

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, BOMBAY 1

(22)

O.A.NO.566/91

N K Gupta
Chief Engineer
(Survey and Planning)
Western Railway
Churchgate, Bombay 20
(C/o. Shri G S Walia
Advocate, High Court
16 Maharashtra Bhavan
Behind Handloom House
Fort, Bombay 1)

Applicant

v/s

Union of India
through
1. Secretary
Railway Board
Rail Bhavan
New Delhi 1

2. General Manager
Western Railway
Churchgate
Bombay 20

Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Shri M Y Priolkar, Member (A)

Appearance:

Mr. C U Singh with Mr. G S Walia
Counsel for the applicant

Mr. M S Ramamurthi with Mr. A L Kasture
Counsel for the respondents

ORAL JUDGMENT:
(Per: S K Dhaon, Vice Chairman)

DATED: 3.12.1992

This application stems from proceedings initiated by the Respondents for promoting certain officers including the applicant to the Senior Administrative Grade. The principal question to be decided by us is whether the Departmental Promotion Committee (DPC) could adopt the "Sealed Cover Procedure" in the case of the applicant.

2. The material facts are these: On 18.7.89 a charge-memo was given to the applicant with a view to award him a minor penalty. On 21-9-1985 punishment was awarded to him, that being the stoppage of one increment without cumulative effect. His next increment was due on 1.2.1990.

On 9.11.89 the DPC met and considered the case of the applicant and others. On 28.11.89 a panel was prepared and in the case of the applicant the Sealed Cover Procedure was adopted. On 30.11.89 another charge-memo was given to the applicant containing serious charges to which he gave a reply. The order passed on 28.9.89 awarding the minor punishment to the applicant has been impugned by means of a separate Original Application which is pending before this Tribunal. By means of O.A. No.767/91 the applicant has challenged the validity of the departmental proceedings initiated on 30.11.89 which is pending before this Tribunal.

3. In this application earlier, an interim order was passed to the effect that one post be kept vacant. On 9.4.92 this Tribunal directed that the Sealed Cover should be opened and if the applicant had been selected he may be promoted. Feeling aggrieved the department preferred a Special Leave Petition in the Supreme Court challenging the legality of the aforesaid interim order passed by this Tribunal. On 1.9.92 the Supreme Court directed that this O.A. should be finally disposed of without delay.

4. It appears to be a common ground that normally the "Sealed Cover Procedure" cannot be adopted unless either departmental or criminal proceedings are pending against a delinquent Government servant. It is now well settled by the decision of the Supreme Court that pendency of either departmental or criminal proceedings comes into existence only when either a charge-memo is given by the competent authority to the Government servant or a charge-sheet is submitted by the prosecuting agency to a competent Criminal Court. If the normal law is applied, there can be no escape from the conclusion that in the instant case, on 9.11.89, when the DPC met for the first time, the "Sealed Cover Procedure" could not be adopted. As stated earlier, no departmental or criminal proceeding was pending against the applicant on that date. The proceeding resulting in a minor punishment being awarded to the applicant had come to an end on 20.9.89.

5. Shri M S Ramamurthi, the learned counsel appearing for the respondents, has on the basis of certain facts, urged that in the instant case for all practical purposes it should be deemed that the departmental proceedings were pending as against the applicant on the relevant date. The material facts are these. The decision to initiate disciplinary proceedings for major penalty against the applicant was taken by the competent authority on 11.6.88. The Central Vigilance

Commission by their note dated 8.12.88 which was received on 9.12.88 advised initiation of major penalty proceedings. The Commission's advise was communicated to the Railways on 20.3.89. The relevant documents were collected from Railway on 14.6.89 and the same were returned to the railways in August 89 for issue of charge-memo and the same was, therefore, issued on 30.11.89. A categorical decision to initiate disciplinary proceedings against the applicant for taking awarding major penalty has been taken by the Central Vigilance Commission prior to the meeting of the DPC and at any rate prior to the decision of 28.11.89.

6. In UNION OF INDIA V. K.V. JANKIRAMAN, AIR 1991 SC 2010, the Supreme Court had occasion to consider the question as to when the procedure of "Sealed Cover" could be resorted to. Their Lordships were considering an appeal against the decision of a Full Bench decision of this Tribunal. Their Lordships concurred with the view taken by the Full Bench 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 pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the "sealed cover" procedure". Their Lordships proceeded further: "The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested person, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time

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to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the "sealed cover procedure". The authorities thus are not without a remedy. Their Lordships emphasised later on that the promotion etc., cannot be withheld merely because some disciplinary proceedings/criminal proceeding are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee.

7. The argument of Shri Ramamurthi in substance is that in the instant case there was really no delay in the service of the charge memo upon the applicant as it was given within two days from the date of decision of the DPC. He has also emphasised that even before the Committee had met and considered the matter, a decision had been taken. He, therefore, urges that the said decision of the Supreme Court should not be either read in a pedantic manner or applied mechanically.

8. According to the respondents themselves, the decision was taken to initiate disciplinary proceedings against the applicant on 11.6.88 and yet it took them nearly 18 months to issue a charge memo, on 30.11.89. There was no proximity between the two acts. The distance between the decision and the issue of the charge-memo was too far. Therefore, intimate, or rational relationship between two was lacking. Even otherwise, the decision, if any, was not final but tentative as it was subject to the report of the Vigilance Commission. A fortiori the decision taken on 11.6.88 and its execution on 30.11.89 did not constitute the same transaction. Therefore, even constructively departmental proceedings were not pending.

9. Shri Ramamurthi relies heavily upon a decision of the Supreme Court, STATE OF MADHYA PRADESH V. BANI SINGH AND ANOTHER, (1991) 16 ATC 514. In the said case, the Screening Committee concerned did not select the Government servant concerned on the ground that there were some complaints of integrity. The Committee deferred its decision until the decision on the complaints. The Tribunal, against whose decision the matter was before the Supreme Court, had

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pointed out that on those complaints not even a preliminary enquiry had been completed and, therefore, they should not have weighed with the Screening Committee. Their Lordships while approving the approach of the Tribunal observed: "Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was "sealed cover procedure" but if the disciplinary proceedings had not reached the stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings." We are not inclined to read the aforequoted observations of the Supreme Court to mean that disciplinary proceedings would be deemed to be pending at any stage anterior to the issue of charge sheet to the delinquent Government servant. The passage, if read as a whole, does not convey the idea that proceedings would be deemed to be pending even though a charge sheet has not been issued, although a decision has been taken to issue the same. That apart, Jankiraman's case having been decided by a Bench consisting of three Hon'ble Judges will be binding upon us in contrast to the judgment of two Hon. Judges in Bani Singh's case.

10. In C.O. ARUMUGAM AND ORS. V. STATE OF TAMIL NADU AND ORS., (1991) 17 ATC 402, the Supreme Court has taken the view in line with the view taken in Jankiraman's case. It has observed that every civil servant has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded." We do not find any conflict of opinion in the cases of Bani Singh and Arumugam.

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11. Shri Ramamurthi then relied upon paragraph 14 of Jankiraman's case. The facts of the cases, which are being dealt with by their Lordships in the Supreme Court, in the said paragraph are briefly these: Disciplinary proceedings as well as criminal prosecutions were launched against appellants for lodging false Leave Travel Concession claims and for using forged documents to support them. The employees were suspended from service on 15th July, 1983. They admitted guilt and pleaded revocation of their suspension on depositing the amount of Rs.1600. They were reinstated in service in November 1983. Keeping in view the deposit of the amount voluntarily in October 1983, a lenient view was taken and the criminal prosecutions against them were dropped by the Administration by an order of January 14, 1985. However, this was done without prejudice to the departmental proceedings which were subsequently initiated and a formal charge sheet was issued to the employees on December 24, 1987. The Departmental Promotion Committee met in July 1986 to consider the cases of the employees for promotion but resorted to "sealed cover procedure" in view of the pendency of the disciplinary proceedings against them. Their Lordships held that the Tribunal was not justified in mechanically applying the decision of the Full Bench and directing promotion of employees on the basis of the recommendations, if any, of the DPC of July 1986. Their Lordships emphasised that when the DPC met in July 1986 the Committee had before it the record of the refund of the amount by the respondent-employees and the consequent withdrawal of the prosecutions without prejudice to the authorities' right to institute departmental proceedings. Then come the important words used by their Lordships: "In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in resorting to the "sealed cover procedure", notwithstanding the fact that the charge sheet in the departmental proceedings was issued in August/December, 1987." We have already referred to the law as laid down by the Supreme Court in Jankiraman's case in paragraph 6, portions of which we have extracted above. Their Lordships while dealing with the cases in para 14 did not intend to dilute the vigour of the law laid down by them earlier. In fact, they have taken pains to point out that, keeping in view the peculiar facts of the cases before them,

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they were taking an exceptional view. We are of the opinion that their Lordships have not declared any binding law in paragraphs 14 to 17.

12. In STATE OF MADHYA PRADESH AND ANOTHER V. SYED NASEEM ZAHIR AND OTHERS, 1992(2) SCALE 834, the facts are these: The Departmental Promotion Committee (DPC) met on 28.10.87 and considered the name of Syed Naseem Zahir (Syed) for promotion. Since disciplinary proceedings were contemplated against him, the recommendation of DPC qua him was kept in "Sealed Cover". On 15.4.88 he was served with charge sheet. He filed the writ petition before the Madhya Pradesh High Court challenging the adoption of "Sealed Cover Procedure" by the DPC and claimed that he would be entitled for promotion specially when a person junior to him had been promoted. The writ petition was transferred to the Madhya Pradesh Administrative Tribunal (Tribunal) which allowed the same by its judgment dated 7.2.92 and directed the State of Madhya Pradesh to promote Syed to the post of Chief Engineer as per the position which existed in February, 1986 or in any case to act in accordance with the "sealed Cover" recommendation of the DPC which met in the year 1987. The State of Madhya Pradesh went up against the judgment of the Tribunal.

13. The Supreme Court described the reasoning and the conclusion of the Tribunal that since on the date when the DPC met the charge sheet was not served on Syed, resort could not be had to the "Sealed Cover" procedure as "unexceptionable". It observes: "The only question for our consideration is whether in the facts and circumstances of this case specially in view of the events subsequent to the meeting of the DPC, it would be in the interest of justice to promote respondent Syed to the post of Chief Engineer." It appears that various complaints were received against Syed. The State Government received a preliminary report from the Chief Engineer in charge on 30.1.87. The report disclosed that respondent Syed committed irregularities which resulted in a loss to the State Government to the tune of rupees eighty lakhs. After examining the report the State Government ordered on the file on 30.9.87 that departmental proceedings be initiated against him. It is observed: "It

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is not disputed that the departmental inquiry has been completed and the charges against Syed have been proved. According to the State Government keeping in view the gravity of the charge and the heavy financial loss to the State Government it has been tentatively decided to impose major penalty upon him and for the purpose the proceedings have been referred to the Madhya Pradesh Public Service Commission." Their lordships observed: "It is no doubt correct that in view of JANKIRAMAN'S CASE the DPC was not justified in keeping the recommendation pertaining to Syed in a "Sealed Cover", but it is difficult to ignore glaring facts in a given case and act mechanically." Their lordships referred to paragraphs 14 to 17 in the judgment of JANKIRAMAN'S case. Finally their lordships observed: "Keeping in view the facts of this case we are of the view that the "sealed cover" containing recommendations of the DPC in respect of respondent Syed be not opened till the departmental proceedings against him are concluded. . . ." (underlining by us)

14. As stated above, the Tribunal had directed that Syed should be promoted. Their lordships emphasise that having regard to the departmental enquiry that has been concluded and the charges against Syed have been proved it would be in the interest of justice that the "sealed cover" containing the recommendation of the DPC in respect of Syed be not opened. Thus it would be seen that their lordships have departed from the normal rule in yet another exceptional case. This case, therefore, does not advance the case of the respondents in the instant application.

15. The contents in paragraph 7 of the OM dated 12.1.1988 inter alia provide that if before the implementation of the decision to promote a Government servant, some disciplinary proceedings are initiated against him, the promotion shall be kept in abeyance and it shall be deemed that the "sealed cover procedure" had been adopted. Shri Ramamurthi urges that, since departmental proceedings are still pending, we will be issuing a futile direction to the respondents to open the "sealed cover" and declare the result of the applicant.

16. In main, two reliefs have been claimed by the applicant in this application. The first is that we may hold

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that the respondents were not justified in adopting "sealed cover procedure". The second is that we may hold that the promotion to the Senior Administrative Grade is due to the applicant and direct that he should be promoted on the basis of the result as contained in the "sealed cover" with consequential benefits.

17. Shri C U Singh and Shri G S Walia, Counsel for the applicant have stated at the Bar that the applicant at this stage, does not press the second relief. They confined this application to the first relief.

18. In the reply filed on behalf of the respondents, there is no assertion whether the applicant was found either fit or unfit by the DPC. He is certainly entitled to be apprised of the decision of the Committee which evidently is under a "sealed cover". Therefore, this Tribunal will not be issuing a futile writ if it directs the respondents to open the "sealed cover" and declare the results. We, therefore, repel the contention of Shri Ramamurthi.

19. This application succeeds in part. The decision of the Departmental Promotion Committee to put the matter of the applicant under a "sealed cover" is quashed. The respondents are directed to declare the result of the applicant as contained in the "sealed cover". Thereafter, it would be open to the respondents to act in accordance with the law. We also make it clear that if the applicant feels dissatisfied either with the declaration of the result or with the action taken by the respondents consequent to the declaration of the result it would be open to him to seek appropriate remedy before an appropriate forum and raise all such pleas as are available to him under the law, including the legality or the applicability of paragraph 7 of the office memorandum aforementioned.

There shall be, however, no order as to costs.


(M Y Priolkar)
Member(A)


(S K Dhaon)
Vice Chairman