

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 22/92

Date of Decision: 23.2.1999.

Major K.M. Somasundaram _____ Applicant.

Shri G.K. Masand _____ Advocate for
Applicant.

Versus

Union of India and others _____ Respondent(s)

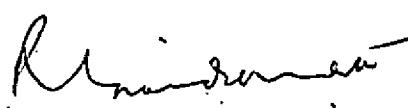
Shri S.S. Karkera for
Shri P.M. Pradhan _____ Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. D.S. Baweja, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(R.G. Vaidyanatha)
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 22/92.

Tuesday the 23rd day of February 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member(A)

Major K.M. Somasundaram
Residing at Plot No.6,
Worli Naka Post Office
Building, Bombay.

... Applicant.

By Advocate Shri G.K. Masand.

V/s.

Union of India through
Director General Posts
Dak Bhavan, Sansad Marg.,
New Delhi.

... Respondent.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant challenging the charge sheet issued by the respondents and also seeking retrospective promotion. The respondents have filed reply opposing the application. We have heard the learned counsel for both sides.

2. The applicant who was working as Assistant Post Master General on the date of application has approached this Tribunal for quashing the charge sheet dated 7.6.1990. His grievance is that he was due for promotion to the post of Director (Junior Administrative Grade) in the year 1989 and many of his juniors came to be promoted under the two orders dated 21.3.1990 and 17.4.1990. The applicant has been superceded by his juniors.

Therefore the applicant wants promotion to the post of Junior Administrative Grade retrospectively from the date of his juniors being promoted. The applicant made a representation and the department had replied to him stating that he will not be promoted due to pendency of vigilence case pending against him. He has made some allegations regarding the charge sheet which are not necessary for our present purpose. It is stated that the applicant had good record of service through out and no disciplinary enquiry was pending against the applicant in 1989. The charge sheet was issued only in June 1990. It is therefore stated that the applicant's case ^{could} ~~could not~~ have been kept in sealed cover, in view of the law declared by the Supreme Court in Janaki Raman's case. He has therefore approached this Tribunal for the reliefs mentioned above.

3. In the reply the respondents have justified the action taken by them stating that since vigilence case was pending against him, his case for promotion was kept in sealed cover by the DPC. It is stated that the respondents have followed the 1988 ^{circular} and the office memorandum shows that when vigilence case is pending, findings of the DPC should be kept in sealed cover. It is therefore stated that the applicant is not entitled to any of the reliefs prayed for.

4. As far as the applicant's prayer for quashing the charge sheet is concerned, in our view, the prayer does not survive since the charge sheet has ^{ended in} ~~ended in~~ awarding minor penalty to the applicant by order dated 10.1.1992.

5. An interim relief has been passed by the Tribunal dated 2.4.1992 directing the administration to open the sealed cover and give effect to it in case no charge sheet has been issued against the applicant on the date DPC met. Now we are informed that in pursuance of the interim order the respondents have opened the sealed cover and they have promoted the applicant to Junior Administrative Grade subject to the outcome of the O.A.

6. Now the question for consideration is whether the respondents have rightly adopted the sealed cover procedure in the facts and circumstances of the case.

The applicant became due for promotion in 1989. The D.P.C. held its meeting on 21 and 26 December 1989. The applicant's case was considered for promotion but the findings of the DPC was kept in sealed cover ~~presumably~~ on the basis of the 1988 Office memorandum. The charge-sheet came to be issued on 7.6.1990. In the circumstances the question is whether adoption of sealed cover procedure by the D.P.C. was ~~valid or not~~.

7. The learned counsel for the respondents contended that in view of 1988 Office memorandum, when vigilance case was pending and administration decides to initiate disciplinary enquiry against the applicant, it was justified for taking ~~recourse~~ ^{recourse} to sealed cover procedure. It may be that 1988 Office memorandum mentions adoption of sealed cover procedure even when vigilence case is pending but the Supreme Court in Jankiraman's case clearly states that sealed cover procedure can be adopted only when charge sheet has been issued against the

official on the date of DPC. In fact there was an earlier decision of the Full Bench of this Tribunal taking similar view in its judgement dated 2.3.1987. Therefore even prior to the issue of 1988 office memorandum there was a judicial decision of the Full Bench of this Tribunal on this point. The judgement of Full Bench of this Tribunal has been confirmed by the Supreme Court except some minor changes but on the basic principle that the promotion cannot be withheld and sealed cover procedure cannot be adopted when no charge sheet was pending on the date of DPC has been upheld by the Supreme Court. In view of the law declared by the Apex Court the department cannot have recourse to the adoption of sealed cover procedure since admittedly the DPC was held in last week of December 1989 and the charge sheet was issued six months later i.e. on 7.6.1990. The action of the administration in adopting the sealed cover procedure is liable to be quashed in view of the law declared by the Apex Court.

8. When once we hold that the adoption of sealed cover is bad in law, naturally the direction is to open the sealed cover and give effect of the findings of the DPC. But even that situation does not arise since by virtue of interim order dated 2.4.1992 the sealed cover has already been opened and the applicant has already been promoted. Therefore what we have to say is that the promotion in pursuance of the interim order should be held as regular promotion and it should be given effect from the date his immediate juniors came to be promoted by order dated 21.3.1990.

9. In the result the application is allowed as follows:

The respondents are directed to issue a fresh promotion order giving retrospective promotion to the applicant in Junior Administrative grade from the date his immediate juniors came to be promoted by order dated 21.3.1990. The applicant is entitled to seniority from that date. As far as monetary benefits are concerned, the competent authority may pass an order as per rules giving whatever monetary benefits the applicant is entitled to from the date of retrospective promotion. In case the applicant is not satisfied with the order passed by the competent authority he may challenge the same according to law. The respondents are directed to comply with the order within three months from the date of receipt of copy of this order. In the circumstances of the case there will be no order as to costs.

D.S. Bawej
(D.S. Bawej)
Member (A)

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

NS