

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 49 of 1994

Date of decision 2.5.95

Sri Kanu Priya Das

PETITIONER(S)

Sri G.K.Bhattacharjee

ADVOCATE FOR THE  
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Sri B.K.Sharma

ADVOCATE FOR THE  
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Yes

No

Judgement delivered by Hon'ble *M.G. Chaudhari* Vice-Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 49 of 1994.

Date of decision : This the 2<sup>nd</sup> day of May, 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Shri Kanu Priya Das  
Senior Personnel Officer (Mech.)  
N.F. Railway,  
Maligaon,  
Guwahati-781011.

..... Applicant

By Advocate Sri G.K. Bhattacharjee.

-versus-

1. The Union of India in the Ministry of Railways through the Secretary, Rail Bhawan, New Delhi-1.
- 2i. The Railway Board through the Secretary, Rail Bhawan, New Delhi-1.
3. The Secretary (E) Railway Board, New Delhi-1.
4. The Union Public Service Commission, through the Secretary, Dholpur House, New Delhi.
5. The Chief Vigilance Officer, N.F. Railway, Maligaon, Guwahati-781011.
6. The General Manager (P), N.F. Railway, Maligaon, Guwahati-781011.
7. Shri A.P. Barua, Senior Divisional Personnel Officer, N.F. Railway, Luming.

8. Shri A.K.Baul,  
Senior Divisional Personnel Officer,  
N.F. Railway, Alipurduar Jn.  
Alipurduar Jn.
9. Shri Haladhar Das,  
Senior Personnel Officer (Welfare)  
N.F. Railway,  
Maligaon,  
Guwahati-781011.
10. Shri D.K.Das,  
Senior Personnel Officer (Construction)  
N.F. Railway,  
Maligaon,  
Guwahati-781011. .... Respondents.

By Advocate Sri B.K.Sharma.

O R D E R

CHAUDHARI J (V.C.).

The O.A. was filed by the applicant on 16.3.94. During the pendency of the application the applicant has already retired from railway service in the month of February, 1995.

2. At the material time the applicant was holding the post of Senior Personnel Officer. In the year 1992 he became eligible for being considered for promotion to junior scale of the Indian Railway Personnel Service which is a selection post. A Departmental Promotion Committee met in the month of July, 1992 (In the written statement it is described as UPSC). Seven officers including the applicant were considered by the Selection Committee for the promotion. While the committee recommend

six officers out of whom one was senior to the applicant and the remaining five were junior to him for appointment to Grade A junior scale. Amongst them the respondent Nos. 7 to 10 are junior to the applicant. The committee however did not recommend the name of the applicant for the reason that a clear integrity certificate could not be issued in his favour as a vigilance investigation against him was in progress and a decision had been taken to proceed against him by way of a departmental proceeding for certain irregularity committed by him while working as Divisional Personnel Officer at Katihar during the year 1988 for continuing some ad-hoc promotion beyond permissible limit. Instead the committee adopted 'sealed cover' procedure.

3. A Chargesheet was served upon the applicant on 9.11.93 for the alleged misconduct. The enquiry carried in pursuance thereof ended in the penalty of censure being imposed upon him vide order passed by the General Manager, N.F. Railway dated 3.2.94. It is thereafter that the applicant has approached this Tribunal by the instant O.A.

4. The applicant seeks a direction to the respondents to open the 'sealed cover' and to appoint him to the I.R.P.S. from the date his junior i.e. respondent No. 7 was promoted, with all consequential benefits. The imposition of the penalty is however not the subject matter of the application.

5. Mr. G.K. Bhattacharjee the learned counsel for the applicant submits that the DPC had acted illegally in

adopting 'sealed cover' procedure on 14.9.92 on which date there was no departmental proceeding pending against the applicant. He therefore submits that the respondents ought to be directed to open the 'sealed cover' and if the applicant had been selected then to give him promotion retrospectively from the date on which respondents No. 7 was promoted together with all consequential benefits. The learned counsel submits that as this was an irregularity relating to the date of selection what transpired thereafter including the punishment awarded to the applicant would be irrelevant and cannot be made a ground to deprive the applicant of the benefit of promotion retrospectively. Mr. G.K. Bhattacharjee further submits that the only interest now left for the applicant is to secure the monetary benefit as he has already retired from service and cannot hope for any other benefits. However according to the learned counsel the monetary benefit will be of great help to the applicant in his retirement as on the relief being granted to him his pension may be enhanced. Mr. B.K. Sharma the learned counsel for the respondents on the other hand submits that the applicant is not entitled to the relief sought by him for the reason that the course adopted by the respondents/Departmental Promotion Committee to apply 'sealed cover' procedure cannot be said to be illegal and the fact that the applicant has been meted out the penalty cannot be ignored.

6. We have given anxious consideration to the matter having regard to the fact that the applicant has already ~~been~~ retired and therefore any monetary benefit coming his

way would be of much help to him particularly as the quantum of penalty awarded is of a minor nature. The position in law however does not permit us to grant him relief for the reasons indicated below.

7. There cannot be any dispute that on the date on which the selection committee had met and the date is stated to be, ~~is~~ 14.9.92, the disciplinary proceedings had not been initiated against the applicant. That was the stage when only some vigilance investigation was being carried out and initiation of disciplinary proceeding was in ~~completion~~ <sup>contemplation</sup>. The Chargesheet was issued subsequently. The position in ~~that~~ respect is now well established by the decision of the Hon'ble Supreme Court in the case of Union of India etc. etc. Vs. K.V. Jankiraman etc. etc. AIR 1991 SC Page 2010. It has been laid down that 'sealed cover' procedure could be adopted only after the date of issuance of charge memo which is the date from which disciplinary proceedings could be taken to have been initiated. Since in the instant case on the date when the DPC met the charge memo had not been served upon the applicant resort could not ~~therefore~~ <sup>be</sup> had with the 'sealed cover' procedure. Relying on the order passed by Their Lordships in paragraph 10 of the judgement relating to Civil Appeal No. 3018 of 1987 Mr. G.K. Bhattacharjee submitted that similar course may be adopted in the instant case as that precisely is the relief sought by the applicant. The order of the Hon'ble Supreme Court relating the Civil Appeal No. 3018/87 contained in paragraph 10 of the report reads as follows :

"In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior ..... was promoted pursuant to the order dated April, 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits."

8. The submission of Mr. G.K. Bhattacharjee would ordinarily be required to be accepted in view of the law laid down by the Supreme Court as regards the stage from whence the 'sealed cover' procedure can be applied and in the light of the above quoted order in para 10 of the judgement as the facts in the instant case would appear to bear similarity with those facts.

9. Mr. B.K. Sharma, the learned counsel for the respondents however submitted and, we think with considerable amount of substance, that although the aforesaid may be the position yet the fact that the enquiry proceeding had resulted in awarding a penalty to the applicant cannot altogether be ignored while considering the question of giving retrospective promotion to the applicant at this stage. In this connection the learned counsel submitted that the applicant had not approached the Tribunal for relief <sup>even</sup> since after he was not selected in July 1992 and he could not therefore make a grievance in that respect in March 1994. The learned counsel also points out that the applicant had filed a representation after about a year after his non-selection, on 14.7.93 and that from the

memorandum of appeal Annexure II, it will be seen that to the knowledge of the applicant the vigilance investigation had been conducted and completed and it was decided to issue a minor penalty memorandum to him. <sup>Thus</sup> This according to the learned counsel on the date on which the selection committee had met the vigilance investigation had effectively progressed disclosing a prima facie case of misconduct against the applicant and therefore it would not be open to him to ask relief in this application as to the denial of selection in July, 1992. The learned counsel also sought to rely on the aforesaid decision of the Supreme Court in Jankiraman's case.

10. The observations of Their Lordships in paragraph 8 of the judgement are required to be borne in mind for the purpose of appreciating the submission of the counsel. That discussion covers the question No. 2 formulated by Their Lordships in paragraph 2 of the judgement in the following terms :

"What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal ?".

The material observations contained in para 8 of the judgement are extracted below :

"In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of

course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. .... An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently .... The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti ..... A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified".

It is true that it would therefore be open for a DPC to take into account the penalty imposed but that would relate to prospective promotion. Even so having regard to the principle enunciated in the above ruling and having regard to the facts of the instant case we think that we will be acting mechanically if we apply only that part of the decision which lays down the correct stage to apply sealed cover procedure and consider granting promotion <sup>to</sup> the applicant retrospectively from the date on which the selection was made with all consequential benefits. It appears to us that the rule of sealed cover

procedure has to be applied rationally in view of the later decision of the Supreme Court in the case of Union of India Vs. Kewal Kumar AIR 1993 SC 1585 wherein after formulating the question to be examined as to whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? it was also held that the decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. Likewise in the case of State of Madhya Pradesh and another Vs. Syed Naseem Zahir and Ors. AIR 1993 SC 1165 directions were given not to open the sealed cover recommendation till the departmental proceedings were concluded and it was made clear that in case the delinquent was punished in the proceedings the action can be taken in accordance with the guidelines as laid down by the Supreme Court in Jankiraman's case.


11. We therefore find it difficult to grant relief to the applicant even though the respondents had not correctly applied the sealed cover procedure at a stage when it could not be adopted. We are of the opinion that if only because of that error we are to direct the sealed cover to be opened and to promote the applicant with retrospective effect with all consequential benefits should he be found to have been selected, we would be giving rise to an incongruous situation wherein the applicant who has suffered a penalty though minor for his misconduct (which he has not disputed) would stand


rewarded with a promotion which he cannot claim as a matter of right. We are therefore not inclined to adopt the course.

12. Mr. G.K. Bhattacharjee drew our attention to the guidelines issued by the Railway Board. These guidelines clearly provide that in the event of any penalty being imposed as a result of disciplinary proceeding the findings in the sealed cover shall not be acted upon and the case for promotion of such Government servant may be considered by the next DPC in the normal course and having regard to the penalty imposed upon him. That further makes it difficult to make a direction which may bring about an inconsistent situation with these guidelines. The guideline also make it clear that in case of minor penalty of censure the promotion may be considered prospectively. The question of prospective promotion does not arise in the instant case as the applicant has already been retired from service.

In the result, the application is dismissed.

There will be no order as to costs.

  
(G.L. SANGLYINE) 2/3/95  
Member (A)

  
(M.G. CHAUDHARI)  
Vice-Chairman