintendent denying the promotion to the applicant on higher post. That the recommendations of DPC, have been kept in sealed cover as a result of pendency of complaint. Sri V.K. Bajpai and Akhilesh Srivastava who are also co-accused in the said complaint were promoted. But the recommendations of the DPC have been kept in sealed cover relating to applicant. Sri V.K. Rastogi, co-accused in the said complaint was promoted as Income Tax Inspector and paid the entire retiral benefits at the time of superannuation. Sri D.K. Mendiratta, a co-accused was also promoted as Income Tax Officer. Neither any departmental proceedings nor the charge sheet are pending against the applicant. No charges have been framed by the criminal court on the basis of the complaint. Sealed cover

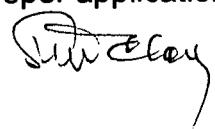
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procedure has wrongly been applied in the case of the applicant in violation of full bench judgment of the Tribunal. There is also a catena of judgments in this connection. DPC has recommended the name of the applicant for promotion to the post of Sr. Tax Assistant and Office Superintendent and he is entitled for promotion on that post w.e.f. 20th July, 2001 and 29th June, 2001. The representation made by the applicant for opening the sealed cover had already been rejected. This is wholly misconceived containing misstatement of facts. O.P. is under obligation to open the sealed cover containing the recommendation of the DPC for promotion of the applicant.

4. On behalf of the respondents, objection has been filed. It has been alleged by the opposite parties that entire crux of the present controversy is over and an order passed on 9th December 2009 whereby the applicant's claim for opening the sealed cover containing the recommendations of the applicant for promotion to the post of Sr. Tax Assistant and Office Superintendent had not been allowed to him.

5. The applicant is well aware that the DOP&T and TOM dated 14th September, 1992 is applicable in his case and he is entangled in a criminal case No. 195 of 1999 before the Special Judicial Magistrate. It is a fact that the Hon'ble High court had stayed the proceedings of criminal case but there is no order of the Hon'ble High Court for quashing the proceedings before criminal court. It means that the applicant has not been completely exonerated of the charges levelled against him. The sealed cover procedure had been adopted by Govt. of India as per DOPT Memo No. 22011/2/86 Estt (A) dated 12.1.1988 as amended by O.M. NO. 22011/1/91 Estt (A) dated 31.7.91. It has been provided in the Memo that any govt. servant who is facing investigation of serious allegation of corruption, bribery or similar grave misconduct on prosecution launched by CBI or other agency departmental or otherwise then his case may be kept in sealed cover. Hon'ble Supreme Court also affirmed the validity of the sealed cover procedure in SCC (2000)4, page 394. Further, the respondent No. 2 had passed a reasoned and speaking order after proper application of mind. The



entire facts as stated in the O.A. are false and the O.A. is liable to be dismissed.

6. We have heard the learned counsel for applicant Sri A.P. Singh and Sri Deepak Shukla for respondents and perused the entire material on record.

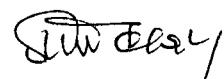
7. From the perusal of the pleadings it is evident that there are certain admitted facts. It has been admitted by the parties that the DPC recommended the name of the applicant for promotion as Sr. Tax Assistant and Office Superintendent. Earlier applicant was promoted as Sr. Tax Assistant on adhoc basis vide order dated 19th July, 2006 subsequently vide order dated 13.4.2007, the promotion of the applicant as Sr. Tax Assistant was regularised . The orders were passed by O.P. No.2 in this connection on the basis of recommendations of the DPC. The DPC also recommended the name of the applicant for promotion on the post of Office Superintendent and the said recommendation has been kept in sealed cover for the reasons that a criminal complaint is pending against him in the court of Special judicial Magistrate, CBI, Lucknow. It is an admitted fact that the proceedings of the criminal complaint filed by the CBI had been stayed by the Hon'ble High Court in a petition U/s 482 Cr.PC filed by persons other than the applicant. It has also been alleged by the applicant that several other persons even junior to the applicant , namely Sri S.C. Rai, K.N. Dubey, Jagdish Saran, P.N.Rai , A.K.Srivastava, S.P.L.Srivastava and more than 100 persons have been promoted to the post of Office Superintendent but the promotion had been denied to the applicant for the reason that a criminal case is pending against him in the CBI Court .There are other persons who are co-accused with the applicant in the criminal complaint filed by the CBI, namely V.K. Bajpai, Akhilesh Srivastava, V.K. Rastogi, and D.K. Mendiratta, who had already been promoted to the post of Office Superintendent , Income Tax Inspector and income Tax Officer. There was no justification for keeping the recommendation of the DPC relating to the applicant in sealed cover and this procedure has wrongly been adopted.

8. It has been argued by the learned counsel for the applicant that firstly the Hon'ble Apex Court laid down guiding lines about matters for which the sealed

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cover procedure is to be adopted and secondly in the case of the applicant this procedure of sealed cover has wrongly been adopted. Moreover there is discrimination in the case of the applicant. Similarly situated persons had already been promoted to the higher post irrespective of the fact that they were co-accused with the applicant in the criminal complaint pending in the court of CBI. According to the allegations of the CBI, it is not the applicant who is solely responsible for the offence of fabricating the order of the Hon'ble High Court but other co-accused persons are equally responsible for the offence. By adopting the discriminatory approach the persons other than the applicant had already been promoted hence different yard stick was adopted in the case of the applicant. It has also been argued by the learned counsel for the applicant that irrespective of the fact that a criminal complaint was pending against the applicant in the special Judicial Magistrate, CBI, Lucknow, on the recommendations of the DPC, he was promoted to the post of Sr. Tax Assistant firstly on adhoc basis and subsequently confirmed on that post, but surprisingly on the same material which was already existing against the applicant, promotion was refused as Office Superintendent. There is no justification for the respondents for adopting different yard stick against the applicant other co-accused. And moreover once on the same material, he was promoted as Sr. Tax Assistant but at the same time on the same material promotion could not be refused as office superintendent.

9. It is undisputed fact that in accordance with DOP&T Memo No. 22011/2/86- Estt (A) datd 12.1.1988 as amended by O.M. No. 22011/1/91- Estt (A) dated 31.7.91, sealed cover procedure may be is invoked and it has been provided in this memo that the Govt. servant against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any agency, departmental or otherwise, then the department may keep the recommendations of the DPC in a sealed cover and the validity of this procedure has been affirmed by the Hon'ble Supreme Court in the case reported at **(2000) 4 Supreme Court Cases, 394 Union of India and Another Vs. R.S. Sharma.** The applicant



counsel has also not challenged regarding the existence of sealed cover procedure. In this circumstances, there is no reason to disbelieve that there is a procedure for keeping the recommendation in a sealed cover regarding the employees against whom investigation is under progress for serious offence.

10. Learned counsel for the applicant argued that Hon'ble Apex court has laid down certain guiding yard stick for adopting the procedure of sealed cover. Learned counsel for the applicant cited the case law in the case reported at **(2000) 4 Supreme Court Cases, 394 Union of India and Another Vs. R.S. Sharma** relied by him. Learned counsel made an endeavor to distinguish that in the light of decision of the Apex Court in the case of UOI vs. K.V. Jankiraman, the sealed cover procedure can be resorted to only after charge memo is received or a charge sheet is filed or charges framed otherwise employee cannot be denied of his promotion, if he is otherwise entitled to it. Learned counsel also submitted that Jankiraman was since followed in **Union of India Vs Dr. Sudha Salhan and Bank of India Vs. Degala Suryanarana**, the clauses of the second para of the sealed cover procedure considered in Jankiraman was not involved in the present case and hence the decision is of no avail to the respondent.

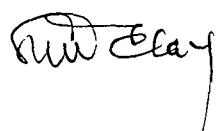
11. Learned counsel for respondent argued that the facts were different from the case of Jankiraman. The added factor in these two cases was that the public servant concerned had been exonerated of the charges framed by the criminal courts. In the present case, the applicant is still facing the serious offences and hence the situation is different.

12. Learned counsel cited a judgment of Central Administrative Tribunal , Principal Bench ,New Delhi in O.A. No. 1604/09 decided on 23rd December, 2009. Learned counsel for the applicant argued that it has been held in this judgment that "However, it is by now a settled preposition of law that promotion of an employee cannot be stalled by putting his case in sealed cover unless , if the employee is facing a departmental enquiry, charge has been framed against him by the concerned authority, or if he is facing a criminal case, charge has been framed by the concerned criminal court."



Much reliance has also been placed on the judgment of the Hon'ble Apex Court laid down in the case of Union of India and others Vs. K.V. Jankiraman and others reported at (1991) 4 Supreme Court Cases, 109 and on the strength of the above judgment of the Hon'ble Apex Court and judgment of Principal Bench of CAT, learned counsel for applicant argued that the procedure of sealed cover must be adopted in the case when either a departmental enquiry is pending against him and charge has been framed in that departmental enquiry and in a criminal case, charge has been framed by the concerned criminal court and in the present case, the procedure of sealed cover has been adopted on the ground that a criminal complaint is pending against the applicant. In this connection, learned counsel for the applicant pointed out that firstly the proceedings of criminal complaint has already been stayed by the Hon'ble High Court in a petition U/s 482 Cr.P.C. filed by other persons other than the applicants moreover he also argued that no charge has been framed in the complaint by the criminal court till date. That no departmental enquiry has been initiated against the applicant on that ground. Learned counsel for applicant argued that sealed cover procedure has wrongly been adopted in the case of the applicant.

13. Learned counsel for the respondents argued that there are serious allegation against the applicant in the criminal case and in view of the direction of the Memo of DOP&T, the sealed cover procedure is applicable in the case of the applicant as he is facing serious allegations in a criminal case. We are of the opinion that if there are serious allegation of bribery etc. against an employee in a criminal case then the department is fully competent to adopt the sealed cover procedure. Learned counsel for the applicant argued that FIR was lodged with the CBI on the direction of the Hon'ble High Court and the allegations are of the nature that the applicant and others have fabricated the orders of the High Court. At this time, learned counsel for the applicant argued that on the one hand the FIR was lodged against the applicant and others on the direction of the High Court and at the same time, the Hon'ble High Court had stayed the proceedings of the criminal complaint.



14. Learned counsel for the applicant also argued that department concerned is expected to adopt impartial approach in the case of all employees. The applicant is not the only accused in the complaint lodged by the CBI in the Criminal court, there are numerous other persons who are facing trial with the applicant of the same allegation. V.K. Bajpai and Akhilesh Srivastava are co-accused with the applicant in the criminal complaint and they were promoted to the higher post but the recommendation of the DPC relating to the applicant was kept in sealed cover. Learned counsel for applicant further argued that V.K. Rastogi, co-accused with the applicant in criminal complaint was promoted as Income Tax Inspector and has also been given the entire retiral benefits at the time of superannuation. Sri D.K. Mendirutta, co-accused in criminal complaint was also promoted as Income Tax Officer. It means that the allegation against the applicant are also identical and he should have been promoted but due to the discrimination shown by the opposite parties, the promotion of the applicant was kept in the sealed cover whereas other accused persons have already been promoted. It is not the case of the respondents that in the FIR or in the investigation of the CBI, the applicant alone was held responsible for fabricating the order of the Hon'ble High Court. Contrary to it, applicant and other above persons are also equally responsible for fabricating the order of the Hon'ble High Court. When other similarly situated persons have been promoted, then no satisfactory reasons are forthcoming as to how the respondents are justified in keeping the recommendations of DPC relating to the applicant in sealed cover. More so, applicant counsel further argued that even on the same material on similar circumstances when a criminal complaint was pending against the applicant, on recommendations of the DPC, he was promoted as Sr. Tax Assistant. It means the allegations were not of serious nature against the applicant so as to disqualify him for promotion. But when the question arose for promotion as Office Superintendent, the recommendation of the DPC was kept in sealed cover. Hence it shows that the approach of the department is not consistent and


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impartial. There had been discrimination with the applicant for the reasons best known to them.

15. The reply has been filed on behalf of the respondents, and there is no specific denial of the facts averred by the applicant relating to giving promotion to other similarly situated accused persons. We see no justification on the part of the respondents for adopting this discriminatory practice against the applicant. It has not been shown that the applicant alone was responsible for the offence. When the allegations against the other persons are also identical in nature, then the approach of the respondents should have been impartial in cases of all accused persons.

16. In this situation, we are of the opinion that it is not the applicant alone against whom there are allegations of serious nature. It is said that a copy of order of the Hon'ble High Court has been fabricated by the applicant and other co-accused persons. Other co-accused persons mentioned above have already been promoted. It has not been shown that the case of the applicant is distinguishable from other co-accused persons. It can be inferred that when the allegations against the applicant and others co-accused were identical in nature, then they ought to have adopted identical yard stick in the case of all accused persons. Although, the validity of adopting sealed cover procedure has been affirmed by the Apex Court but we have to ascertain whether the respondents are justified in adopting the sealed cover procedure in the present case. Regrettably we have to say that opposite parties are not at all justified in adopting discriminatory approach towards the applicant. There appears no justification on the part of the respondents as to why promotion was given to other similarly situated co-accused persons. Moreover, at one point of time, the applicant was considered suitable and fit for promotion to the post of Sr. Tax Assistant on the same material but for promotion on the post Office Superintendent, the recommendation relating to DPC was kept in sealed cover. There appears no justification for adopting one procedure at one time and a different one on second time on same material. Moreover, in the case of the applicant, the respondents adopting biased approach.

Ramsey

17. For the reasons mentioned above, O.A. deserve to be allowed and a direction is to be given to the respondents to open the recommendation of the DPC relating to the promotion of the applicant.

18. O.A. is allowed. Order dated 9.12.2009 passed by O.P. No. 1 (Annexure No.1) is quashed. Opposite parties are directed to open the sealed cover envelope containing the recommendations of the DPC for promotion of the applicant for the post of Office Superintendent dated 20th July, 2001 and 29.6.2001 (as per the applicant). No costs.

6/15/2010
(Dr. A.K. Mishra)
Member (A)

6/15/2010
(Shiv Charan Sharma)
Member (J)

HLS/-