

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 87/2009

This the 26/2 day of February, 2010

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Dr. A.K. Mishra, Member(A)

Arun Kumar Gupta, Aged about 52 years, S/o Sri Ganga Ram Gupta, R/o F-2368, Rajajipuram, Lucknow, presently posted as Additional Superintendent of Police, Vidhan Sabha Security, Lucknow.

.....Applicants

By Advocate: Sri. C. Mehrotra

Versus

1. Union of India through its Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2. Under Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
3. Union Public Service Commission, Dhoulpur House, New Delhi through its Secretary.
4. State of U.P. through its Principal Secretary (Home), U.P. Civil Secretariat, Lucknow.
5. Secretary (Home), Government of U.P., Civil Secretariat, Lucknow.
6. Director General of Police, U.P., 1 Tilak Marg, Lucknow.

.....Respondents

By Advocate: Sri S.P. Singh for Sri Z. A. Khan for R-1 & R-2 and Sri P. Awasthi for Sri A.K. Chaturvedi for R-3 to R-6.

ORDER

Delivered by Dr. A.K. Mishra, Member-A

The applicant has challenged the order dated 24.11.2008 passed by the respondent no.2 on behalf of Government of India, by which the representation of the applicant relating to his grievance for not having been considered for regular promotion was rejected. He further assails the select list of candidates for the year 2006 for promotion to Indian Police Service (IPS) for U.P. State Government prepared by the UPSC and notified by Ministry of Home Affairs on 1.7.2008 so far as it related to including the applicant in the said list on provisional basis due to pendency of disciplinary proceedings against him after issuance of a chargesheet on 20.12.2007. By way of relief, he has prayed for quashing of impugned order dated 24.11.2008 and also requested to set-aside the notification dated 1.7.2008 so far as it related to inclusion of the applicant on



provisional basis. His further prayer is for a direction to the respondent-authorities to grant him regular promotion w.e.f. 1.7.2008 to U.P. cadre of IPS.

2. At the time of hearing, learned counsel for the applicant canvassed the following grounds:-

Chargesheet initiating disciplinary proceedings against him was issued on 20.12.2007; the DPC meeting for preparing the select list of the candidates for promotion to U.P. cadre of IPS was held on 28.12.2007; chargesheet was served on him on 2.1.2008. Relying on the observation of Supreme Court in the case of Union of India Vs. K.V. Jankiram reported at AIR 1991 SC 2010 made in Civil appeal no. 3018 of 1987, the learned counsel pleads that a chargesheet against the applicant could not have been considered by the DPC as it was served on him on a later date. For ready reference, para 10 of this judgment of Supreme Court is extracted below :

"In this case, no chargesheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion....."

3. His second argument was that a chargesheet against the applicant was ostensibly issued by the respondent State Government on the basis of irregularities noticed by the Committee constituted by the State Government vide its order dated 13.6.2007 to inquire into the irregularities in recruitment of Constables to U.P. Police Force. Allahabad High Court of Lucknow Bench, in its judgment and order dated 14.1.2009 in Writ petition no. 7740 (M/B) of 2007, held the constitution of the Committee as illegal and quashed it. Therefore, all actions of the Committee including the report prepared by them became non-est in the eyes of law. No stay order has been granted by the Supreme Court in the SLP preferred by the State Government against the order of High Court. For clarity sake, it may be mentioned that two sets of actions had been initiated by the State Government on the basis of report of the inquiry committee, whose constitution was subsequently declared as illegal in the aforesaid decision of High Court: (i) it



terminated the services of Constables who were recruited by the previous Government and whose recruitment was held to be irregular in the said inquiry committee; (ii) disciplinary proceedings were initiated against many members of the Selection Committee including the applicant for their role in such improper selection. Affected Constables challenged the order of their termination before High Court and the Writ petitions were allowed. Subsequently, in the SLP filed by the State Government, the Supreme Court directed the reinstatement of Constables and accordingly they have been reinstated in service. The senior Police officers who were members of the recruitment committee also have filed Writ Petitions/ Original Applications challenging the validity of disciplinary proceedings initiated against them. In most of the cases, they took the ground that no action could be taken against the members of the recruitment committee when the validity of the constitution of the committee itself has been struck down by the High Court. In view of such development, it is contended, that, all consequences emanating from the inquiry report cannot be sustained in law.

4. The third ground canvassed by him is that one Mukul Goyal, IPS, who was Chairman of a similar recruitment Board and had been similarly chargesheeted, has been promoted to the post of Inspector General of Police vide order dated 17.9.2009 of the Ministry of Home Affairs, Government of India. If the Chairman of a similar Board could be given regular promotion on the higher post, it does not stand to reason how a member of another recruitment Board could be penalized by keeping him in the suspect list and denying him regular promotion to IPS cadre only on the ground that a chargesheet on similar facts was pending against him. He also cited the example of one Lallan Rai, who was promoted by the State Government from the post of Deputy Superintendent of Police to the post of Additional Superintendent of Police vide their order dated 21.4.2008 although disciplinary proceedings had been initiated against him in respect of same allegation of irregularities of recruitment of Constables made in the year 2005. Sri Lallan Rai, was one of the members of the recruitment Board at Sitapur



in the year 2005 and disciplinary proceedings initiated against him were pending when he was granted promotion to the post of Additional Superintendent of Police. The learned counsel argued that there could not be two yardsticks for judging the police officers serving the State Government of U.P. Therefore, he claims that alleged action in denying regular promotion to the applicant suffers from the infirmity of a hostile discrimination. In para 4.37 of the Application, he has mentioned the case of one Ram Bharose, who was also a member of recruitment Board and against whom inquiry report had identified many instances of irregularities; no disciplinary action had been initiated against Sri Ram Bharose and he has been appointed to IPS cadre. Such gross discrimination, according to learned counsel, constitutes violation of fundamental right guaranteed under Article 14 of Constitution of India.

5. The learned counsel for the respondents placed before us a number of judgments of Supreme Court to support the contention that disciplinary proceedings are deemed to have been initiated from the date of issue of chargesheet and not from the date of its service. (i) Supreme Court in Jankiraman case (supra) specifically dealt with the question as to when disciplinary proceedings can be said to have commenced. Para 6 of the judgment, which is self explanatory, is reproduced below:

“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 case of Delhi Development Authority Vs. H.C. Khaura reported at 1993 (3) SCC 196 deals with the specific question of difference between the issuance of chargesheet and its service on an employee. Paragraphs 14, 15 and 16 which are relevant for our purpose dealt with the apparent contradiction appearing in the judgment of Jankiram case. These are extracted below:



14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to dispatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of the process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman¹ which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No. (4), but the fact 'issue' of the charge-sheet to the employee is emphasized in para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman¹ only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include : 'to give exit to; to send forth, or allow to pass out; to let out; ... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit , put into circulation'. The issue of the charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and dispatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee', in para 7 of the decision in Jankiraman¹.

16. In view of the above, we are unable to accept the respondent's contention, which found favour with the High Court, that the decision in Jankiraman¹ on the facts in the present case, supports the view that the decision to initiate the disciplinary proceedings had not been taken or the charge-sheet had not been issued to the respondent prior to November 28, 1990, when the DPC adopted the sealed cover procedure, merely because service of the charge-sheet framed and issued earlier could be



effected on the respondent after November 28, 1990, on account of his absence."

6. In other cases, namely State of M.P. Vs. Onkar Chand Sharma reported at (2001) 9 SCC 171, State of M.P. & Another Vs. Syed Naseem Zahir & Others reported at 1993 SCC (L&S) 429 and Union of India Vs. Kewal Kumar reported at 1993 SCC (L&S) 744, it has been consistently held that the date of decision to initiate disciplinary proceedings by the competent authority, particularly the date of issuance of charge sheet should be taken as the material date of commencement of disciplinary proceedings to adopt the sealed cover procedure.

7. Learned counsel for the respondents submits that the competent authority is within its right to withhold the promotion of an employee if disciplinary proceedings have been initiated against him before taking the final decision on the matter. He relied on the judgment and order dated 13.11.2002 of CAT-Lucknow Bench in O.A.No. 656/95. Paragraph 7 of Office Memorandum dated 14.9.92 of DOP&T and the ratio laid down by the Supreme Court in the case of Union of India and another Vs. R.S. Sharma 2000(2) LBESR 337 (SC) have been referred to in the order of CAT, which shows that an employee's request for promotion cannot be conceded if disciplinary proceedings/ criminal prosecution are pending against him before making final decision.

8. In view of the discussions in the preceding paragraphs, we find that the disciplinary proceedings have, in fact, been initiated against the applicant before the DPC took up consideration of his case for promotion to UP Cadre of IPS.

9. As regards the allegation of hostile discrimination, the learned counsel for the respondents explains that Sri Mukul Goyal was being considered for promotion to the rank of Inspector General while he was on central deputation. Promotion within the IPS cadre is governed by a separate set of rules. Therefore, his case stands on a different footing. Nevertheless, the respondent,



State Govt. had written a letter on 24.11.2009 to the Union of India pointing out relevant facts concerning pendency of disciplinary proceedings initiated by the State Govt. against Sri Goyal and the Union of India is yet to take a decision in the matter.

10. As regards Sri Ram Bharosey, he submits that there was no disciplinary proceeding pending against him as no charge sheet had been issued to him before he was considered for promotion to the U.P. cadre of IPS. The reasons why charge sheet was not issued to him and the applicant faced disciplinary proceedings cannot be gone into by this Tribunal as the matter pertains exclusively to the domain of the State Govt. It is for the applicant to challenge the charge sheet issued to him on this ground and any other ground he deems fit before appropriate judicial forum but not before CAT. The learned counsel for the applicant fairly submits that he has not challenged the charge sheet issued to him in this application. In this view of the matter, the learned counsel for the respondents contends that the precedent of Ram Bharosey quoted by him does not help him in the present application.


11. As regards the example of Lallan Roy, it is contended on behalf of the respondents that Sri Roy is an employee of the State Govt. and his promotion from the post of Dy. Superintendent of Police to the post of Additional Superintendent of Police is a matter which pertains to the domain of the State Govt. Said argument though attractive on its face but wholly misplaced and out of context. Case of Lallan Roy can be looked into for limited purposes to appreciate fairness of actions of the respondents.

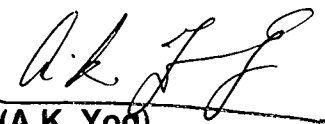
12. As regards invalidation of the constitution of the Inquiry Committee which was set up by the State Govt. to investigate irregularities in recruitment of constable, the learned counsel for the respondents submits that the charge sheet issued to the applicant does not make any mention about the report of Inquiry Committee, nor does it rely on the report of that committee. Be that as it may, the basis of foundation of the action itself being held to be arbitrary and non-est demolishes all actions referable to it.



13. On going through the rival submissions, we find that the Union of India has, in fact, promoted Sri Mukul Goyal, a member of U.P. Cadre of IPS on the higher post of Inspector General of Police in spite of the fact that a charge sheet had been issued to him on the alleged irregularities committed during recruitment of constables and the State Govt. had protested against such promotion. Further, the fact remains that Sri Goyal was the Chairman of a recruitment board whereas the applicant was a member of another recruitment board, which were responsible for recruiting constables and there were allegations of irregularities against the recommendations of the recruitment boards. In view of this, the contention of the applicant that he has been discriminated against in the matter of regular promotion to the IPS cadre has some force. We, therefore, direct the applicant to file a representation to the respondent No.1 setting forth this ground of discrimination, and any other grounds he may like to incorporate in ^{the} a said representation within a period of 4 weeks from the date of receipt of this order. The respondent No.1 may pass a reasoned order on his representation according to law within 8 weeks of the date of receipt of this representation.

14. The impugned order dated 1.7.2008 may be kept in abeyance till final disposal of his representation as directed by us. Further, the provisional promotion granted to him on the post of Superintendent of Police may not be interfered with till final disposal of his representation, as directed above. However, if no representation will be made by the applicant within time stipulated, this order will lose its efficacy. The application is disposed of with the aforesaid directions. No costs.


(Dr. A.K. Mishra)
Member (A) 26/02/10


(A.K. Yog)
Member (J)

HLS/-