

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 345/95.

Dated the 8th day of March, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Bipin Chandra P. Gor,
Inspector of Central Excise,
Bombay-II Collectorate,
Piramal Chambers,
Lalbaug, Parel,
Bombay - 400 012.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Finance,
Government of India,
Department of Revenue,
New Delhi - 110 001.

2. The Collector of Central
Excise,
Bombay-I Collectorate,
Central Excise Building,
Maharshi Karve Road,
Churchgate,
Bombay - 400 020.

... Respondents.

3. Collector of Central Excise,
Bombay-II Collectorate,
Piramal Chambers,
Lalbaug, Parel,
Bombay - 400 012.

(By Advocate Shri V.D. Vadhavkar
for Shri M.I. Sethna).

O R D E R

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19
of the Administrative Tribunals Act, 1985. The respondents
have filed reply opposing the application. We have heard
the Learned Counsels appearing on both sides.



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2. The applicant is working as an Inspector of Central Excise at Bombay. He is due for promotion as Superintendent of Central Excise. By order dated 04.11.1993 three Inspectors were promoted as Superintendent of Central Excise, including the immediate junior of applicant, Smt. Phal Asha Prabhakar. The applicant was not promoted and his promotion has been withheld presumably because of pending disciplinary proceedings against him. Subsequently, the applicant has been exonerated in the disciplinary enquiry case. The order of the Disciplinary Authority is dated 28.10.1994 under which the applicant came to be exonerated. Then the applicant made representations to the competent authority to promote him in view of his exoneration. Since he had not been promoted, the applicant has approached this Tribunal seeking a direction to the respondents to promote him retrospectively with effect from 04.11.1993 when his junior came to be promoted and for other consequential reliefs.

3. The respondents in the reply have admitted most of the facts. As far as the applicant not being promoted inspite of his exoneration in the disciplinary enquiry, it is stated that subsequently a fresh F.I.R. has been registered against the applicant on 07.02.1994. The Disciplinary Authority took a decision on 24.02.1995 to initiate disciplinary action against the applicant and, therefore, the applicant could not be promoted.

4. The short point for consideration is, whether the applicant is entitled to be promoted w.e.f. 04.11.1993 as claimed by him or not ?

5. The fact that the disciplinary proceedings were pending on 04.11.1993 and, therefore, the applicant could not have been promoted, does not admit of any doubt. But the disciplinary proceedings ended in favour of the applicant and he came to be exonerated admittedly by the order of the Disciplinary Authority dated 28.10.1994. Though the pleadings are not clear, either it is a case of the D.P.C. keeping its recommendations, so far as the applicant is concerned, in a sealed cover or a case of adopting 'deemed sealed cover procedure' in view of pendency of the disciplinary enquiry against the applicant. Therefore, let us proceed on the basis that on 04.11.1993 the applicant could not be promoted either because sealed cover procedure was followed or deemed to have been followed. But admittedly, the disciplinary proceedings ended in exoneration of the applicant as per the order of the Disciplinary Authority dated 28.10.1994. When once the disciplinary proceedings end in exoneration of the applicant, then the sealed cover will have to be opened and the competent authority should give effect to the recommendations of the D.P.C. If on opening the sealed cover it is found that the applicant is suitable and he has been recommended for promotion, then the competent authority should issue order of promotion to the applicant. If the D.P.C. has not found the applicant fit for promotion, then nothing further need to be done.

The question is no longer res-integra and is covered by number of decisions and suffice it to refer to K.V. Jankiraman's case [AIR 1991 SC 2010] where the Supreme Court has held that when

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sealed cover procedure is followed and if the proceedings end in favour of the delinquent official in exoneration, then sealed cover should be opened and given effect to.

6. The Learned Counsel for the respondents, without disputing the position of law explained above, contended that notwithstanding the exoneration of the applicant in the disciplinary case, the C.B.I. has registered a fresh F.I.R. against the applicant on 07.02.1994 and on that basis a decision has now been taken by the competent authority to initiate disciplinary action as per order dated 24.02.1995 but charge-sheet has not yet been issued, since the matter is referred to the Chief Vigilance Officer for opinion.

The Learned Counsel for the respondents invited our attention to the Sealed Cover Procedure Circular dated 14.09.1992 and in particular, para 7, where it provides that even after the D.P.C. has recommended for promotion and before issuing the actual order of promotion, if any enquiry is pending, then it must be treated as deemed sealed cover procedure and he shall not be promoted, unless exonerated in the enquiry.

It was, therefore, argued that the applicant came to be exonerated in the disciplinary enquiry case on 28.10.1994 and since by that time a fresh F.I.R. has been registered and subsequently a decision has been

taken to initiate disciplinary enquiry on 06.02.1995, the applicant is not entitled to promotion. In our view, this contention of the respondents has no merit. Such an argument was canvassed before the Supreme Court and it was rejected in the case of Union Of India V/s. Dr. Sudha Salhan [1998 SCC (L&S) 884]. It was a case where the official was considered for promotion on 08.03.1989 but the recommendation was kept in a sealed cover. The official was subsequently kept under suspension and a charge-sheet was issued. The Supreme Court pointed out that subsequent issuance of charge-sheet after the D.P.C. meeting has no relevance as far as adopting sealed cover procedure is concerned.

In our view, para 7 of the circular regarding sealed cover procedure applies where a panel for promotion is prepared and the concerned officer may not have immediate right for promotion due to the number of vacancies available and he will get promotion as per his position in the panel when a future vacancy occurs. In such a case, if after preparation of panel by D.P.C. and before actual promotion order is issued, departmental charge-sheet or criminal charge-sheet is instituted against the officer, then deemed sealed cover procedure can be followed. When a junior has been promoted, the official's right to get immediate promotion comes into play and at that time sealed cover procedure cannot be adopted.

Similarly, in this case, the applicant's right to get promotion was on 04.11.1993 when his immediate junior came to be promoted. Therefore, the applicant's right to get promotion came to be crystallized on 04.11.1993 when his immediate junior got promotion. However, at that time, promotion could not be given and

sealed cover procedure adopted rightly due to pendency of disciplinary enquiry. The disciplinary enquiry ended in exoneration on 28.10.1994. Therefore, immediately applicant's case for promotion after opening sealed cover should have been taken. The registration of F.I.R. on 08.07.1994 or subsequent decision to initiate disciplinary enquiry said to have been taken in February, 1995, are no grounds to with-hold the promotion of the applicant.

In the facts and circumstances of the case, we hold that the respondents are not right in with-holding the promotion of the applicant. The applicant is entitled to be considered for promotion on 04.11.1993 after opening the sealed cover.

6. In the result, the O.A. is allowed as follows :

The respondents are directed to open the sealed cover and give effect to the recommendations of the D.P.C. and if the applicant has been found suitable and recommended for promotion, then the applicant should be given promotion retrospectively with effect from 04.11.1993, when his immediate junior came to be promoted. In such a case, the applicant is entitled to get seniority in the grade of Superintendent of Central Excise from 04.11.1993. The applicant is also entitled to fixation of notional pay in the promotional grade on 04.11.1993 and on that basis his present pay should be worked out. The question whether the applicant is also entitled to arrears of pay

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or monetary benefits from 04.11.1993 till today or till the date of issue of order of promotion or not, should be considered by the competent authority and pass a speaking order in that behalf. If the applicant is aggrieved by any order passed by the competent authority on this point, he may challenge the same according to law. MP-22/98 does not survive.

No order as to costs.

D. S. Baweja
(D. S. BAWEJA)

MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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