

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No. 391/88

~~Transfer Application No.~~ ~~XXXXXXXXXXXXXX~~

Date of decision 17.8.1993

Shri T.F.Karmalawala Petitioner

Shri M.A.Mahalle Advocate for the Petitioner

Versus

The Collector of Central Excise, Respondent
Bombay.

Shri M.S.Karnik for Sh.P.M.Pradhan Advocate for the Respondent(s)

Coram :

The Hon'ble Shri M.Y.Priolkar, Member (A)

The Hon'ble ~~Shri~~ Ms.L.Swaminathan, Member (J)

1. Whether the Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(MS.L.SWAMINATHAN)
MEMBER (J)


(M.Y.PRIOLKAR)
MEMBER (A)

(15)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 391/88

Shri Tahir Fidahussain Karmalawala ... Applicant
V/S.

The Collector of Central Excise,
Bombay I (Cadre Controlling Officer) ... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar
Hon'ble Member (J) Ms.L. Swaminathan

Appearance

Shri M.A.Mahalle
Advocate
for the Applicant

Shri M.S.Karnik
for Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 17.8.1993

(PER: M.Y.Priolkar, Member (A)

The applicant while working as Inspector (Senior Grade) in the Collectorate of Central Excise, Bombay was considered on 18.4.1988 by a D.P.C. for promotion to the post of Superintendent Gr.'B'. The applicant's name was, however, placed in a Sealed Cover by the D.P.C. and subsequently an order promoting a junior in the grade of Superintendent came to be issued on 10.5.1988. The applicant thereupon approached this Tribunal against supersession by the OA.No. 391/88 filed on 20.5.1988. Thereafter, on 22.5.1988 a charge sheet for minor penalty was issued to him under Rule 16 of the CCS(CCA) Rules. On 24.1.1989 on a prayer by the applicant, the Tribunal directed to open the Sealed Cover. The Sealed Cover was opened and it was found that the applicant was graded 'Good'. No further direction was, however, given by the Tribunal since the Tribunal deemed it necessary to await the decision of the Supreme Court on the appeal filed by the respondents against the Full Bench decision regarding the applicability of Sealed Cover procedure in the case of Venkata Reddy & Ors. vs. Union on India & Ors. A.T.R. 1987(I) C.A.T. 547.

2. Admittedly, the Inquiry Officer by his report dated 27.9.1989 gave the finding that there was no direct involvement of the applicant in any loss of revenue but that he was merely negligent. Accepting this finding of the Inquiry Officer, the disciplinary authority by its order dated 29.12.1989 held that the applicant showed negligence of duty on 15.3.1984 and imposed the penalty of withholding of promotion. The applicant had since retired on superannuation on 28.2.1990.

3. The Supreme Court by its judgement dated 27.8.1991 in the case of Union of India & Ors. vs. K.V.Janakiraman (1993) 23 A.T.C. P. 322 has upheld the Full Bench decision in the case of K.C.Venkata Reddy. It is held that Sealed Cover procedure can be followed only after the issuance of charge-memo, that being the date from which disciplinary or criminal proceedings can be taken to have been initiated or if the employees are placed under suspension.

4. There was no charge sheet issued in the present case when the D.P.C. met in the year 1988 and decided to place the applicant's name in Sealed Cover. Disciplinary proceedings had thus not commenced when DPC met. The learned counsel for the respondents, however, argued that since the applicant had already been punished on 29.12.1989 and this penalty has become final because the applicant did not choose to appeal against the penalty order to the appellate authority, it will not be possible at this stage to promote him retrospectively on the date of D.P.C. since that would amount to nullifying the penalty order, which was not permissible under the rules.

5. It is difficult for us to accept this contention of the respondents. The law is now very clear that the Sealed Cover procedure is to apply only if the employee was placed under suspension or disciplinary or criminal proceedings had

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already commenced as on the date of the meeting of the D.P.C. It is also seen from Government of India, Dept. of Personnel & Training Memo dated 12.1.1988 that apart from the above categories, Sealed Cover procedure is also to be followed in respect of "Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by C.B.I. or any other agency, departmental or otherwise". Earlier, the Ministry of Home Affairs O.M. dated 16.2.1979 also stated, inter-alia, that even minor penalties like stoppage of increment did not constitute a bar to promotion, if recommended by D.P.C. on the basis of overall assessment. As already stated above, in the present case the applicant was categorised as 'Good' and was therefore found suitable for promotion by the D.P.C. He is, therefore, entitled to be promoted from the date of meeting of the D.P.C. when his juniors who were categorised as 'Good' were promoted and the mere fact that subsequently minor penalty proceedings were initiated against him which culminated in a minor penalty being imposed, should not come as a bar against his promotion. We have, therefore, no hesitation in holding that the applicant is entitled to promotion to the post of Superintendent Gr.'B' as recommended by the D.P.C. on the date his juniors categorised as 'Good' were promoted. We direct accordingly. The applicant will be entitled to all the consequential benefits including the arrears of wages and fixation of pay and refixation of pensionary benefits on the basis of emoluments to be drawn in the higher posts. This may be done within a period of six months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi
(MS.L.SWAMINATHAN)
MEMBER (J)

Y. B. J.
(M.Y.PRIOLKAR)
MEMBER (A)