

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 971/96

Date of Decision: 31-10-97

B.S.Lalchandani

Applicant.

Shri G.K.Masand

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.D.Vadhavkar for Shri M.I.Sethna

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. M.R.Kolhatkar, Member (A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No  
other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)

MEMBER (A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA.NO. 971/96

Pronounced this the 31<sup>st</sup> day of October 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri M.R.Kolhatkar, Member (A)

Bhagwan Sirumal Lalchandani  
Deputy General Manager,  
India Security Press, Nashik  
residing at Garden House,  
I.S.P.Estate, Nasik Road-402001.

By Advocate Shri G.K.Masand ... Applicant

v/s.

1. Union of India through the Secretary to the Government of India in the Ministry of Finance, Department of Economic Affairs, New Delhi.
2. Union Public Service Commission, Dholpur House, New Delhi.

By Advocate Shri V.D.Vadhavkar  
for Shri M.I.Sethna ... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application under Section 19 of the A.T.Act seeking an order to get the sealed cover <sup>opened</sup> and for consequential reliefs. The respondents have filed a reply opposing the application. We have heard both the sides and perused the material on record and DPC proceedings produced by the learned counsel for the respondents.

2. The applicant is working as Deputy General Manager in the Security Press, Nashik. He was due to be considered to the promotion of General Manager when the vacancy occurred on 10.1.1988 but without considering the promotion of the applicant and others, the Government of India amended the rules of recruitment and modified the eligibility criteria for promotion. As per the new amended rules, the applicant was not entitled to be considered for promotion. Therefore, the applicant had approached this Tribunal by filing OA. NO.472/88 for the relief that he is entitled to be considered for promotion on the eligibility criteria as per the old rules and not as per the newly amended rules. This Tribunal by order dated 10.10.1991 allowed the application and directed the respondents to consider the applicant's case for promotion on the basis of old rules. It appears that DPC met for considering the question of the promotion to the post of General Manager on 18.5.1993. But it appears in the meanwhile disciplinary proceedings had been initiated against the applicant on some charges and a chargesheet had been issued. In view of the pending departmental enquiry proceedings, the DPC gave its finding on the promotion of the applicant and put it in a sealed cover and promoted one Mr. Gulati as General Manager. Then the departmental enquiry was completed and the applicant was imposed a penalty of Censure by the President of India. According to the applicant, the penalty of Censure is a minor penalty and it will not come in the way of applicant for considering the promotion of the applicant. Now the respondents are

taking up steps to fill the post of General Manager by deputation. On this allegation the applicant has approached this Tribunal with a prayer to direct the respondents to open the sealed cover and give effect to the recommendations of the DPC as kept in the sealed cover. Then there is a consequential prayer that respondents should not fill up the post of General Manager by deputation till the sealed cover is opened and given effect to and the post of General Manager should be directed to be filled up only by promotion and not by deputation.

3. The respondents have denied many of the allegations in the application and have asserted that the application is not maintainable, that the applicant is not entitled to promotion on the basis of proceedings of the DPC meeting held on 18.6.1993 since the applicant has been punished in the disciplinary enquiry by imposing a penalty of Censure. It is, therefore, asserted that the recommendations of the DPC kept in the sealed cover cannot be given effect to since the disciplinary proceedings ended by imposing the penalty of Censure on the applicant.

4. The short point for consideration is whether the applicant is entitled to promotion on the basis of the recommendations of the DPC which met on 18.6.1993 and kept in the sealed cover. The other two reliefs prayed for in the application follow from the main relief.

5. At the time of arguments, the learned counsel for the applicant at one stage contended that the very constitution of the DPC was contrary to rules and the meeting was not properly held since one Member was absent etc. <sup>but it</sup> is not a point which is taken in the pleadings. No relief is asked for on this point. Therefore, we need not consider that argument.

6. Another argument before us was that the imposition of penalty of Censure was illegal and it is contrary to the principles of natural justice. Here again, we must say that this application is not filed challenging the disciplinary proceedings or challenging the imposition of penalty of Censure in the disciplinary enquiry. No relief is asked for regarding disciplinary enquiry or imposition of penalty. The penalty was imposed by the President of India as per order dated 5.4.1995. This order has not been challenged in the OA. for seeking appropriate relief. Hence, now at the time of arguments the applicant can not be allowed to challenge the legality or validity of the order dated 5.4.1995.

7. Now, therefore, we will have to proceed on the assumption that there is a valid and legal order imposing a penalty of Censure on the applicant. The question is whether this order is coming in the way

of opening the sealed cover or not. It may be that the Censure is a minor penalty and normally <sup>it</sup> which may not come in the way of granting promotion in the usual course. But we are concerned with a situation where a procedure of sealed cover is adopted.

8. In service jurisprudence a sealed cover procedure is adopted when at the time of <sup>D.P.C.</sup> disciplinary proceedings <sup>or</sup> departmental enquiry is pending. Govt. of India issued an official Memorandum dated 30.1.1982 describing the procedure as to how this should be done. According to this official Memorandum if an official is fully exonerated in disciplinary proceedings or criminal proceedings, then sealed cover will have to be open and then effect will be given to the recommendations of the DPC. The relevant provision in the O.M. for the present purpose reads as follows :-

" If any penalty is imposed on the officer as a result of the disciplinary proceedings ----- the findings in the sealed cover shall not be acted upon."

Therefore, the clear instructions issued by the Government in case of sealed cover procedure is that in case any penalty is imposed as a result of disciplinary proceedings, then the contents of the sealed cover cannot be given effect to. In the face of this legal position, it is not open to the applicant to request <sup>u/s</sup> to direct the respondents to open the sealed cover and take action on the basis of findings of the DPC.

9. In our view, the question is no longer res-integra and is covered by a direct authority of the Supreme Court in Jankiraman's case (AIR 1991 SC 2010). The Supreme Court has extensively considered the said official Memorandum regarding sealed cover procedure and has given guidelines as to how it should be followed. In Para 7 of the reported judgement at page 2016 the Supreme Court has observed that "when an employee is completely exonerated on the conclusion of the disciplinary/ court proceedings, that is, when no statutory penalty, including that of censure, is imposed, then employee must be given notional promotion etc. Again in the same page the Supreme Court has observed as follows:-

" There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure -----, he should not be deprived of any benefits including the salary of the promotional post." (Underlining is ours).

Again in page 2017 the Supreme Court has reiterated that only when an employee is completely exonerated, then he is entitled to benefit of promotion etc. The Supreme Court has considered the matter in detail and in more than one place it is observed that once if any penalty is imposed in the disciplinary proceedings then the sealed cover cannot be open<sup>ed</sup> and the contents cannot be given effect to.

*R.M.*  
.. 7/-

10. The learned counsel for the applicant invited our attention to Administrative Tribunal Full Bench Judgements 1991 - 1993, N.T.Joseph vs. Union of India & Ors. (CAT) 34, where the question was about the right of an employee <sup>for</sup> of promotion when there was a penalty of censure, but, in our view, this decision has no application to the facts of the present case, Since in that case the question of sealed cover procedure was not subject matter of dispute. Further when the law is declared by the highest court of the land, we <sup>need</sup> do not consider judgements of any other courts or Tribunal. As already stated, we are not for a moment considering the question of promotion in the general sense. We are not for a moment considering when an officer <sup>has</sup> suffered ~~from~~ a penalty of censure in departmental proceedings but what we are considering is whether in a case of sealed cover procedure an official is entitled to get the benefit of findings of DPC kept in sealed cover when he suffered punishment in departmental enquiry. In our view, the answer is in the negative in view of the law declared by the Apex Court.

11. At one stage, the learned counsel for the applicant contended that the promotion of Mr.Gulati itself was illegal. Here again we mention that in this application no relief is asked challenging Mr. Gulati's promotion and further Mr.Gulati is not a respondent in this case. Hence, we need not consider the said argument.

12. Since the main prayer in the OA. is a relief seeking opening of sealed cover and to take action as per the contents is not sustainable in law for the reasons stated above, The applicant is not entitled to any relief in this OA.

13. At the time of arguments, the learned senior counsel for the respondents Mr. M.I. Sethna made a statement at the Bar that the respondents have already initiated action for constitution of a next DPC meeting to consider promotion of candidates to the post of General Manager including the case of the applicant. He told us that the case of the applicant will also be placed before DPC for consideration along with other candidates for promotion to the post of General Manager. He even brought to our notice a Fax message received from Delhi regarding the proposed constitution of DPC meeting and asking for some material to place the same before the DPC committee. ~~It is~~ <sup>We</sup> only trust and hope that the DPC proceedings will be expedited since the applicant has been knocking the doors of Courts seeking promotion to the post of General Manager from 1988 and further his case will be considered by the DPC in accordance with the rules.

14. In the result, the application is hereby dismissed subject to the observations in Para 13 above. In the circumstances of the case, there will be no orders as to ~~the~~ costs.

MR.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

mrj.

R.G.Vaidyanatha  
(R.G.VAIDYANATHA)  
VICE CHAIRMAN