

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.N. 1366/95

Date of Decision 17/4/96

Hemant Kumar Tantia Petitioner

Mr. G. K. Masand Advocate for the Petitioner.

Versus

U.O.I. & anr. Respondent

Mr. Sureshkumar Advocate for the Respondents.

Coram:

The Hon'ble Mr. B.S. Hegde, Member(J)

The Hon'ble Mr. M.R. Kolhatkar, Member(A)

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

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

O.A. 1366/ 95

Prayag this the 17th day of April 1996

CORAM: HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Hemant Kumar Tantia,
5, Shiv Sagar Society,
Pereirawadi, Sakinaka,
Mumbai 400 072.

(By advocate Shri G.K.Masand) .. Applicant

-versus-

1. Union of India
through
The Secretary,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. Collector of Customs,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

(By counsel Shri Sureshkumar) .. Respondents

O R D E R
(Per M.R.Kolhatkar, Member(A))

In this case the short question for decision is whether sealed cover procedure had been correctly followed in the case of the applicant. The applicant is working as an Examiner under Respondent No.2. He was due for promotion as Appraiser. The meeting of the DPC took place on 30-10-1995. The promotion orders were issued on 30-10-1995 at Ex.'A' The case of the applicant is that his junior Shri Anand Kumar has been promoted but the applicant has been left out. According to the applicant the said action is due to certain vigilance enquiries being conducted by the respondents against the applicant of which the applicant has no knowledge, till date no chargesheet has been served upon the applicant nor has the applicant been placed under

suspension. The applicant's record is also without any blemish. No adverse remarks have been communicated to him concerning his working as Examiner. The applicant has, therefore, prayed for a declaration that the action of the respondents in superseding the applicant by his junior in the matter of promotion to the post of Customs Appraiser is illegal, that the applicant is entitled to be promoted to the post of Customs Appraiser and to direct the respondents to open the sealed cover and ~~to promote~~ ~~xxxxxx~~ promote the applicant to the post of Appraiser.

2. Respondents have opposed the O.A. ~~at the~~ admission stage. It is conceded that DPC took place on 30-10-1995 and the sealed cover procedure was adopted in relation to the applicant. This is stated to be due to the fact that the applicant along with a Group 'B' officer is involved in granting and permitting duty free import under the D.E.E.C Scheme, to the importer who did not qualify for such duty free imports, and since further action against Group 'B' officer can be taken only after the first stage advice is received from the Central Vigilance Commission, formal chargesheet has not been issued but the material date being prior to the date of meeting of the DPC viz. 13-4-94 which is the date of alleged offence and 18-7-94 when a case is ~~stated~~ to be registered against the applicant, the action of the respondents in adopting sealed cover procedure is strictly in accordance with Govt. orders on the subject. Respondents have further enclosed a copy of the letter dt. 14-7-1994 from Collector of Customs, Nhava Sheva addressed to Collector of Customs, New Customs House, Bombay under whom the applicant works. In this letter the Collector of Customs Nhava Sheva has requested Collector of Customs, New Customs House ~~A~~ to consider initiating departmental proceedings against

the two officers. On 20-10-1994 the Collector of Customs, New Customs House, Bombay addressed a letter to the Commissioner (Vigilance) in the CBEC enclosing a copy of A investigation report and requesting to obtain first stage advice from C.V.C. and also the consent.

3. The applicant has relied on the case of Delhi Development Authority vs. H.C. Khurana, AIR 1993 SC 1488 decided by the Supreme Court on 7-4-93. In this case the question of when the chargesheet can be said to have been issued arose for decision. The Hon'ble Supreme Court observed in para 9 as below :

"9. The question now, is: What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the chargesheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the Government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the Government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the chargesheet on the Government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the Government servant, after it has been framed and despatched, A does not have the effect of delaying

initiation of the disciplinary proceedings inasmuch as information to the Government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings."

The learned counsel would urge that since in this case what has come on record is that there was some proposal to initiate major penalty proceedings but the matter was pending and the chargesheet was not issued and in view of the above Supreme Court decision, the sealed cover procedure ~~should~~ not have been followed. Counsel for the respondents, however, contends that applicant and is under the cloud, that the delay in issue of chargesheet is merely due to the fact that this is a joint enquiry in which one of the co-delinquents being a Group 'B' officer the case requires first stage advice from the C.V.C. The learned counsel for the respondents would rely on Union of India vs. K.V.Jankiraman, AIR 1991 SC 2010. However, it does not appear to help him because para 6 of the judgment clearly states that pendency of preliminary investigation prior to the stage of issue of chargesheet will not be sufficient to enable the authorities to adopt the sealed cover procedure. Although the case was not cited before us, in our view the case of Jankiraman has been further clarified in the further Supreme Court judgment viz. Union of India vs. Kewal Kumar, AIR 1993 SC 1585. In that case the Hon'ble Supreme Court has held that where a decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the basis of FIR registered by the Central Bureau of Investigation on the Govt. servant prior to the meeting of the DPC, the action of the Govt. in following the sealed cover procedure would be proper. In that case FIR was registered on 30-9-1988 by the C.B.I. the decision

to initiate disciplinary proceedings was taken based on the FIR on 31-5-1989. ~~the~~ DPC met on 23-11-89 and the chargesheet was issued on 1-8-90. In those circumstances even though the chargesheet was issued subsequent to the meeting of the DPC, the Hon'ble Supreme Court held that since the decision to initiate disciplinary proceedings was taken prior to the DPC meeting, ~~resort to~~ ~~the~~ sealed cover procedure was in order. In this particular case apart from correspondence which has passed between ~~Collector of Customs Nhaya Sheva~~ ~~the~~ ~~xxxxxxxxxx~~ the Collector of Customs New Customs House ~~and CBEC~~ respondents have not been able to show us that any decision to initiate disciplinary proceedings against the applicant was taken prior to date of meeting of DPC viz. 30-10-95. In all these decisions O.M.No. 22011/2/86-Estt.(A) dt. 12-1-1988 of the Department of Personnel has been interpreted. This O.M. refers to four types of cases which are reproduced in para 4 of the Khurana's case. For ready reference the relevant circular is reproduced below :

"Cases of Government servants to whom Sealed Cover procedure will be applicable.

2. 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 disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution

has been issued or a decision has been taken to accord sanction for prosecution.

iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

Kewal Kumar's case was decided by the Supreme Court as it falls within the category of 2(iv) as well as 2(ii). That was a case in which not only a decision was taken but also an investigation by CBI [xxxxxxxxxxxx] was in progress. In our view [] case is not covered by para 2(iv) referred above because passing of correspondence between different agencies is not a substitute for an investigation by an agency like CBI or any other departmental agency.

4. It may further be observed that O.M. dt. 12-1-1988 has been superseded by O.M No. 22022/4/91-Est.(D) dt. 14-9-1992 which is to be seen at pages 214 to 217 of Swamy's Manual on Disciplinary Proceedings for Central Government servants, 5th edition, 1993. From this O.M. it is seen that item 2(iv) has been altogether deleted which means ^{that} the Tribunal is not required to go into the question of whether the preliminary enquiries being conducted by the department were in the nature of investigation by departmental ^{or similar} agencies because that particular item has been deleted. The reference to a Govt. servant being under cloud which appears in para 2(i) of the circular dt. 14-9-92 on which counsel for the respondents relies heavily is also ^{not of} any avail because it is only those Govt. employees who are covered by ~~is~~ item 2(i), 2(ii) and 2(iii) who are by definition Govt. servants under the cloud and it is quite clear that the applicant cannot be stated to be a Govt. servant under cloud in terms of this circular.

5. We are, therefore, of the view that the sealed cover procedure was wrongly adopted in case of the applicant and we therefore admit the O.A. and dispose of the same at the admission stage by passing the following order :

O R D E R

O.A. is allowed. Respondents are directed to open the sealed cover in respect of the applicant so far as the DPC dt. 30-10-1995 is concerned and if the sealed cover contains the recommendation for promotion of the applicant, the same should be implemented and the applicant should be given all the consequential benefits including deemed date of promotion but no arrears of pay. This should be done within a period of three months from the date of communication of this order. There will be no order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)

Member (A)

B.S.Hegde
(B.S.HEGDE)
Member (J)

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