

(80)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.1113/92.

Date of Judgement 12-3-1993

Arun Kumar Jagannadham .. Applicant

Vs.

1. Union of India,  
Rep. by the Secretary  
to the Railway Board,  
New Delhi.

2. General Manager,  
S.C.Rly., Rail Nilayam,  
Secunderabad. .. Respondents

---

Counsel for the Applicant :: Shri N.Ram Mohan Rao

Counsel for the Respondents:: Shri N.R.Devaraj, SC for Rlys.

---

CORAM:

Hon'ble Shri Justice V.Neeladri Rao : Vice-Chairman

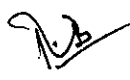
Hon'ble Shri R.Balasubramanian : Member(A)

[ Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) ]

---

This application has been filed by Shri Arun Kumar Jagannadham against the Union of India, Rep. by the Secretary to the Railway Board, New Delhi & another under section 19 of the Administrative Tribunals Act, 1985 seeking ~~for~~ setting aside the memoranda of charges issued under cover of letters No.P/SC/227/0/27 dt. 31.10.89 and No.P/SC/227/0/31 dt.9.12.91.

2. At the relevant time, the applicant was working as Senior Transportation Manager, Safety, S.C.Rly., Secunderabad in the Senior Time Scale of Group 'A'. 3 of his juniors were promoted to the Junior Administrative Grade on adhoc basis. The applicant represented against this arrangement overlooking his seniority. He was given to understand that this <sup>was</sup> due to pendency of disciplinary proceedings against him.

 Again, by orders dt. 17.10.91, 45 persons were promoted, this time on a regular basis. Of these, persons appearing at serials 44 and 45 are stated to be his juniors.

The applicant is aggrieved that the respondents having framed the charge-memos against him had not made any satisfactory progress in the proceedings and instead had been keeping the proceedings pending denying in the process promotions due to him. Hence, aggrieved, the applicant has filed this O.A.

3. The respondents have filed a counter opposing the application. It is stated that not 2 but 3 charge-sheets are pending against him. The third one is dated 29.1.92. It is contended that as per extant rules when departmental proceedings are pending against an employee he is not entitled for promotion. It is their case that the consideration of the applicant for promotion <sup>has</sup> to await the outcome of the disciplinary proceedings.

4. We have examined the case and heard Shri N.Ram Mohan Rao for the applicants and Shri N.R.Devaraj for the respondents. We have seen the letter No.P/SC/607/JA/T&C dt. 5.12.90 from the Chief Personnel Officer addressed to the applicant. At that point of time only the charge-sheet dt. 31.10.89 was pending against him. The respondents had intimated the applicant that his promotion to the Junior Administrative Grade on adhoc basis will be considered as per extant rules, depending on the outcome of the DAR case on its finalisation. The short point that is to be decided is whether the claims of the applicant for promotion have to wait till the disciplinary case is finalised. According to the rules, when the turn of an official for promotion comes, his case has to be considered by the D.P.C. alongwith other cases and if a charge-sheet is pending on that date, then the findings of the D.P.C. have to be kept in a sealed cover. In this case since the regular promotion orders have been issued on 17.10.91 there must have been a D.P.C. proceeding that and since juniors to the applicant were promoted, the applicant's case ought to have been considered by the respondents. It is not clear from the counter as well as the arguments of the learned counsel for the respondents whether   the D.P.C. considered his case and, if so, had placed the findings in a sealed cover.

.....3

52

The D.O.P. instructions dt. 12.1.88 of which the respondents are aware require that six monthly review of sealed cover cases should be made (para 17.7.1 of the instructions). <sup>The</sup> ~~the~~ precedent laid down in this memo dt 12-1-88 and forming the basis for our decision in this case, is virtually repeated in the subsequent O.M.No.22011/4/91-Estt(A) dt.14.9.92 of the Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Dept. of Personnel & Training). In cases where the disciplinary case against the Govt. servant is not concluded even after the expiry of two years from the date of the meeting of the D.P.C. (on the recommendations of which 2 of his juniors were promoted in November, 1991) which kept its findings in respect of the Govt. servant in a sealed cover, the appointing authority may review the case of the Govt. servant provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view certain aspects listed (para 5 of the instructions). For ready appreciation para 5 of the said letter is reproduced:

"Procedure for  
ad-hoc  
promotion."

(17.7.1 of 12-1-88 memo)

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Govt. servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Govt. servant in a sealed cover. In such a situation the appointing authority may review the case of the Govt. servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Govt. servant concerned; and
- (e) Whether there is any likelihood of misuse of official position which the Govt. servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau."

We have, in view of the position as above, no hesitation

in giving a direction to the respondents as follows:-

- (a) In case the sealed cover procedure had been adopted, the respondents should straightaway take recourse to para 5 referred to at the appropriate time.
- (b) In case the sealed cover procedure has not been adopted, a review D.P.C. should be conducted within three months from the date of receipt of the order and review the case of fitness or otherwise <sup>of the applicant</sup> for regular promotion. ~~of the applicant,~~ as on the date that was considered by the previous D.P.C. The findings of such review D.P.C. should also be kept in a sealed cover and acted upon at the appropriate time i.e., after the expiry of two years from the date on which the original D.P.C. met as required in para 5 extracted above.
5. With the above directions, the O.A. is disposed of with no order as to costs.

*V.N.*  
( V.Neeladri Rao )  
Vice-Chairman.

*R.B.*  
( R.Balasubramanian )  
Member (A).

*Rob*  
Dated: 12<sup>th</sup> March, 1993.

*L*  
Deputy Registrar (J) <sup>30/3/93</sup>

To

1. The Secretary, Railway Board, Union of India, New Delhi.
2. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
3. One copy to Mr.N.Rammohan Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
5. One copy to Deputy Registrar(J)CAT.Hyd.
6. One copy to Hon'ble Mr.Justice V.Neeladri Rao, Vice Chairman, CAT.Hyd.
7. Copy to All Reporters as per standard list of CAT.Hyd.
8. One spare copy.

pvm