

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1052/95

Transfer Application No.

Date of Decision 31.10.1995

Aftab Ahmed Khan

Petitioner/s

Mr. M.S. Ramamurthi with

Mr. G.S. Bhargava Ram

Advocate for  
the Petitioners

Versus

State of Maharashtra & U.O.I.

Respondent/s

Mr. M.I. Sethna with

Mr. Suresh Kumar

Advocate for  
the Respondents

CORAM :

Hon'ble Shri.

B.S. Hegde, Member(J)

Hon'ble Shri.

P.P. Srivastava, Member(A)

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

*[Signature]*

Member(J)

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A. No. 1052/95

Tuesday, this the 31st day of October 1995

HON.SHRI B.S.HEGDE, MEMBER (J)  
HON.SHRI P.P.SRIVASTAVA, MEMBER(A)

AFTAB AHMED KHAN, IPS.,  
Spl. Inspector General of Police  
Nagpur, residing at Major Sony's  
Bungalow, Opp. Hislop College,  
Civil Lines, Nagpur

By Advocate Shri M.S.Ramamurthi  
with Mr. G.S.Bhargava Ram

..Applicant

V/s

1. The State of Maharashtra  
through Chief Secretary,  
Govt. of Maharashtra,  
Madam Cama Road  
Mantralaya, Bombay
2. The Union of India  
through the Ministry of Home Affairs  
New Delhi

By Advocate Shri M.I.Sethna, Central Govt.Senior  
Standing Counsel  
with Mr. Suresh Kumar, Advocate

..Respondents

O R D E R

[Per: B.S.Hegde, Member(J)]

Heard arguments of Mr. M.S.Ramamurthi  
with Mr. G.S. Bhargava Ram, counsel for the  
applicant and Mr. M.I.Sethna, Senior Counsel,  
for the respondents.

2. In the O.A. the applicant has prayed  
for a direction to the Respondent No.1 and D.P.C.  
Members not to consider the Complaint Case  
No.459/S of 1994 pending before the Additional  
Chief Metropolitan Magistrate's 37th Court,  
Esplanade, Bombay, as an adverse factor in  
considering the applicant's case for promotion.  
Respondents have filed their reply on 7.10.95

opposing the application. the DPC took place on 25.9.95 for considering officers for promotion to the post of Additional D.G. of Police. The respondents have take a stand that pursuant to the circular issued by the Department of Personnel dated 8.10.1993 and in accordance with the ratio laid down in JANKIRAMAN's case the applicant's case for promotion has been considered and the same has been kept in a 'Sealed Cover'.

3. The Tribunal on 13.10.95 after hearing Counsel for both the sides permitted the applicant to file a Miscellaneous Petition. The applicant has come out with M.P.No.759/95 seeking an amendment stating that the GOI Circular dated 8.10.1993 is not applicable to the case of the applicant and the respondents be directed to open the 'Sealed Cover' containing the recommendations and the gradation awarded and they be directed to implement the decision of DPC held on 25.9.95. Respondents in their reply to M.P. No.759/95 contended that the M.P. is totally misconceived and created new cause of action for which the applicant should have filed a sepearte O.A. and the relief sought through M.P. cannot be brought in by way of an amendment. However, after considering the rival contentions of the parties we are of the opinion, that the M.P. filed by the applicant is relevant to the issue raised in the O.A. inasmuch as in the O.A. the applicant has sought a direction for promotion and since in the written statement filed by the

respondents it was brought out that the proceedings of DPC are kept in 'Sealed Cover', the prayer made in M.P. is therefore akin to the O.A. filed by the applicant and hence M.P.No. 759/95 is allowed.

4. The short question for consideration in the facts and circumstances of the case is whether the 'Sealed Cover Procedure' could be resorted to by the respondents in the present case.

5. In JANKIRAMAN's case, AIR 1991 SC 2010, the Apex Court held that when a charge memo in a disciplinary proceeding or a charge sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. In that event the 'Sealed Cover Procedure' is to be resorted to only after the charge memo / charge sheet is issued. The promotion cannot be withheld merely because some disciplinary / criminal proceedings are pending against the employee. To deny the said benefit, at the relevant time a charge memo / charge sheet must have been issued to the employee. It was submitted that in view of the Department of Personnel order dated 8.10.1993 'Sealed Cover Procedure' can be invoked against a Government employee in respect of whom prosecution for criminal charge is pending. In the instant case

admittedly on the basis of a complaint made by the TADA Court under Chapter XV S.200 Cr.P.C. with the concerned Magistrate who on receipt of the complaint from the TADA Court after satisfying himself and after taking cognizance of the offence issued process against the present applicant and 10 others. This proceedings have been challenged by the applicant on the grounds of want of jurisdiction to issue process and for want of sanction u/s. 197 Cr.P.C. in the High Court of Judicature at Bombay. It was also the stand of the applicant that the complaint filed by the TADA judge was delayed one and is not in accordance with S.161 of the Bombay Police Act. The High Court vide its order dated 4.9.95 has stayed further proceedings in Criminal Complaint No.459/S of 1994 pending in the Ld. Addl. Chief Metropolitan Magistrate's 37th Court, Esplanade, Bombay.

6. The Ld. Counsel for applicant draws our attention to certain sections of Cr.P.C. to the effect that a complaint filed by a person, other than a police report, has to be treated as a private complaint and on receipt of the complaint the Magistrate shall examine the complaint and witnesses if any and after satisfying himself about the authenticity of the complaint, shall proceed further either by issue of process under section 204 or dismiss the complaint, if no case

is made out. Ld. Counsel for the applicant further argued that the issuance of process u/s, 204, after taking cognizance of the offence, the Magistrate has to determine whether the charges are required to be framed u/s.211 of Cr.P.C. In the instant case, the procedure u/s.211 for framing the charges has not started, and could not have been started because of the stay order granted by the Hon'ble High Court. Mr. Sethna, Ld. Counsel for the respondents contended that in the present case the complaint has been filed by an officer of the Court viz., TADA Court and therefore examination of the complainant is not required u/s.200 of Cr.P.C. and after taking cognizance of the complaint the Magistrate has issued the process u/s.204 of Cr.P.C. However, further action could not be taken as the proceedings have been stayed by the High Court.

7. Mr. Ramamurthi, Ld. Counsel for applicant, contended that since the charges leveled against the applicant as well as others are cases of warrant cases, warrant procedure had to be adopted in these cases which has not been done. However, since the official involved in this case is a Public Servant, it is left to the discretion of the magistrate either to issue summons or warrant as the case may be. Mr. Ramamurthi brought to our attention Sections 244 to 246 of Cr.P.C. which state the case instituted, other than a police report, if the accused is not discharged

*JS*

for non-availability of evidence how to proceed further in the matter etc. and submitted that till such a stage is reached one cannot say that the person is issued with the charge sheet as laid down in JANKIRAMAN's case. Mr. Ramamurthi contended that though the process is issued on a complaint no charge sheet has been issued in so far as the applicant is concerned. Mr. Ramamurthi submitted that since the conditions laid down in JANKIRAMAN's case are not satisfied in the instant case of the applicant, the applicant is not covered by the ratio laid down in that case as well as the DOP Circular dated 8.10.93 and therefore the 'Sealed Cover Procedure' cannot be invoked by the respondents. On the other hand Mr. Sethna, Id. Counsel for the respondents, submitted that the respondents have acted in accordance with the circular issued by the Department of Personnel dated 8.10.93 and also in accordance with the principles laid down in JANKIRAMAN's case. The main argument of the Id. Counsel for the respondents is that the complaint has been filed by the TADA Judge and since the Magistrate has taken cognizance of the same and issued process on the basis of the complaint filed by the TADA Court Judge, the stage of issue of charge sheet as envisaged in JANKIRAMAN's case has already been covered as soon as the process has been issued by the Magistrate u/s.204 of Cr.P.C. He further argued

*Ms*

that issuance of the process in such cases where the complaint has been filed by the Court, should be treated on par with the complaint filed by the police u/s. 173(ii) of Cr.P.C. Mr. Sethna further argued that that the action taken under S.200 and 204 is equivalent to the charge sheet as envisaged in JANKIRAMAN's case. Apart from JANKIRAMAN's case he has relied on UNION OF INDIA Vs. KEWAL KUMAR, AIR 1993 SC 1585 and drew our attention to para 2 of the judgment which reads as under:


"In Jankiraman itself, it has been pointed out that the sealed cover procedure is to be followed where a government servant is recommended for promotion by the DPC but he is actually promoted if 'he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken'. Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, or 'decision to accord sanction for prosecution is taken' or 'criminal prosecution is launched or .....decision to accord sanction for prosecution is taken'."

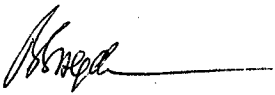
*Mr*



As against this Mr. Ramamurthi contended that the observation of the Supreme Court in KEWAL KUMAR case is not applicable in the instant case as action has not been initiated by the State Government and further no order so far has been passed as suggested. In the instant case, no FIR has been filed by the State against the applicant and the Ld. Counsel for the applicant argues that the ratio laid down in KEWAL KUMAR will not be applicable to the present case.

8. We have considered the arguments of both the Counsel and also available record. We are of the opinion that the issue of charge sheet as envisaged in JANKI RAMAN means framing of charges under S.211 of the Criminal Procedure Code and since that stage has not reached in this case, the procedure laid down for applying 'Sealed Cover' in JANKI RAMAN do not apply in the present application. Therefore, we are of the opinion that the State Government has no right to keep the decision of the D.P.C. in a 'Sealed Cover'. In the circumstances we hereby direct the Respondents to open the Sealed Cover forthwith, not later than seven days from the receipt of this order, and consider the applicant's case for promotion as per rules. With these directions the O.A. as well as M.P.No.759/95 are disposed of with no order as to costs.

  
(P.P. Srivastava)  
Member(A)

  
(B.S. Hegde)  
Member(J)

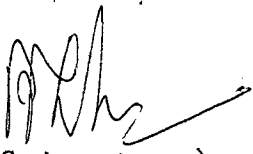
Dated: 31.10.1995


Mr. G.S.Bhargava Ram, counsel for the applicant.

Mr. M I Sethna, counsel for the respondents.

After delivering the judgment/order the Ld. Counsel for the Respondents Mr. M.I. Sethna, submitted that the order may not be effected for a period of three weeks as the respondents intend moving the Hon'ble Supreme Court by filing a Special Leave Petition.

In the facts and circumstances of the case, we stay the operation of our order for a period of three weeks from to-day i.e., upto 21.11.1995. We direct the respondents not to fill up one post of "Additional Director General". If the respondents do not get any stay order from the Supreme Court, the stay granted shall automatically lapse on 21.11.1995.

  
(P.P.Srivastava)  
Member(A)

  
(B.S.Hegde)  
Member(J)

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