

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 322/93

Date of Decision: 23.2.1999.

Shri Gul Kishinchand Bhatia Applicant.

Shri G.K. Masand. Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri Vadhwarkar for Shri M.I. Sethna 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? No

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

R.G. Vaidyanatha

(R.G. Vaidyanatha)

Vice Chairman

NS

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

Original Application No. 322/93

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)

Gul Kishinchand Bhatia
residing at Block No.
A-176, Room No. 352,
Near Guru Nanak
High School,
Kurla Camp Road,
Ulhasnagar.

... Applicant.

By Advocate Shri G.K. Masand.

V/s.

Union of India through
the Secretary in the
Ministry of Finance
Department of Revenue
North Block, New Delhi.

Additional Collector of
Customs, Personnel and
Vigilance Department
New Custom House, Ballard
Estate, Bombay.

Asstt. Collector of
Customs, Personnel
and Estt. Department
New Custom House,
Ballard Estate, Bombay.

... Respondents.

By Advocate Shri Vadhavkar for Shri M.I. Sethna.

O R D E R (ORAL)

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

This is an application filed under Section 19
of the Administrative Tribunals Act 1985. The
respondents have filed reply. We have heard the
learned counsel for both sides.

2. The applicant has been working as adhoc
Preventive Officer on promotion from U.D.C. with
effect from 6.8.1985. He was due for consideration
for promotion on regular basis in the same post
sometime in 1991. It is brought on record that the

case of confirmation and regularisation of applicant and other officials were taken up in DPC held on 17.5.1991 which promoted many officers and findings regarding the applicant was kept in sealed cover. It ^{was} has also come on record that the Government has issued order dated 4.6.1991 promoting as many as 192 officers as Preventive Officers on regular basis. According to the applicant his name should have come below serial No. 58 R.D. Mulchandani and above serial No. 59 H.G. Khilnani. Since the applicant was not promoted and number of juniors came to be promoted, He made some representations and ultimately got the reply dated 21.9.1992 stating that his case for regular promotion was scrutinised by the competent authority and he has rejected the same. Therefore the applicant has approached this Tribunal seeking a direction to the respondents to promote him on regular basis as Preventive Officer from the date his juniors came to be promoted namely with effect from 17.5.1991 and for other consequential reliefs.

3. The respondents in their reply have stated that the applicant was involved in certain irregularities and as a consequence there was a vigilance enquiry against the applicant and a decision was taken by the Competent authority to institute disciplinary enquiry against the applicant on 17.10.1990. Though the DPC met on 17.5.1991 and considered the case of the applicant for regular promotion, the findings were kept in sealed cover in view of the pendency of vigilance case pending against the applicant. Subsequently

a charge sheet was issued against the applicant. Therefore the respondents states that action taken by them is fully justified and is covered by the circular regarding adoption of sealed cover procedure when disciplinary case is pending against the officials.

4. We have perused the entire materials on record and heard the counsel for both sides.

The short point for consideration is whether the action of the respondents in keeping the findings of DPC pertaining to the applicant in sealed cover is justified or not?

5. No doubt Office memorandum of 1988 provides that in case whether investigations are pending or vigilance enquiry is pending against an officer he should not be promoted but the findings should be kept in sealed cover. When the matter came for judicial review, ^a Full Bench of the Tribunal took a view that if no charge sheet is filed as on the date of DPC the findings cannot be kept in sealed cover. The matter was taken to Supreme Court ~~at~~ the instance of Union of India. In AIR 1991 SC 2010 (Union of India V/s K.V.Jankiraman), The Supreme Court has held that in case investigation is pending finding of the DPC cannot be kept in sealed cover. It is also pointed out that where a charge sheet has been issued prior to the DPC or charge sheet is pending as on the date of DPC the findings of the DPC can be kept in sealed cover. In the present case the charge was issued against the applicant in September 1992. The DPC was held on 17.5.1991. Therefore admittedly there

was no charge sheet pending against the applicant either on 17.5.1991 or even few days there after. The charge sheet was issued one year and four months after the DPC. The learned counsel for the respondents states that the delay in issue of charge sheet is due to administrative reasons. The Supreme Court has explained that pending investigation or some vigilance enquiry is no ground to postpone the consideration for promotion. The Supreme Court has also observed that in serious cases or deserving cases ^{under} the official can be kept ~~in~~ suspension. In view of the law declared by the Apex Court we find that when the charge sheet was issued one year and four months after the DPC met, ^{findings in} The action of the respondents in keeping sealed cover is not sustainable and the said decision is liable to be quashed.

6. As already stated that the applicant is on adhoc promotion from 6.5.1985. The respondents are directed to open the sealed cover and then give effect to the findings of the DPC. In case the DPC has found the applicant ~~as~~ suitable for promotion then the respondents should give effect to that finding and give promotion to the applicant retrospectively with effect from 17.5.1991 from the date his juniors came to be promoted as per the order dated 4.6.1991. The question whether the applicant is entitled to consequential monetary benefits is left open to be decided by the competent authority as per rules. If the applicant is not satisfied with the order that may be passed by the competent authority he may challenge the same according to law.

7. In the result the O.A. is allowed with a direction to the respondents to open the sealed cover and consider the case of the applicant for regular promotion with effect from 17.5.1991 and issue proper orders subject to the observations made in para 6 above. 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