

**Central Administrative Tribunal
Principal Bench**

**CP No. 285/2014
OA No. 4226/2012**

Order Reserved on: 13.01.2016
Order Pronounced on: 19.01.2016

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)**

Shri Pawan Kumar (aged about 41 years)
S/o Late Shri Hanumant Singh,
Deputy Director (Administration), NTRO,
R/o A-23, Sector 71,
NOIDA (UP)-201301

-Petitioner

(By Advocate: Shri Ajesh Luthra)

VERSUS

1. Shri Alhad G. Apte, Chairman,
National Technical Research Organization (NTRO)
Government of India,
Block-3, Old JNU Campus,
New Delhi-110067
 2. Sh. G.S.N. Raju, Centre Director (CMMS),
National Technical Research Organization (NTRO)
Government of India,
Block-3, Old JNU Campus,
New Delhi-110067
 3. Shri Ashwani Kumar Sonik,
Controller of Administration (COA)
National Technical Research Organization (NTRO)
Government of India,
Block-3, Old JNU Campus,
New Delhi-110067
 4. Air Comdr. (Retd) Virender Sehgal (on contract)
Director (Establishment-II),
National Technical Research Organization (NTRO)
Government of India,
Block-3, Old JNU Campus,
New Delhi-110067
- Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

Dr. B.K. Sinha Member (A):

The instant Contempt Petition has been filed against the respondents alleging deliberate disregard of the order of this Tribunal dated 16.12.2013 in OA No. 4226/2012 (**Pawan Kumar Vs. NTRO & Ors.**). It has been stated that the applicant became eligible for promotion w.e.f. 21.06.2011, while the draft charges were served him on 21.09.2011. The OA was disposed of with the following directions:-

- “(i) The respondents are directed to convene DPC for promotion to the post of Director wherein the case of the applicant may also be considered as per the ratio laid down in the case of Union of India Vs. K.V. Jankiraman (supra) and that in Bhajan Singh Vs. State of Uttarakhand (supra).***
- (ii) This DPC will be held within a period of six months.***
- (iii) In the meantime, the respondent-organization has liberty to proceed with and conclude both the departmental inquiry pending against the applicant and the proposed inquiry under Rule 14 of the CCS(CCA) Rules, 1965.”***

2. It is the case of the applicant that in the DPC convened on 01.07.2014, the date of eligibility for promotion was deemed as 01.12.2012 overriding the findings of the Tribunal in OA No.4226/2012 that he had become eligible for promotion w.e.f. 21.06.2011. The proceedings of the

DPC were, therefore, placed under sealed cover. The applicant has relied upon para 20 of the decision of the Hon'ble Supreme Court in **K.A. Ansari & Anr. vs. Indian Airlines Limited**, (2009) 2 SCC 164 to contend that the respondents could not have circumvented the directions of the Tribunal on any ground whatsoever without having challenged the same or sought clarifications.

3. The respondents have filed a counter reply and it is also submitted orally by their learned counsels that as per OM dated 17.09.1998, the crucial date for determining eligibility for promotion in the case of financial year-based vacancy year would be 1st of January immediately preceding such vacancy year, and in the case of calendar year-based vacancy year, the first day of the vacancy year i.e., 1st January itself, would be taken as the crucial date. In the case of the respondent-organization, it is the calendar year, which is taken as the vacancy year. In the instant case, the applicant had completed five years of regular service on 21.06.2011 and, thus eligibility for promotion will have to be reckoned w.e.f. 01.01.2012. The DPC decided to place its recommendations in sealed cover because the charge-sheet had been pending against the petitioner prior to 01.01.2012, namely, 21.09.2011. The applicant's case is also hit by paragraph 7 of the OM dated 14.09.1992 which provides for sealed cover procedure where an employee comes under

cloud before he is actually promoted despite recommendations of the DPC otherwise.

4. We have considered the matter. Here, the order of the Tribunal is in two parts. The first part of the order is regarding holding of DPC within a period of six months, which has been complied with, as the DPC was held on 01.07.2014. The second part of the directive was to hold the DPC as per the decisions of the Hon'ble Supreme Court in **Union of India & Ors. vs. K.V. Jankiraman**, AIR 1991 SC 2010 and in **Bajan Singh Vs. State of Uttarakhand** (Civil Ap[peal No. 7706/2013). In **K.V. Jankiraman** (supra), the respondent-employee was served with a charge-sheet on 22.02.1988. He was awarded penalty of withholding of increment for one year vide order dated 19.08.1988. On 03.06.1988, the DPC met for consideration of promotion to the Selection Grade on the basis of which some of his juniors had been promoted with retrospective effect from July 30, 1986 while the case of the respondent-employee had been kept in a sealed cover. The Tribunal had found fault with the authorities on two grounds; i.e. promotion had been given w.e.f. 30.07.1986 when there was no departmental charge-sheet against the employee and that as the punishment had been imposed on conclusion of the departmental proceedings, the employee could not have been denied promotion to the Selection Grade as it

amounted to double jeopardy. The findings of the Hon'ble Supreme Court are being extracted for the sake of greater clarity:-

“The Tribunal has found fault With the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986,. the DPC should not have excluded the respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the 'respondent his promotion to the. Selection Grade as that amounted to 'double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the 'respondent's case for promotion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records up to 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from, July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunal's finding is 'accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he

would stand rewarded not with-standing his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be no order as to costs”.

This finding is squarely attracted to the facts of this case even though in the instant case, the misconduct as contained in the charge-sheet dated 21.09.2011 relates to a period prior to gaining eligibility for promotion, i.e., 14.06.2010, when the applicant had been found unauthorizedly in possession of 17 documents not related to his official duties. He had also forwarded classified data to undisclosed sources through internet. Hence, the finding of the Hon'ble Supreme Court in **Union of India vs. K.V. Jankiraman** (supra) is fully attracted to the facts of the case.

5. We are further swayed by the fact that the order of this Tribunal is only to be implemented within the terms of laws and rules. It is true that the applicant had completed five years of regular service on 21.06.2011. However, the promotion would only be considered within the terms of the OM No. 17.09.1998. For the sake of clarity, we extract paras 1 and 2 of the said OM as under:-

“SUBJECT:-Eligibility of officers to be considered for promotion by DPC-Fixing of Crucial Date of

The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and Training Office Memorandum No.22011/7/86-Estt.(D), dated the 19th July, 1989, the crucial date for determining the eligibility of officers for promotion has been prescribed as under:-

- (i) 1st July of the year in cases where ACRs are written calendar year-wise.
- (ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions, it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.”

Besides the OM dated 14.09.1992 also acts as a barrier.

Para 7 of this OM is also being extracted for the sake of greater clarity:-

“7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a

sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.”

There is no way that the applicant would have been promoted in view of the departmental proceedings initiated against him.

6. In conclusion, we are of the opinion that the respondents have considered the case of the applicant in the review DPC held pursuant to the order of this Tribunal dated 16.12.2013 within the terms of **Union of India vs. K.V. Jankiraman** (supra) and the framework of the rules, which act as subordinate legislation. The respondents have, thus, not defied or disobeyed the order of this Tribunal in any way. We, therefore, drop the contempt proceedings and discharge the respondents from notice. It is made clear that our observations are only for the purpose of deciding the contempt petition, and since we have found that there is substantial compliance, the Contempt Petition is dismissed. However, liberty is given to the applicant to challenge the same before appropriate forum in accordance with law.

7. The CP is accordingly closed. No costs.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

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