

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDER SHEET**

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**ORDERS OF THE TRIBUNAL**

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23.4.2009

OA 465/2008 with MA 59/2009

Mr. Kuldeep Sharma, proxy counsel for  
Mr. Sameer Jain, counsel for applicant.  
Mr. Hemant Mathur, counsel for respondents.

We have heard learned counsel for the  
parties. For the reasons dictated separately,  
the OA stands allowed.

*B.L.KHATRI*  
(B.L.KHATRI)  
MEMBER (A)

*M.L.CHAUHAN*  
(M.L.CHAUHAN)  
MEMBER (J)

*vk*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR

This, the 23<sup>rd</sup> day of April, 2009

**ORIGINAL APPLICATION No. 465/2008**

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

K.P.Singh  
s/o Shri B.B.Singh,  
aged about 40 years,  
r/o V/1, Central Revenue Colony,  
Jyoti Nagar, Jaipur,  
presently working as Joint Commissioner,  
Central Excise Commissionerate,  
Jaipur-I (Rajasthan).

.. Applicant

(By Advocate: Mr. Kuldeep Sharma, proxy counsel for  
Mr. Sameer Jain)

Versus

1. Union of India through  
Secretary (Revenue),  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi.
2. The Chairman,  
Central Board of Excise and Customs,  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi.

.. Respondents

(By Advocate: Mr. Hemant Mathur)

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O R D E R (ORAL)

The grievance of the applicant, who is working as Joint Commissioner, Central Excise Commissionerate, Jaipur, is that he has not been allowed benefit of Non-Functional Selection Grade (NFSG, for short) w.e.f. 1.1.2006 whereas the benefit of the said grade has been extended to the junior persons and findings of the Internal Selection Committee have been kept in the sealed cover erroneously. It is on this basis, the applicant has filed this OA thereby praying that he may be declared fit for grant of NFSG w.e.f. 1.1.2006 and direction may be given to the respondents to allow all consequential benefits.

2. Briefly stated, undisputed facts of the case are that the applicant is 1993 batch officer of the Indian Revenue Service (Custom and Central Excise). An Internal Selection Committee in respect of 1993 batch officers for granting them NFSG was held on 5.9.2006 and on the recommendation of the Committee, NFSG was granted to the officers of 1993 batch retrospectively w.e.f. 1.1.2006. However, the said benefit was not extended to the applicant and recommendations of the Committee were kept in a sealed cover as prosecution sanction was pending on the crucial date i.e. before 1.1.2006. The grievance of the applicant in this case

is that as on 1.1.2006, no prosecution was pending against him and the chargesheet was filed in the competent court by the CBI on 30.1.2006, as such, the Committee could not have resorted to sealed cover procedure in terms of the provisions which were in vogue at the relevant time and also in view of the law laid down by the Hon'ble Apex Court in the case of Union of India vs. K.V.Jankiraman, AIR 1991 SC 2010 and the law laid down by the Apex Court in the case of Union of India vs. Sangram Keshari Nayak (2007) 6 SCC 704 and further in view of the instructions issued by the Government of India vide OM dated January 8, 2003 (Ann.A/5) which deals with the application of sealed cover procedure so far as grant of NFSG is concerned.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have taken the stand that since prosecution was sanctioned against the applicant before the crucial date i.e. 1.1.2006, as such, in view of the law laid down by the Apex Court in the case of Kewal Kumar reported in 1993 (3) SCC 204 and in the case of H.C.Khurana, reported in 1993 (3) SCC 196, the sealed covered procedure was rightly adopted. At this stage, it will be useful to quote para (3) of the reply, which thus reads:-

"(3) That against applicant, prosecution was sanctioned on 19.12.2005 and the charge-sheet was filed in the competent court by CBI on

31/1/2006. Applicant was eligible for grant of NFSG w.e.f. 1/1/2006. Accordingly, the case of the applicant was reviewed by the review DSC held on 5/8/2006, by circulation. The review DSC recommended to keep the assessment in respect of the applicant in 'sealed cover' as prosecution was sanction against him before the crucial date i.e. before 1/1/2006. This view was taken in the light of Hon'ble Apex Court judgment in the matter of Kewal Kumar reported in 1993 (3) SCC 204 and in the matter of H.C.Khurana reported in 1993 (3) SCC 196."

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. The question which requires our consideration is whether the Committee has rightly resorted to the sealed cover procedure in the facts and circumstances of the case ? In order to answer this question, it may be stated that what procedure should be followed by the DPC while resorting to sealed cover procedure was *initially* contained in the OM dated 12.1.1988 which OM, inter alia, stipulated that the sealed cover procedure can be resorted to by the DPC in respect of a Government servant against whom prosecution for criminal charge is pending or a prosecution sanction has been issued or a decision has been taken to accord sanction for prosecution. The aforesaid OM dated 12.1.1988 was further amended vide OM dated 31.7.1991, which was further amended in view of the law laid down by the Apex Court in the case of K.V.Jankiraman (supra) and ultimately, it is the circular dated 21.1.1993 which stipulate instructions regarding adhering to the

sealed cover procedure in the case of promotion. The departmental instructions dated 21.1.1993 specified the following three circumstances warranting sealed cover procedure - (i) Government servants under suspension, (ii) Government servants in respect of whom a chargesheet has been issued and disciplinary proceedings are pending & (iii) Government servant in respect of whom prosecution for a criminal charge is pending. The Apex Court in the case of K.V.Jankiraman (supra) has specifically held that sealed cover procedure is to be resorted to only after the charge memo/chargesheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. It was further observed that in case there are serious allegations against a person and authorities are keen in investigating them it may take much time to collect the relevant evidence and finalise the charges, in that eventuality, the authorities are not remediless. The Government servant can always be put under suspension so as to make the sealed cover applicable. The Apex Court in the case of Sangram Keshari Nayak (supra) has also considered judgment of the Apex Court in the case of Kewal Kumar and H.C.Khurana (supra) on which reliance has been placed by the respondents and it was observed that those decisions were rendered in terms of instructions which were in vogue at the relevant time and the same

cannot be made applicable, in the instant case, where the DPC was held in the year 1999 and the instructions which governed the field were of 1993. The instructions of 1993 did not stipulate that sealed cover procedure should be adopted in such cases where the prosecution has been issued or decision has been taken to call sanction for prosecution which was part of OM dated 12.1.1988 and stood deleted subsequently. Thus, reliance placed by the respondents in resorting to sealed cover procedure on the basis of the earlier instructions dated 12.1.1988 and on the basis of law laid down by the Apex Court in the case of H.C.Khurana and Kewal Kumar (supra) is wholly misconceived and is not applicable in the facts and circumstances of this case. Thus, the fact that prosecution was sanctioned against the applicant prior to 1.1.2006 from which date the applicant was eligible for grant of NFSG is of no consequence.

6. Now the further question which requires our consideration is whether the sealed covered procedure could have been adopted on the ground that when the Departmental Selection Committee met on 5.8.2006, a chargesheet before the competent court was already filed by the CBI i.e. on 31.1.2006 ? For that purpose, it will be useful to quote para 2 of the departmental circular dated 21.1.1993 which specifies the follow 3

circumstances warranting sealed cover procedure and  
Para 2 thus reads:-

"2. At the time of consideration of the case of government servants for empanelment, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) government servants under suspension;
- (ii) government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending;
- (iii) government servants in respect of whom prosecution for a criminal charge is pending."

(emphasis supplied to underline)

Having regard to the aforesaid instructions, admittedly, case of the applicant has to be kept in sealed covered by the Departmental Selection Committee while considering case for promotion as at the time of consideration of the case of the applicant on 5.8.2006 chargesheet was already filed in the competent court on 31.1.2006, but the aforesaid instructions are applicable only in the case of promotion. The case of the applicant is regarding grant of NFSG w.e.f. 1.1.2006 from which date benefit has been extended to certain juniors of the same batch to which the applicant belongs. The grant of NFSG is covered by separate OM dated January 8, 2003 (Ann.A5). At this stage, it will be useful to quote para 2 of the said OM, which thus reads:-

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"2. It is clarified that the Internal Selection Committee, while considering the issue of grant of NFSG in accordance with the criteria laid down in this Department's O.M.no.28038/1/88-Estt D dated the 9<sup>th</sup> October, 1989, shall also place the recommendations for grant of NFSG in a sealed cover, if the Officer (s) concerned are covered by any of the following three situations as on the 1<sup>st</sup> January of the relevant calendar year in which the case of the concerned officer matures for grant of NFSG, unless such meeting is held in advance of the relevant year in which case the date of the meeting of the Internal Selection Committee will be relevant:

- a) Where the officer is under suspension;
- b) Where a charge sheet has been issued and the departmental proceedings for disciplinary action are pending; and
- c) Where prosecution for a criminal charge is pending in a court of law."

Keeping in view the above provisions, it is evident that the aforesaid three conditions as stipulated in para 2 shall be attracted as on first January of the relevant calendar year in which case of the concerned officer matures for grant of NFSG and not at the time of consideration of the case of the Government servant for empanelment by the Committee as stipulated in 1993 instructions, which related to the cases of promotion of the Government servants.

7. Thus, in view of what has been stated above, we are of the view that the applicant has made out a case for grant of relief. Admittedly, as on 1.1.2006 no chargesheet was filed against the applicant in a criminal court and case of the applicant could not

be

have been kept in sealed cover solely on the ground that prosecution has been sanctioned against him (which provision contained in the OM of 1988 has been subsequently deleted by the Government keeping in view the law laid down by the Apex Court in the case of V.K.Jankiraman).

8. Accordingly, the OA is allowed. The respondents are directed to open the assessment of the applicant kept in sealed cover and if found fit grant him NFSG w.e.f. 1.1.2006 with all consequential benefits.

  
(B.L.KHATTRI)

Admv. Member

  
(M.L.CHAUHAN)

Judl. Member

R/