

(A2)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 480/91
T.A. No.

198

DATE OF DECISION 10-9-91

Shri S.F. Desai

Petitioner

Shri G.K. Masand

Advocate for the Petitioner(s)

Versus

Union of India
Secretary, Ministry of Finance

Respondent

Shri P.M. Pradhan

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. T.C. Reddy, Member(J)

1. Whether 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? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000

(M.Y. Priolkar)
Member(A)

(63)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 480/91

Shri Saleem F. Desai,
Bombay ...

Applicant

vs

Union of India, through
Secretary, Ministry of Finance,
New Delhi. and another ...

Respondent

Coram: Hon'ble Mr. M.Y. Priolkar, Member(A)

Hon'ble Mr. T.C. Reddy, Member(J)

Appearances:

Shri G.K. Masand for
Shri G.R. Menghani for the
applicant

Mr. P.M. Pradhan
for the respondent.

Dated 10-9-91

Tribunal's Order
(Per: Mr. M.Y. Priolkar, Member(A))

Applicant by Mr. Masand. Respondents by Mr.
P.M. Pradhan.

2. The short point involved in this application is whether the promotion to an employee can be denied on the ground that disciplinary proceedings are contemplated and charges are under investigation. In the present application, the applicant has impugned the decision of the respondents to resort to Sealed Cover Procedure denying promotion to the applicant to the post of Superintendent of Customs (Preventive). The Departmental Promotion Committee had met in March 1991. when the applicant's case was put up for consideration of DPC. This DPC is stated to have been convened in pursuance of an order of the Supreme Court. The applicant's name was not in the list of promotees and the recommendation of the DPC in respect of the applicant was kept in the Sealed Cover on the ground that the investigations were underway, in regard to his alleged misconduct.

3. In Full Bench Judgement of this Tribunal in the case of Venkata Reddy v Union of India 1987 (2) SLJ (CAT)115, can be resorted to only after a charge memo is served on the concerned official or the charge sheet is filed it was before the criminal court and not before. This view held that has been confirmed by the Supreme Court Judgement in the Sealed case of Union of India v K.V. Menikraman - 1991, Judgements Cover Procedure Today (3) SC 527 - dated 27th Aug. 91 where it has been observed as follows:-

"The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt sealed cover procedure. We are in agreement with the Tribunal on this point. 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."

4. It is not disputed that no charge-sheet had been served on the applicant, prior to the meeting of the concerned DPC. Although on 26-8-91 when this application came up for hearing, Mr. P.M. Pradhan who appeared on behalf of the respondents, prayed for and obtained an adjournment so as to produce the relevant papers in this connection, Mr. P.M. Pradhan again today sought further adjournment. In view of the settled legal position as stated above, we are, however, rejecting the prayer of further adjournment and proceed to dispose of this case finally today itself.

5. Since it is not disputed that no chargesheet had been served prior to the DPC meeting although preliminary investigations were pending, we are of the view that this case is fully covered by our Full Bench Judgement as well as the Supreme Court decision cited above. Accordingly, this application is allowed and we direct the respondents to open the sealed cover within one month from the date of receipt of this order and implement the recommendations of the DPC contained therein within a further period of one month thereafter.

W.M.C. - 10

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With these directions this application is disposed of finally with no order as to costs.

T.C. Reddy
(T.C. Reddy)
Member(J)

M.Y. Priolkar
(M.Y. Priolkar)
Member(A)