

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Date of Order : 28th Feb. 2002

O.A. No. 516/1997.

Shri Sadashiv Gangadhar Joshi, r/o MaitriPark, Tilak Chowk, Kalyan (W), Dist. Thane 421 301 ; employed in the office of the Chief Commissioner of Income-tax, Mumbai as Income-tax Officer (Audit)-VIII, 3rd Floor, Mittal Court, 'B' Wing, Nariman Point, Mumbai-400 021.

... APPLICANT.

V E R S U S

1. Union of India, through Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. The Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi- 110 001.
3. The Chief Commissioner of Income-tax, Mumbai, 3rd Floor, Aaykar Bhawan on K. Road, Mumbai - 400 020.

... RESPONDENTS.

Mr. P.A. Prabhakaran counsel for the applicant.
Mr. M.I. Sethna counsel for the respondents.

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Hon'ble Mr. M. P. Singh, Adm. Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

:O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985. The following prayer has been made :-

" (i) The respondents may be directed to open the "Sealed cover" or covers by the DPCs held in

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March 91, October 91, December 91 and thereafter till the last DPC for promotion of I.Os to ACs I.T. in terms of para 3 of the O.M. dated 14.9.92(Annex. A-7) immediately as the applicant is due to retire on 31.7.97 and do all consequential acts in favour of the applicant expeditiously.

(ii) cost of this application.

(iii) Any other relief deemed fit and proper by this Tribunal."

2. The brief facts of the case of the applicant are that he was appointed on the post of Clerk in Group-C. He enjoyed his promotion to the post of Inspector of Income-tax and also to the post of Income-tax Officer. He get his promotion to the post of Income-tax Officer w.e.f. 26.12.1977. During the year 1983-1984, he was issued a memo asking him to explain regarding certain assessments completed by him as 7th I.T.O. D-I ward. He replied the same immediately and believed that the matter was closed. He was issued with a charge sheet dated 13.06.1988, on the same ground which were the subject

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matter of the above memo. He denied the charges and an oral enquiry was conducted into the allegations. The charges were have to be proved. However, the Enquiry Officer also observed that while deciding the quantum of penalty, the Disciplinary Authority should keep in mind the heavy pressure of work and other circumstances as pointed out by the applicant. He was awarded the penalty of censure vide order dated 12.03.1997. he has been insisting consistently and persistently with the departmental authorities that the sealed cover by the D.P.C. held in March 91, October 91, December 91 and thereafter, for promotion, to the post of ITO-II Assistant Commissioner of Income-tax, may be opened and he may be allowed all consequential benefits in terms of Para 3 of OM dated 14.09.1992. Further it was also stated that the applicant would be retiring on 31.07.1997.

3. Show cause notice was issued to the respondents and the respondents who have filed their reply. The facts stated by the applicant have not been generally by the respondents. However, the applicant has filed the rejoinder, which has been brought on record.

4. We have heard the learned counsel for both the parties and have perused the records. Rejoinder was filed and brought on record.

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5. Learned Counsel for the applicant has invited our attention to Para 3 of the office memorandum dated 14.09.1992, and stressed that the sealed cover should be opened as per his prayer in the Original Application. Para 3 of the office memorandum provides that the sealed cover can be opened on the conclusion of the disciplinary case/criminal prosecution or an investigation which results in dropping of allegation or complaints against the government servant. He vehemently argued that the applicant was made to keep under hanging sword of uncertainty and the disciplinary proceedings were unduly prolonged for over nine years and the incident relates to the period of 1978-80 i.e., about 20 years back. He has been made to suffer for none of his faults and the very penalty was uncalled for. Despite multiple requests/representations, the respondents did not open the sealed cover and the applicant was superceded by his juniors in the year 1991 and onwards. He was gravely harrassed and his career was damaged without any fault on his part.

6. On the other hand, Learned counsel for the respondents have drawn our attention to the relief which has been prayed for and it has been specifically

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pointed out that the penalty order is not under challenge and the penalty imposed upon the applicant vide order dated 12.03.1997 has become final. However, he has also drawn our attention to the very memorandum Annexure A-7, OM dated 14.09.1992, Para 3.1 ,Supra, which has been relied upon by the Learned Counsel for the applicant. The same reads as under :-

" If any penalty is imposed on the government servant as a result of disciplinary proceedings or he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted open. His case for promotion may be considered by the next DPC in the normal courts and having regard to the penalty imposed on him."

7.. It has been stressed that in view of the specific provisions, the sealed cover has not been opened. Learned Counsel for the respondents has also drawn our attention to the judgment in U.O.I. vs. Janki Raman AIR 1991 Supreme Court 2010, wherein, the Hon'ble Supreme Court has examined the matter in detail and it has been clearly held that the sealed cover shall not be opened even if a penalty of censure has been imposed on the government servant. It has also been said that the least



expected any any administration is that it does not reward an employee with promotion with retrospective from a date when his conduct before that date, he is penalised in presenti. When an employee is held guilty and penalised and is therefore, not promoted at least till date on which he is penalised. A denial of promotion in such circumstances is not a penalty but necessary consequence of the conduct. Further in another judgment, State of M. P. and Another vs. I.A. Qureshi, reported in 1998 SCC, L&S 1121, the Hon'ble Supreme Court has categorically held that once a minor penalty has been imposed in the departmental proceedings, the sealed cover containing recommendations of the DPC could not be opened and the recommendations of DPC could not be given effect to, because delinquent was not fully exonerated and a minor penalty was imposed. The promotion could be considered only on prospective basis after the conclusion of the departmental proceedings or thereafter. Thus, action of the respondents in not opening the sealed cover in respect of the applicant cannot be faulted with.

8. In view of the aforesaid discussion, the O.A. fails and the same is dismissed with no order as to costs.

J. K. KAUSHIK
(J. K. KAUSHIK)
MEMBER (J)

M. P. SINGH
(M. P. SINGH)
MEMBER (A)

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cl 28/2/02
Order/ judgement despatched
to Appellant & Co-plaintiff (s)
21/4/02

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