

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

26.07.2011

OA No. 362/2010

Mr. Amit Mathur, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

During the course of arguments, we thought it proper to know about the progress of the trial inquiry pending against the applicant.

The respondents are directed to produce the latest position of the inquiry proceedings.

Put up on 11.08.2011 as a part heard.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(Justice K.S. Rathore)
MEMBER (J)

AHQ

30/8/11
Ry

11.8.2011

Mr. Anrit Mathur, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

Heard. The OA is disposed of by
a separate order.

Anil Kumar

(Anil Kumar)
M (A)

K. S. Rathore

(Justice K.S. Rathore)
M (J)

30/8/11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of August, 2011

OA No. 362/2010

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

S.N.Sethi
s/o Shri Srinarayan Sethi,
r/o 184, Durga Pura, Jaipur
presently working as
Superintendent (Ad-hoc),
Central Excise, Jaipur

.. Applicant

(By Advocate : Shri Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise & Customs, North Block, New Delhi.
3. The Chief Commissioner, Central Excise and Customs, N.C.R. Building, Statue Circle, Jaipur
4. The Commissioner, Central Excise, Jaipur-I, N.C.R. Building, Statue Circle, Jaipur.

.....Respondents

(By Advocate : Shri Mukesh Agarwal)

O R D E R (ORAL)

This is fourth round of litigation and the present OA is preferred by the applicant claiming following reliefs:-

"It is, therefore, humbly and respectfully prayed that this petition filed by the applicant may kindly be allowed and the order annexure A/1 & A/2 may kindly be quashed and set aside. The respondents may be directed to promote applicant w.e.f. Sept. 2002 as Superintendent Group-B on regular basis with all consequential benefits. The respondents may further be directed to interpreted the provision of clause 7 of para dated 14.09.1992 as such that the filling of the challan does not mean that it is pending prosecution. In alternate the clause 7 of OM dated 14.09.1991 may be declared as ultra virus and the same may kindly be quashed and set-aside.

Any other appropriate relief which this Hon'ble Tribunal deems fit in the interest of justice in the facts and circumstances of the case in favour of the applicant may kindly be passed."

2. Brief facts of the case are that the applicant was working as Inspector in the Central Excise and Customs. On 18/19.07.2002 meeting of Departmental Promotion Committee (DPC) was convened for promotion to the post of Superintendent Group-B from amongst Inspectors for filling up 124 vacancies including 118 new additional posts, for the vacancy of the year 2002-2003. The applicant was duly considered by the DPC. Since the Commissioner had accorded sanction for prosecution against the applicant for criminal charge on 27.6.2002, therefore, findings in respect of



applicant were kept in sealed cover by the said DPC held on 18/19.07.2002.

3. A representation dated 29.5.2003 was submitted by the applicant for his promotion to the grade of Superintendent Group-B and the same was disposed of vide letter dated 8.9.2003.

4. Being aggrieved and dis-satisfied with the order dated 8.9.2003, the applicant filed OA No. 393/2004 before this Tribunal. The Tribunal allowed the OA and the impugned order dated 8.9.2003 was quashed and set-aside and the respondents were directed to act on the recommendations of the DPC held on 18/19.7.2002 so far as the applicant is concerned and if found fit he may be promoted to the grade of Superintendent Group-B from retrospective date when his junior was promoted w.e.f. 23.9.2002 with all consequential benefits including arrears of pay and seniority. It is further directed that this exercise shall be carried out within three months from the date of receipt of the order.

5. In compliance of the order dated 9th May, 2005 rendered in OA No.393/2004, the matter was examined and it was found that case of the applicant comes within the purview of Para 7 of the DOPT OM dated 14.9.1992 and Establishment Order dated 8.6.2005 was issued mentioning the relevant instructions therein.



6. The applicant challenged Para-7 of OM dated 14.9.1992 by way of filing second OA No.401/05. During the pendency of this OA, the applicant was promoted to the grade of Superintendent Gorup-B purely on ad-hoc basis in terms of para-5, 5.1 and 5.2 of the DOPT OM dated 14.9.1992 vide Establishment Order dated 22.3.2007. This fact was brought to the notice of the Tribunal by way of filing MA No. 113/2008 thereby annexing copy of the Establishment Order No. 23/2007 dated 22.3.2007 whereby the applicant was promoted in the grade of Superintendent Group-B on ad-hoc basis. The said document was taken on record and the MA as well as OA was disposed of.

7. The applicant preferred third OA No.353/2008 before this Tribunal against the action of the respondents due to declaring him unfit in the sealed cover and against the order dated 8.6.2005. This Tribunal vide its order dated 12.5.2009 passed in OA No.352/2008 held that:-

"In view of the provisions contained in para 2.1, as extracted above, it was incumbent upon the DPC to assess the suitability of applicant without taking into consideration the criminal prosecution pending against him. In the instant case, the DPC has taken into consideration the criminal prosecution against the applicant and as such he was declared unfit. Accordingly, we are of the view that the applicant could not have been graded unfit by the DPC especially when the applicant was graded as 'Good' on the basis of 5 ACRs upto 2000-2001. Accordingly, the impugned order dated 08.06.2005 is quashed and set aside.

The case is remitted back to the respondents to hold the Review DPC and assess the suitability of the applicant for the post of Superintendent Group 'B' keeping in view the instructions of the DOPT O.M. dated 14.09.1992 and to proceed further in accordance with law/instructions and pass appropriate order. Such an exercise will be taken within a period of three months from the date of receipt of a copy of this order. With these observations, the O.A. is disposed of with no order as to costs."

8. In compliance of the Tribunal's order dated 12.5.2009, a review DPC was held on 6.8.2009 in respect of DPC held on 18/19.7.2002 for considering the case of the applicant for regular promotion to the grade of Superintendent Group-B. Since a chargesheet (challan) was filed against the applicant by the CBI before court on 19.8.2002 i.e. before 23.09.2002 when seniors and immediate junior to him Shri R.P.Nagar were actually promoted to the grade of Superintendent, Group-B, therefore, in terms of Para-7 of DOPT's OM dated 14.9.1992, the recommendations of the review DPC held on 6.8.2009 in respect of the applicant for regular promotion to the grade of Superintendent Group-B w.e.f. 23.9.2002 were deemed to be placed in sealed cover and In terms of DOPT OM dated 14.9.1992, the applicant will be eligible for regular promotion to the grade of Superintendent Group-B w.e.f. 23.9.2002, if he is completed exonerated of the charges against him in the said prosecution on the basis of the recommendations of the said review DPC held on 6.8.2009.



9. The applicant represented through his representation dated 31.8.2009 to the chief Commissioner, Central Excise, Jaipur Zone against the order dated 11.8.2009 (Ann.A/1) and the same has been disposed of after examination in the light of the judgment of this Tribunal as well as DOPT's instruction vide letter dated 20.11.2009 (Ann.A/2).

10. Aggrieved and dis-satisfied with the order dated 11.8.2009 (Ann.A/1), the applicant preferred the present OA i.e. fourth OA and challenged action of the respondents to keep the recommendations under the sealed cover and in support of his submissions placed reliance on the judgment rendered by the Principal Bench of this Tribunal in the case of R.P.Singh vs. Govt. of NCT of Delhi, in OA No.1604/2009 decided on 23rd December, 2009.

11. Now, we have to decide the question whether promotion can be made pending prosecution by way of filing challan or framing of the charges and second question whether the development occurred subsequent to the recommendations of the DPC can be made a ground to deny promotion ?

12. The Hon'ble Supreme Court in the case of Union of India and Ors. vs. K.V.Jankiraman, AIR 1991 SCC 2010 decided on 27.8.1991 and observed as under:-



"It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued..."

13. This Tribunal in OA No.393/2004 preferred by the applicant has considered the judgment rendered in the case of K.V.Jankiraman (supra) and in para 5.5 observed that 'legal position on the point has already been settled by the Apex Court in number of decisions including the decision rendered by the Apex Court in the case of K.V.Jankiraman (supra) which decision was subsequently followed by the Apex Court in the case of Dr. Miss Sudha Shalhan (supra). In the first instance we would refer to the decision of the Apex Court in the case of Union of India vs. K.V.Jankiraman, wherein the law regarding prohibition to promotion of an officer though recommended by the DPC was laid down. Their Lordships in the above referred case had declared the law as follows:-

"It is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee, it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet 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. The plea that when there are several allegations and it taken time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it

would not be in the interest of the purity of administration to reward the employee with a promotion, increment, etc would not be tenable...."

14. Thus from 1991 onwards the procedure of sealed cover should have been resorted to only if the charge memo in the case of disciplinary proceedings or chargesheet in criminal prosecution is issued to the employee.

15. With regard to Para-7 of the DOPT OM , the Hon'ble Supreme Court in the case of Union of India and Anr. Vs. R.S.Sharma reported at 2000 SCC (L&S) 653 held that Para-7 of the sealed cover procedure would entirely apply and the recommendations made by DPC in respect of the respondent therein have to remain in the sealed cover until he is completely exonerated of the charges against him.

16. Since the chargesheet (challan) was filed against the applicant by the CBI in the Court on 19.8.2002 i.e. before 23.09.2002 when seniors and immediate junior Shri R.P.Nagar, Inspector were actually promoted to the grade of Superintendent Group-B on the basis of the findings of DPC held on 18/19.7.2002. Therefore in terms of provisions of Para-7 of DOPT OM dated 14.9.92, the recommendations of the said review DPC held on 6.8.2009 in respect of the applicant for regular promotion to the grade of Superintendent Group-B w.e.f. 23.9.2002 have been deemed to be placed in sealed



cover. The applicant will be eligible for regular promotion to the Superintendent Group-B w.e.f. 23.9.2002 until he is completely exonerated of the charges against him in the said prosecution.

17. The Hon'ble Supreme Court has also considered the same controversy in the case of Delhi Development Authority vs. H.C.Khurana, reported at 1993 SCC (L&S) 736 and referred para-2 of the OM dated January 12, 1988 which is in the following terms:-

"Cases of government servants to whom Sealed Cover Procedure will be applicable.

2. At the time of consideration of the cases of government servants for promotion, 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 disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.

(iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

18. Further, in the case of Union of India and Anr. vs. R.S.Sharma (supra), the Hon'ble Supreme Court has held as under:-

"Admittedly, the respondent has not been promoted even so far while formal sanction to prosecute him has been accorded meanwhile. Therefore, para 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by DPC in respect of the respondent have to remain in the sealed cover "until he is completely exonerated of the charges against him.

The respondent's arguments are wholly unconvincing. Firstly, because what the Department did not do is not the yardstick indicated in para 7 of the Sealed Cover Procedure; what is mentioned therein is that it cannot apply to the government servant who is not "actually promoted" by that time, Secondly, the stand taken up by the Department is that in spite of deletion of Para 2(iv), the recommendation of DPC must remain in the sealed cover on account of the conditions specified in Para 2(iii) by virtue of operation of para 7. One cannot say that the said stand was incorrect and, therefore, one cannot blame the Department for not opening the sealed cover immediately after 31.7.1991."

19. Thus, in view of the ratio decided by the Hon'ble Supreme Court vide its judgments as referred to hereinabove, we find no merit in the present case since after according sanction challan has been filed and criminal case is pending and until and unless the applicant is completely exonerated of the charges, the sealed cover cannot be opened. It is not disputed that recommendations of the review DPC held on 6.8.2009 have not been placed in the sealed cover by the said review DPC but since a charge-sheet was filed against the



applicant by the CBI before Court on 19.8.2002 i.e. before 23.9.2002 when promotion to junior/seniors were actually made, therefore, in terms of Para-7 of DOPT's OM dated 14.09.1992, the recommendations of the said review DPC have been deemed to be placed under sealed and until and unless the applicant is completely exonerated of the charges, the sealed cover cannot be opened. The judgment of the Principal Bench of this Tribunal in OA No. 1604/2009 dated 23.7.2009 relied upon by the applicant in the facts and circumstances is entirely different and is not applicable to the instant case.

20. Consequently, the OA being devoid of merit is hereby dismissed with no order as to costs.



(ANIL KUMAR)
Admv. Member



(JUSTICE K.S.RATHORE)
Judl. Member

R/