

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

D.A.1592/94.

Dt.of Decision : 14-07-95.

A. Nageswara Rao

.. Applicant.

Vs

1. Director, Intelligence Bureau H.Qrs.,  
Ministry of Home Affairs,  
Central Secretariat, North Block,  
New Delhi.
2. Secretary, Ministry of Home Affairs,  
Govt. of India, Central Secretariat,  
North Block, New Delhi-110 001. .. Respondents.

Counsel for the Applicant : Mr. S.Ramakrishna Rao

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN  
THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

96

O.A.NO.1592/94.

JUDGMENT

Dt: 14/7.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri S.Ramakrishna Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. The applicant joined Intelligence Bureau (IB) on 28.10.1970 as Junior Intelligence Officer. He was promoted as Assistant Central Intelligence Officer Gr.II on 1.6.1981. He was placed under suspension with effect from 12.10.1990 for his involvement in <sup>a</sup> police case under Section 498-A of IPC. As such, sealed cover procedure was adopted for consideration of the case of the applicant for promotion to the post of Assistant Central Intelligence Officer Grade-I, when the DPC met in December 1990. The suspension was revoked on 5.4.1991. Criminal Case was filed against the applicant, after investigation for the offence under Section 498-A of IPC and the applicant was acquitted for the said offence on 16.3.1993.

3. But another disciplinary proceeding was initiated against the applicant on 25.5.1992. The penalty of reduction in pay by two stages in the time scale with effect from 28.9.1993 for a period of two years with cumulative effect was imposed on completion of the   
Hr

contd....

.. 3 ..

inquiry in regard to the above disciplinary proceeding initiated on 25.5.1992. When after the applicant was acquitted for the offence under Section 498-A of IPC, he made a request for release of his promotion with effect from December 1990 and the applicant was informed by the memo dated 18.6.1993 that the same cannot be acceded to as the disciplinary proceeding initiated on 25.5.1992 was pending against him. When the applicant again made representation after disposal of the disciplinary case for release of his promotion with effect from December 1990, he was informed by the memo dated 23.11.1994 that he cannot be promoted till the penalty period expires. Being aggrieved, the applicant filed this OA praying for setting aside the memo dated 23.11.1994 and for consequential direction to the respondents to promote the applicant to the post of Assistant Central Intelligence Officer Grade-I with effect from December 1990 ie., from the date he was due for the time bound promotion in view of his acquittal in the Criminal Case with all consequential benefits.

4. The O.M.No.22011/1/79-Estt.(A), dated 30.1.1982 was issued by the Government of India (Departmental of Personnel & Training) on the subject of promotion of officers in whose cases sealed cover procedure had been followed but against whom disciplinary/court proceedings were pending for a long time. The O.M.No.22011/2/86-Estt.(A), dated 12.1.1988 was issued in supersession

✓

contd....

.. 4 ..

of all the earlier instructions on the subject including the OM dated 30.1.1982. The following portion of Para-3 of the OM dated 30.1.1982 which is reiterated in the OM dated 12.1.1988 is as under:-

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion."

The said provision is to the effect that even though the delinquent is exonerated in the disciplinary proceeding/acquitted in the Criminal Case, he is entitled to notional promotion from the date of actual promotion and he will not be entitled to arrears of pay for the period from the date of notional promotion till the date of his actual promotion. The Full Bench of Central Administrative <sup>Tribunal</sup> ~~has~~ struck down the same. The Apex Court held in 1992 AIR 1991 SC 2010 (Union of India Vs. K V. Jayakiraman) that the above quoted portion in the OM has to be substituted by the following:-

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution.

.. 5 ..

Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

5. Even the OM dated 12.1.1988 states that if the delinquent is exonerated in the disciplinary proceeding/acquitted in the criminal prosecution, he has to be given promotion from the date it was due to him, if ~~the recommendation of~~ the DPC/selection committee as per the sealed cover recommends for the promotion of the ~~xxx~~ delinquent or if he is entitled to the promotion as per the grading given. But the question as to whether the sealed cover referred to has to be opened or not if by the time of disposal of the earlier disciplinary proceeding/criminal case, another disciplinary proceeding is initiated, was not considered in Jankiraman's case, for such a question had not arisen for consideration before their lordships of the Supreme Court. There is no mention about such a situation either in the OM dated 30.1.1982 or in OM dated 12.1.1988.

6. It is urged for the applicant that when the relevant OMs make it clear that the sealed cover has to be opened in case of the exoneration of the delinquent in the disciplinary proceeding/acquittal in the Criminal Case, ~~pendency~~ of the later disciplinary pro-

*Am*

contd....

... 6 ..

ceeding by the date of culmination of the earlier disciplinary proceeding/criminal case, ~~can~~ <sup>is</sup> not a bar for opening the sealed ~~xxxxxxxx~~ cover and in any case when there is no specific provision for deferring the opening of the sealed cover till after the disposal of the later disciplinary proceeding or the expiry of the period of punishment as the case may be, the sealed cover has to be opened.

7. But the learned standing counsel for the respondents submitted that it is not proper to promote an officer/employee while he is undergoing punishment and hence the respondents cannot be directed to open the sealed cover till after the expiry of the punishment imposed in the later disciplinary proceeding.

8. It is not in controversy that both the ~~xxx~~ relevant OMs stipulate that the sealed cover has to be opened, if the delinquent is completely exonerated of all the charges in the disciplinary proceeding/~~acquitted~~ in the criminal case due to the pendency of which it had become necessary to adopt the sealed cover procedure. It is further stated in the said OMs that the delinquent has to be given promotion from the/~~from~~ which it was due, if the recommendation ~~was~~ kept in a sealed cover, indicates that the delinquent has to be promoted. There is no specific provision to the effect that the sealed cover ~~xxxxxxxx~~ should not be opened or that the promotion has to be deferred, if the later disciplinary

*[Signature]*

.. 7 ..

proceeding was pending or the period of punishment had not expired by the date the delinquent was exonerated in the earlier disciplinary proceeding/acquitted in the Criminal Case. In the absence of any provision, statutory or otherwise, promotion of the employee/ officer cannot be deferred.

9. The Civil Appeal No.3018/87 was also disposed of along with some other Civil Appeals and SLPs by their lordships as per the judgment in Jankiraman's case. Therein the sealed cover procedure was followed even though no charge sheet was served on the concerned employees by the date the DPC met to consider the said employees' promotion. When those employees approached the Central Administrative Tribunal, the said Tribunal directed the authorities to open the sealed cover and if the delinquents were found fit for promotion by the DPC, to give them promotion from the date their immediate junior was promoted with all consequential benefits. It was also made clear therein that the said order would not mean that the disciplinary proceeding instituted against the said employees should not go on, when the said disciplinary proceedings were instituted in pursuance of the charge memo that was issued after the DPC met but which was merely contemplated by the date the DPC met. That decision of the Tribunal was confirmed by the Apex Court. Thus, it is a case where the

X

contd....

.. 8 ..

orders of promotion were given even during the pendency of the disciplinary case, when such promotion was given with effect from a date earlier to the date of charge memo. It was on the basis that the sealed cover procedure should not be adopted merely because the disciplinary proceeding is contemplated and such a course has to be resorted to only when the charge sheet is issued. It further suggests that the circumstances which existed by the date of promotion have to be taken into consideration and any instance which had come into existence after the date of assumption of the charge of the promotional post has no bearing for consideration in regard to such promotion. Thus, when the relevant OMs lay down that in case the delinquent is exonerated/acquitted, he has to be given promotion from the date it was due to him, the events which had taken place subsequent to the date on which the promotion was due have no relevance. Hence, we cannot accede to the contention for the respondents that it is not just and proper to order promotion, though with retrospective effect, when the said employee was undergoing penalty on the basis of the punishment order issued in the later disciplinary proceeding.

10. So, the respondents are to be directed to open the sealed cover containing the recommendations of the DPC which met in December 1990, and if the applicant was   
*H*

contd....

33

..9..

recommended for promotion to the post of Assistant Central Intelligence Officer Grade-I, he

has to be given promotion from the date on which his junior was promoted. The question as to whether the applicant is entitled to only notional promotion from that date or regular promotion with monetary benefit, till the date of acquittal has to be considered in accordance with the observations of the Apex Court in Jankiraman case cited supra.

11. The OA is ordered accordingly. No costs.//

*Anubegs/25*  
(A.B.GORTHI)  
MEMBER (ADMN.)

*Kuchm2*  
(V.NEELADRI RAO)  
VICE CHAIRMAN

DATED: 14th July, 1995.  
Open court dictation.

*Arshu 21-7-95*  
Deputy Registrar (J) CC

vsn  
To

1. The Director, Intelligence Bureau H.Qrs.  
Ministry of Home Affairs, Central Secretariat,  
North Block, New Delhi.
2. The Secretary, Ministry of Home Affairs, Govt. of India,  
Central Secretariat, North Block, New Delhi-1.
3. One copy to Mr.S.Ramakrishna Rao, Advocate, CAT.Hyd.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. Copy to All Reporters as per standard list of CAT.Hyd.
7. One spare copy.

pvm

*Typing*

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

*A.B.Gorafi*  
THE HON'BLE MR.R.RANGARAJAN: (M(ADMN))

DATED 14/7 1995.

ORDER/JUDGMENT:

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

OA.No. 1592/94 in

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.

4 Spale Copies

