

(68)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

C.A.NO. 456/90.

DATE OF JUDGMENT: 26-07-95.

BETWEEN:

Ch. Narayanacharyulu

.. Applicant.

AND

1. The Secretary, Ministry of Defence,
South Block, DHQ P.O. New Delhi-11.
 2. The Chief of the Naval Staff (for DCP)
Naval Headquarters, DHQ P.O. New Delhi-11.
 3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
 4. The Chief Staff Officer (P&A)
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
 5. The Area Accounts Office,
Controller of Defence Accounts (Navy),
Visakhapatnam-9.
- .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI Ch. Narayanacharyulu,
(Party-in-person)

COUNSEL FOR THE RESPONDENTS: SHRI N.R. Devaraj,
Sr/Asstt. CGSC.

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN.)

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN I

J U D G E M E N T

Heard both the learned counsels.

2. This OA was filed praying for the following reliefs.

- 1) To quash the impugned order (Annexure A-8) No. CR/2745 dated 7-3-90 as not valid due to the facts submitted.
 - 2) To declare the CCS (CCA) Rules 65 are not applicable to Defence Civilians as per the law declared by Supreme Court AIR 1989 SC 662 accordingly the delegation of Appointing Authority held vide Order CP 4935 dated 04 Aug. 79 is required to be declared as not valid.
 - 3) To quash the panels CE/2727 dated 10-9-85 and 16-4-87 drawn by Respondent No. 4 who got no valid delegation to draw those panels or ALTERNATIVELY
 - 4) To order the Respondent No. 4 to promote me w.e.f. 10-9-1985 by paying all consequential benefits within one month of receipt of the judgement in this case.
 - 5) To declare violation of article 14 of the Constitution since Respondents 2, 3 & 4 are still exercising the powers delegated under CCS (CCA) Rules 1965 for awarding appointments in higher posts/promotions which are declared by Supreme Court as are not applicable to defence civilians.
who
3. The applicant/was working as UDC in Command Supplies Office, Eastern Naval Command, Visakhapatnam was placed under suspension on 11-7-85 by order dated 10-7-85. The DPC met on 24-7-85 for consideration for promotion of the eligible candidates for OS Gr. II from UDC. The promotions to the post of OS Gr. II from the said panel were given as per order dated 10-9-85. It is stated for the Respondents that as the applicant was under suspension, the sealed cover procedure was adopted.

70

4. On 17-9-85 the appeals of the applicant against the order ~~of suspension~~ were rejected vide order No. CE/9403/7 dated 17-9-85.

5. The adverse remarks ^{were} passed against the applicant for the periods from 1-1-84 to 30-9-84, from 1-10-84 to ~~31~~ 31-12-84 and from 1-1-85 to 5-7-85. The applicant filed OA 118/86 on the file of this Bench challenging the adverse remarks for the periods from 1-1-84 to 30-9-84 and from 1-10-84 to 31-12-84. The adverse remarks for the period from 1-10-84 to 31-12-84 were set aside by the judgement in the above O.A. The OA 187/87 challenging the adverse remarks for the period from 1-1-85 to 5-7-85 was allowed. Even the adverse remarks from 1-1-84 to 30-9-84 were set aside by the appellate authority. When review was ^{not} made in regard to case of the applicant for promotion to the post of OS Grade II after the above adverse remarks were set aside, the applicant moved R3, the appellate authority. By order dated 25-2-1989, R3 directed R4 to convene Review D.P.C. for reviewing the case of the applicant for promotion to OS Gr. II in 1985 and also in 1987 by ignoring the adverse remarks passed against the applicant for the period from 1-1-84 to 5-7-85. The applicant was dismissed from service by order dated 27-2-89 in pursuance of the charge memo. dated 9-10-85. The suspension of the applicant by order dated 10-7-85 is in regard to contemplated disciplinary proceedings in regard to which charge memo. was issued on 7-10-85. The order dated 27-2-89 removing the applicant from service were ~~was~~ set aside by the order dated 29-11-89 in OA 171/89

(71)

on the ground that a copy of the enquiry report was not furnished to the applicant before the order of removal was passed. The applicant requested R4 to consider his case for review as the order of removal ~~is also~~^{was} set aside. The applicant was informed by R4 vide his letter dated 7-3-90 that as the enquiry against him was continued on furnishing a copy of the enquiry report, ~~it~~ can be reviewed after the disposal of the disciplinary case. After a copy of the enquiry report was furnished to the applicant and after considering his representation, the applicant was again removed from service by order dated 21-3-90. The applicant filed OA 303/90 challenging the same. This OA was filed on 4-6-90 for the reliefs referred to ~~therein~~.

6. The first and foremost contention for the ^{as} applicant is that the charge memo. was not issued to him by the date the D.P.C. met, the adoption of sealed cover procedure is illegal. In support of the said contention the following judgements have been cited by the applicant

1. I (1988) ATLT (CAT) 341 (Delhi)
(R.D. Madan Vs. Union of India & Others).
2. I(1987) ATLT (CAT) 480 (Full Bench
decision) Hyderabad.
K.Ch. Venkata Reddy & Ors. Vs. Union of
India & Others).
3. II(1990) ATLT(SC) 239:
State of Madhya Pradesh Vs. Bani Singh
and Others decided on 5-4-90.
4. 1993 SCC (L&S) 387
Union of India Vs. K.V. Janakiram

72

5. 1994(3) (CAT) SLJ - 77 (Jaipur)
Chandra Dutt Sharma Vs. Union of India
& Others decided on 20-4-94.
6. ATR 1990(1) (CAT) 59 (Jabalpur)
P. Singh Vs. Union of India & Others
decided on 12-6-89
7. 1992 (2) (CAT) SLJ-472 (Chandigarh)
M.R. BHAGAT VS. Union of India & Anr.
decided on 24-5-93.
8. 1989(3) SLJ (CAT)608 (Calcutta Bench)
1989 10 ATC 638
Arvind Kumar Gupta Vs. Union of India
& Others decided in 1989
9. ATR 1990 (1) SC 581 (Supreme Court)
State of Madhya Pradesh Vs. Bani Singh &
Anr. decided in 1990.
10. II(1992) ATLT (SC) 239 (Supreme Court)
State of Madhya Pradesh Vs. Bani Singh
decided on 5-4-1990.

7. Government of India office memorandum No.
220/1/1/79 Estt.(A) dated 30-1-1982 was issued
on the subject of promotion of officers in whose
cases the sealed cover procedure had been followed
but against whom disciplinary/court proceedings
were pending for a long time. The same was issued
in supersession of the earlier instructions issued
in this regard from time to time. The relevant
instruction as per the said memo. is as under:-

"In cases of officers who are under suspension
or against whom disciplinary proceedings are
pending or a decision has been taken by the
competent disciplinary authority to initiate
disciplinary proceedings against them or again
whom prosecution has been launched."

1(1987) ATLT vol. I 493. (para 25)

8. While adverting to the various points raised
in regard to sealed cover procedure ~~ignoring as per~~
O.M. dated 30-1-82, the Full Bench in

73

-- 6 --

I(1987) ATIT 480 had not expressed any opinion ^{about the} ~~in regard to~~ validity of the relevant instruction as per O.M. dated 30-1-1982 in regard to an employee suspended by the date the D.P.C./Selection committee met and charge sheet was not issued by then. The judgement of the Full Bench in Venkat Reddy's case referred to supra was ~~also~~ challenged before the Apex Court by judgement dated 27-8-1991. ~~It was also reported in~~ 1993 SCC L&S 387 (Union of India Vs. K.V. Janakiraman & Others).

/That appeal and some other appeals and SLPs were disposed of by the Lordships of the Supreme Court

9. The relevant instruction as per O.M. dated 30-1-82 in regard to adoption of sealed cover procedure against an employee/officer suspended pending contemplation of disciplinary proceedings by the date of the meeting of DPC/Selection committee, even if the charge memo. was not issued by then, was held as valid as can be seen from the following observations:-

"Many times they never result in the issue of any charge memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy." (Emphasis supplied)

10. Thus it is manifest that sealed cover ~~procedure~~ can be adopted in regard to an employee/officer who is under suspension pending contemplation of the disciplinary action by the date of

✓

-/-.....7

96 JN

74

meeting of the D.P.C/Selection committee even though the charge memo. was not issued by then.

11. In ~~11~~ (1992) ATLT SC 239 it was observed by the Apex Court that normally "Pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon his right to be considered. If the departmental enquiry had ~~reached the~~ stage of framing of charges after prima facie case has been made ~~out~~, the normal procedure followed as mentioned by the Tribunal, was sealed cover procedure but if the disciplinary proceedings had not reached that stage of framing of the charges if prima facie case is established, the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings".

12. The O.M dated 30-1-82 is applicable in regard to the applicant, for the D.P.C. met in 1985 & 1987 even before O.M. No. 22011/2/86/ Estt.(A) dated 12-1-1988 was issued. The scope of O.M. dated 30-1-82 was not considered in 1992 (2) ATLT 239. In view of the judgement of the Apex Court in Janakiraman's case, there is no need to refer to the various judgements relied upon by the applicant which were decided earlier to Janakiramn's case. None of the judgements relied upon for the applicant

na

(75)

which are subsequent to Janakiraman's case, deal with a case of an employee suspended pending contemplation of disciplinary action by the date of the meeting of the D.P.C./Selection committee and where the charge memo. is issued subsequent to ^{it} them. As all the High Courts/Tribunals are bound by the judgement of the Apex Court, there cannot be any judgement of the Tribunal/High Court contrary to the judgement of the Supreme Court in Janakiraman's case wherein it was inter alia held that the instruction in the O.M. dated 30-1-82 about the application of sealed cover procedure in regard to an employee who was suspended pending contemplation of the disciplinary action by the date of meeting of the D.P.C./Selection committee and before issual of the charge memo, is held to be valid.

13. The contention for the applicant that the application of sealed cover procedure, ^{when} ~~even though~~ the charge memo. was not issued by the date of meeting of the D.P.C. in 1985, is illegal has to be held as untenable in view of Janakiraman's case, as by then he was under suspension pending contemplation of the disciplinary action and later the charge memo. was given and the enquiry was also held.

14. The sealed cover cannot be opened if ultimately the delinquent employee/officer is held guilty and even if ^{only} ~~if~~ censure is ordered. In this case the applicant was dismissed from service by order dated 21-3-1990. The appeal thereon was dismissed. OA 277/95 was filed assailing the same.

✓

76

Unless the applicant is exonerated, there cannot be any direction to the Respondents to open the sealed cover. It depends upon the final result in the OA 277/95 on the file of this Bench filed against the order dated 21-3-1990 dismissing the applicant from service .

15. Minutes of the D.P.C. which met on 20/21-8-1990 are produced. It disclosed that the case of the applicant for promotion to the post of OS. Gr. II was reviewed on 23-3-1987 by ignoring the adverse remarks for the periods from 1-10-84 to 31-12-84 in pursuance of the judgement in OA 118/86. The review on 20/21-8-1990 was made in regard to panel of 1985, 1987 and 1989 by ignoring the adverse remarks from 1-1-84 to 30-9-84 and from 1-1-85 to 5-7-85 also and they were placed in sealed covers.

The claim of the applicant for setting aside the panel of 9-10-85 has to be negatived on 2 grounds.

- (1) Persons who were promoted to OS Gr. II as per the said panel are not impleaded as parties to this OA.
- (2) Further, the said relief was rejected in OA 187/87 on the ground of resjudicata. The question of estoppel does not arise in such cases.

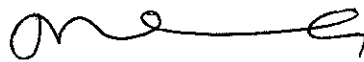
Hence we are not venturing to the files in regard to the said claim.
16. In the result, this OA is disposed of as under:

The sealed cover recommendations which were made at the time of the D.P.C. which reviewed on 20/21-8-1990 has to be opened and acted upon only if ultimately the order dated 21-3-1990 removing the applicant from service is going

Rgv

to be set aside and if the applicant is going to be exonerated completely.

17. The OA in regard to other reliefs is dismissed. No costs.//



(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Dated the 26-7-95
Open court dictation

NS


Dy.Registrar(Judl)

Copy to:-

1. The Secretary, Ministry of Defence,
South Block, DHQ, P.P. New Delhi-11.
2. The Chief of the Naval Staff (for DCP),
Naval Headquarters, DHQ, P.P. New Delhi-11.
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
4. The Chief Staff Officer (P & A),
Eastern Naval Command, Naval Base,
Visakhapatnam-14.
5. The Area Accounts Officer, Controller of
Defence Accounts (Naval), Visakhapatnam-9.
6. One copy to Shri Ch. Narayanacharyulu, (Party in person)
Door. No. 57-1-46, Golulnagar, Kancharapalem, P.O.
Visakhapatnam-530 008.
7. One copy to Mr. N.R. Devaraj, Sr. CGSC, CAT, Hyderabad.
8. One copy to Library, CAT, Hyderabad.
9. One spare copy.

kku.


11/8/95

04-458/90

THPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

A N D

THE HON'BLE MR. R. RANGARAJAN: (M (ADMN))

DATED 26-7-1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in
OA.No. 458/90
TA.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

No spare copy

Central Administrative Tribunal
DESPATCH
17 AUG 1995
HYDERABAD BENCH