

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 249 1987
T.A. No.

DATE OF DECISION 16/6/87

MV K V. Janakiraman Petitioner

MV T. Jayarath

Advocate for the Petitioner(s)

Versus

Dy Postal Service, New Delhi & others Respondent

MV K. Jagannadha Rao Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.N. Jayasimha, V.C.

The Hon'ble Mr. D. Surya Rao, M.J.S.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *MR.*
4. Whether it needs to be circulated to other Benches of the Tribunal?

W/C (Sect)

BNT
(V.C)

D
(M.J.S)

ORIGINAL APPLICATION NO.249 of 1987

((ORDERS OF THE TRIBUNAL))

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The applicant herein, who is working as Superintendent, Hyderabad Sorting Division, Hyderabad, has filed this application seeking a direction from this Tribunal to the respondents to permit him to cross the Efficiency Bar with effect from 1-1-1984 by declaring the Order No. ST/12-35/IV dated 7-5-1986 of the second Respondent as illegal, null and void.

2. The applicant states that he was eligible to cross the Efficiency Bar in the pay-scale of Rs. 650/1200 at the stage of Rs. 1,000/- with effect from 1-7-1984. The applicant was not allowed to cross the Efficiency ^{Bar} and he made repeated representations to the second Respondent and the second

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13

Respondent by his letter dated 30-1-1985 stated that the applicant has not been permitted to cross the Efficiency Bar from the stage of Rs.1,000/- to that of Rs.1,040/- by the D.P.C. Aggrieved by this decision of the D.P.C., he again submitted a detailed representation dated 1-3-1985 to the Chairman and the Director-General, Postal Services, New Delhi stating that the decision of the D.P.C. contemplated on the ground of pendency of/enquiry against him is unjustified. He was informed by the PMG, AP Circle, Hyderabad in his letter dated 27-1-1986 that he should await further communication from the Directorate. The Dept. of Posts through Letter dated 2-1-1986 informed the PMG, Hyderabad to step up the pay of the applicant ^{retrospective} under FR-27 with/effect from 27-1-1981. Consequent to this, the applicant made another representation to the second respondent for allowing him to cross the E.B. with effect from 1-1-1984 and not from 1-7-1984 as a result of refixation of pay and change in the date of next increment. The second Respondent, viz. PMG, Hyderabad has rejected this representation also vide his letter dated 7-5-1986. The applicant has approached this tribunal for giving a direction to the Respondents to permit the applicant cross the E.B. contd..3

3. We have heard Mr. Jayanth, Counsel for the Applicant and Mr. G. Parameswara Rao on behalf of the Central Govt. Standing Counsel: Mr. K. Jagannadha Rao, for the Respondents. The facts of the case disclose that at the time when the applicant became eligible to cross the Efficiency Bar, no charge-sheet was issued, but it was only a contemplated disciplinary action. This is a ~~case~~ ^{which is} case covered by the decision of the Full Bench of this Tribunal dated 2nd March, 1987 in T.A. No. 849/86 & other batch cases. The relevant portions of the above Order of the Full bench are reproduced below :-

"All these cases have been posted before the full bench of this Tribunal on a reference made by the Hon'ble Chairman for resolving the conflict of opinion among the various High Courts on the question whether the pendency of the disciplinary proceedings would justify withholding of promotion, refusing of higher pay-scales, crossing of Efficiency Bar and the like. In some cases the officials have not been allowed to cross the Efficiency Bar pending disciplinary proceedings. In other cases higher pay-scale arising out of the upgradation or restructuring of the pay-scales

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had been refused to the applicants in view of the pendency of the disciplinary proceedings against them. Thus, in all these cases the common question that arises is as to whether pendency of the disciplinary/criminal proceedings would justify withholding of promotion, selection grade, higher pay-scale, or the crossing of Efficiency Bar and the like. As whatever decision we render on the question of withholding of promotion pending disciplinary or criminal proceedings will equally apply to the withholding of selection grade, higher pay scale, or the crossing of the efficiency bar etc., we propose to deal with the question of withholding of promotion pending such proceedings. Likewise whatever we say as regards the pendency of disciplinary proceedings will apply in all force to the pendency of criminal proceedings, we deal with ~~discipline~~ the question with reference to the pendency of disciplinary proceedings.

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There are two conflicting concepts here. A right to be considered for promotion is a right flowing from the conditions of service and once an employee is found fit for promotion, his promotion cannot arbitrarily be withheld and a junior promoted instead in the face of Articles 14 and 16 of the Constitution. On the other hand, the purity of public service requires that a person under a cloud, i.e. person against whom disciplinary or criminal proceedings had been initiated and are pending, should get himself absolved of the charges before he is actually promoted. If will be against public interest if any employee who is being proceeded against say on a charge of corruption were to be promoted while facing the corruption charges. It is only to keep a proper balance between these two concepts, instructions have been issued from time to time to adopt the sealed

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cover procedure which is intended to protect the interest of the employee in the matter of promotion and also to advance the public interest and to sustain the purity of public service.

At this stage we have to consider as to when exactly the sealed cover procedure is to be followed. In O.M. dated 14-7-1977 it has been decided by the Government that the sealed cover procedure should be followed in those cases where, after investigation, the evidence collected indicates a prima facie case against the pending and no conclusion is reached about the prima facie guilt of the officer as at what stage there is no ground for treating the said officer as one "whose conduct is under investigation". An officer can be said to be under investigation only when a charge-sheet is filed in a criminal court or charge-memo under CCA Rules is issued to the official.

In the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge-memo. is served on the official and the charge-sheet is filed before the court.

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Thus, our conclusions are :

(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

xxx xxx xxx"

Admittedly, even the sealed cover procedure prescribed in Government of India Memo. dated 30-1-1982 has not been followed in this case. Had this procedure been followed, we would have ordered that the sealed cover be opened and the case of the applicant be reviewed. Following the full-bench decision, which has been extracted above, we direct the respondents to allow the applicant to cross the Efficiency Bar with effect from 1-1-1984 and pay the arrears of salary. This order, however, does not preclude any Departmental action being taken in pursuance of the charge-memo issued against the applicant in accordance with the Rules.

4. The application is accordingly allowed.

There will be no order as to costs.

(dictated in open court)

B.N.Jayasimha

(B.N.JAYASIMHA)
Vice-Chairman

D.Surya Rao

(D.SURYA RAO)
Member (Judl.)

16th June, 1987.

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8