

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:178/99

DATE OF DECISION: 3rd January 2001

Shri Prabhakar Natrajan Applicant.

Shri Suresh Kumar Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri M.I. Sethna Advocate for
Respondents

CORAM

Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

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

(2) Whether it needs to be circulated to u,
other Benches of the Tribunal?

(3) Library. yes

S.L.J.
(Shri S.L. Jain)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 178.99

Wednesday the 3rd day of JANUARY 2001

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

Prabhakar Natrajan
Residing at
Camp: B -1/103, Shree complex
Andharwadi, Kaluyan (West)
Maharashtra.

...Applicant.

By Advocate Shri Suresh Kumar

V/s

1. Union of India through
Secretary, Ministry of Finance
Department of Revenue
South Block, New Delhi.

2. Chief Commissioner of
Central Excise, Central Excise
Building, Maharishi Karve Road,
Opp. Churchgate Station,
Bombay.

3. The Commissioner
Central Excise, Mumbai -II
Piramal Chambers,
9th Floor, Lal Baug,
Parel, Mumbai.

...Respondents.

By Advocate Shri M.I. Sethna.

ORDER

(Per Shri S.L. Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking a direction to the respondents to consider the applicant for promotion to the post of Superintendent, Central Excise with effect from the date when his juniors were promoted, as per guide lines dated 14.9.1992; a further direction is sought to consider his case for adhoc promotion, refix the pay of the applicant to which he is entitled with all consequential benefits such as pay fixation, seniority and interest thereon @ 18% per annum with costs.

S.L.J. ...2...

2. The applicant, a confirmed Inspector Central Excise, was served with a suspension order dated 16.4.1993 by the then Deputy Commissioner (P & V). The said suspension of the applicant was revoked vide order dated 2.2.1998. In the mean time D.P.C. held on 26.6.1997 for promotion to the post of Superintendent Group 'B' in which the procedure of the sealed cover was adopted the applicant was considered and findings were kept in sealed cover. The applicant was served with a charge sheet dated 4.5.1998.

3. The grievance of the applicant is that on consideration of the Guide lines dated 14.9.1992 (Annexure 5), between 3.2.1998 to 4.5.1998 there was nothing against him - such as suspension, charge sheet, prosecution for a criminal charge, the procedure for sealed cover is being adopted by the respondents for promotion of the applicant, the sealed cover should be opened and if the applicant is found fit for promotion, as per the recommendation of the D.P.C., he should be promoted.

4.....The learned counsel for the applicant relied on para 2 of O.M. 22011/4/91 Estt. (A) dated 14.9.92 issued by the DOP&T of the Ministry of PPG&P which is as under:

At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- i) Government servants under suspension
- ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

S.V.P.

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5. The learned counsel for the applicant relied on W.P. No. 2396/99 Union of India and another V/s K.S. Guliani and others decided by the Hon'ble High Court of Bombay on 28th July 2000 and argued that the case of the applicant is squarely covered by the same. On when suspension is revoked, there was no legal bar rather a duty on the administration to open the sealed cover and give effect to its contents.

6. The learned counsel for the respondents relied on 2000 SCC (L&S) 653 Union of India and another Vs R.S. Sharma decided on 18.4.2000 and argued that as the applicant is not promoted to the next higher post and is not exonerated completely of the charges against him, he cannot be promoted, even if he is found fit for promotion by the D.P.C., hence opening of the sealed cover will be a futile exercise in the present case.

7. In the case of R.S. Sharma referred above G.O.I Deptt. of Personnel and Trg. O.M. No. 22011/2/86 Estt (A) dated 12.1.1988 as amended by O.M. 22011/1/91 Estt(A) dated 31.7.1991 was the subject of ~~the~~ ^{id} conservation while in the present case O.M. 22011/4/91 Estt. - A dated 14.9.1992 is the subject of ~~the~~ consideration. Hence, if the said authority is to be applied to the present case, the provisions must be similar and the pleadings to this effect are available on record.

Para 7 of the O.M. 22011/4/91-Esatt (A) dated 14.9.1992 is as under:

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.

Sign :- ...4...

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 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 OM will be applicable in his case also.

8. On persual of the same, we are of the considered opinion that O.M. dated 12.1.1988 as amended vide order dated 31.7.1991 and O.M. dated 14.9.1992 embodies the similar provisions.

9. It is averred by the respondents in para 8 and 10 of the written statement as under:

Para 8

The revocation order dated 2.2.1998 clearly mentioned at para 3 that, "This order is issued without prejudice to the Disciplinary proceedings that may be initiated against the said officer " (Applicant). Thereafter the applicant was issued a charge sheet for major penalty on 4.5.1998 by the disciplinary authority.

Para 10

The sealed cover shall be opened only on the conclusion of the disciplinary case/criminal prosecution if it results in dropping of allegations against the Government servant (Para 3 of O.M. dated 14.9.1992 of DOPT). As such, Applicant's contention that "after his revocation of suspension on 2.2.98, no charge sheet was pending against him, his sealed cover ought to have been opened and he should have been promoted" is baseless and hence unacceptable as decision to initiate disciplinary proceeding was contemplated way back in 1993.

10 On persual of the provisions contained in two O.Ms dated 12.1.1988 as amended vide O.M. dated 31.7.1991 and 14.9.92 which are similar one, there exists the pleadings of the respondents in this respect also, hence conclusions reached by the Apex Court in

the case of R.S. Sharma deserves to be followed. It is suffice to state that the decision in case of Union of India and another v/s Shri K.S. Guliani and others in W.S. 2396/99 decided on 28.7.2000 did not consider para 7 of O.M.22011/4/91 Estt.A dated 14.9.1992. A point which is not alleged, not considered and not decided cannot serve as precedent.

11. The learned counsel for the applicant relied on 1999 SCC (L&S) 1036 Bank of India and another v/s Degala Suryanarayana. The Apex Court has occasion to deal with the matter by referring the said precedent in case of R.S. Sharma in para 16 of the same which is as under:

Learned counsel for the respondent made an endeavour to contend that in the light of the decision of this Court in Union of India v. K.V. Jankiraman the Sealed Cover Procedure can be resorted to only after charge-memo is received or a charge-sheet is filed and that unless such an event had happened at the relevant time the government 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 v Dr. Sudha Salhan and Bank of India a/s Degala Suryanarayana. The clauses of the second para of the Sealed Cover Procedure considered in Jankiraman were not those involved in the present case and hence that decision is of no avail to the respondent.

12. Hence in our considered opinion, as per the decision of the Apex Court in R.S. Sharma referred above, the applicant cannot seek any help from the other precedents.

Case reported in (1993) 24 ATC 770 Union of India v/s Kewal Kumar also deals with O.M. dated 12.1.1988 only, before it was amended vide O.M. dated 31.7.1991. Hence it is not relevant for the decision in the present case.

13. As the meeting of the D.P.C. was held on 26.6.1997, the OA is filed on 19.2.1999, in view of para 5 of O.M. dated 14.9.1992 two years have not lapsed before filing of the OA for consideration for adhoc promotion, hence no direction for consideration of adhoc promotion can be ordered, as the relief sought was premature one.

14. In the result OA is liable to be dismissed and is dismissed accordingly with no order as to costs.

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(Ms. Shanta Shastry)
Member(A)

P.U.M/
(S.L.Jain)
Member(J)

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