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**Central Administrative Tribunal
Jabalpur Bench**

OA No.963/05

Jabalpur, this the 1st day December, 2006.

CORAM

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Mr.A.K.Gaur, Judicial Member

Balwant Rai
S/o late Atma Ram
Assistant Administrative Officer
National Research Centre for
Weed Science, Jabalpur.
R/o A-21, Professors Colony
Jabalpur.

Applicant

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Agriculture
Krishi Bhawan
New Delhi.
2. The Indian Council of Agricultural
Research (CAR) through its Secretary
Ministry of Agriculture
Krishi Bhavan
New Delhi.
3. The Director
National Research Centre for
Weed Science
Maharajpur,
Jabalpur.

Respondents

(By advocate Shri S.K.Mishra)

ORDER

By A.K.Gaur, Judicial Member

This case has a chequered history and this is the third round of litigation.

2. Stated in nutshell, a charge sheet dated 22.12.95 was issued to the applicant by the then Secretary, ICAR. The validity of the charge
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sheet was challenged by the applicant by filing OA No.449/96 which was dismissed by this Tribunal. Feeling aggrieved, the applicant filed a writ petition before the High Court. The High Court directed the applicant to file a review application for review of the order passed in OA No.449/96. Accordingly the applicant, who was working as Assistant Administrative Officer, filed a review application No.2/03. This review application was decided by the Tribunal vide order dated 28.3.2003 (A-1) setting aside the charge sheet, and giving liberty to the respondents to initiate disciplinary proceedings as per law. The validity of the order passed in the RA was challenged by the respondents by filing a writ petition No.1958/03 before the High Court. The said writ petition was dismissed by the High Court (A-4). Since the order passed in the RA No.2/03 attained finality, the applicant preferred representations (A-2) to open the sealed cover and to give effect to the recommendations of the DPC in regard to his pending promotion to the post of Senior Administrative Officer. When the representations yielded no result, the applicant filed OA No.142/03 which was disposed of by this Tribunal directing the respondents to decide the representations of the applicant by a reasoned order. It is significant to mention at this juncture that the applicant has specifically mentioned in his representation dated 17.1.2005 that the DPC which met on 31 October 1995 duly considered his case for promotion along with other eligible AAOs for promotion to the post of Senior Administrative Officer. The department did not open the sealed cover and issue promotion order in favour of the applicant. The respondent department issued a fresh charge sheet dated 16.9.05 (A-5) in pursuance of the order passed in RA No.2/03.

3. It has been contended on behalf of the applicant that the DPC met in the month of October 1995 to consider the applicant and other eligible persons for promotion to the post of senior Administrative Officer. On 31.10.95 there was no charge sheet against the applicant. It has also been contended on behalf of the applicant that in view of the judgement rendered by Hon. Supreme Court in Union of India vs.

K.V.Jankiraman – 1991 (4) SCC 109, the sealed cover procedure is to be resorted to only after the charge memo is issued. Since in the month of October 1995 there was no charge sheet against the applicant, the sealed cover procedure should not have been adopted in the case of the applicant and he should have been promoted as Sr. Administrative Officer immediately after the recommendation of the DPC convened in the month of October 1995.

4. The case of the applicant has been opposed by the respondents by filing a detailed as well as an additional reply. It has been averred in the additional reply that the recommendation of DPC held on 31.10.95 was not kept in sealed cover and the applicant was ^{not} recommended for promotion by this DPC. Subsequent DPCs held in 1996 and thereafter kept the recommendation concerning the applicant in sealed cover. It has been contended by the respondents that taking into consideration the gravity of the misconduct and proceeding pending against the applicant it was not in the interest of justice to open the sealed cover recommendations of DPC. The respondents have also stated in the reply that they have acted in accordance with rules. The applicant is not entitled to claim any relief. It is the specific case of the respondents that on representation from the applicant regarding opening the recommendations of DPC, the matter was examined and it was found that no sealed cover proceeding of the DPC could be opened as the applicant has not been exonerated from the charges on merit. Since the order passed by the Tribunal in OA No.449/96 was not final, the department filed WP No.1958/03 against the said order, therefore, the sealed cover recommendation of the DPC was not opened. They have also contended that the applicant is not entitled to get any benefit of the judgement in Janakiraman's case.


5. We have heard Shri S.Paul, learned counsel for the applicant and Shri S.K.Mishra, learned counsel for the respondents.

6. The learned counsel for the applicant has placed reliance on 1998 3 SCC 394 – Union of India vs. Dr.Sudha Salhan. Para 6 of the said judgement was specifically relied upon. It has been submitted on behalf of the applicant that on the date when the name of the applicant

was to be considered by the DPC for promotion to the higher post, the applicant was neither under suspension nor was any departmental proceeding initiated against him and his name should have been considered for promotion to the higher post. We have carefully gone through the decision rendered by the Hon. Supreme Court and we are of the firm view that if on the date when the name of a person is considered by the DPC for promotion to a higher post, and such person is neither under suspension nor has any departmental proceeding been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the sealed cover procedure cannot be adopted. In our considered view, if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the DPC would be opened, and the recommendation would be given effect to. Learned counsel for the applicant has placed heavy reliance on the decision of Hon. Supreme Court in Delhi Jal Board vs. Mahinder Singh – 2000 7 SCC 210. Para 5 of the said decision is reproduced hereunder:

“The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.”

8. With these directions, the OA is disposed of with no order as to costs.


(Dr. G.C. Srivastava)
Vice Chairman

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....

(1) सचिव, ~~उप~~ ^{जिला} ~~महानगर~~ ^{महानगर} ~~पुणे~~ ^{पुणे}, जवळपुर

(2) आदेशों के अन्तर्गत के कानून

(3) प्रत्यक्षी श्री/श्रीमती/श्रीमान के काउंसल

(4) ग्रंथपाल, कोसगाँव, जिला : पटना-800 005

सचना एवं आवस्यक सज्जना हेतु

उप रजिस्ट्रार

~~TS/nd~~
on 5/12/06
~~And~~