

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2338/2013

Reserved on: 19.02.2016
Pronounced on: 26.04.2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Surendra Bahadur Singh
s/o Late Sh. L.B. Singh
r/o H.No.338, Sector-15A
NOIDA, U.P.

...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Versus

MCD & Others through

1. Commissioner
Municipal Corporation of Delhi
Civic Centre, J.L.N. Marg
New Delhi.
2. The Additional Commissioner (Engg.)
Municipal Corporation of Delhi
Civic Centre, J.L.N. Marg
New Delhi.

...Respondents

(By Advocate: Sh. R.K. Jain)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The instant OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 assailing the action of the respondents in not promoting him to the post of Assistant Engineer (Civil)[hereinafter referred to as AE(C)] despite having fulfilled all the eligibility conditions as prescribed under the rules.

2. The applicant has prayed for the following relief(s):-

“(i) to quash and set aside the impugned order dated 01.01.2013 and 09.04.2013;

- (ii) *to declare the action of respondents in not promoting the applicant to the post of AE (Civil) from the date of promotion of his juniors as illegal, arbitrary and unconstitutional;*
- (iii) *to direct the respondents to promote the applicant to the post of AE (Civil) from the date of promotion of his juniors with all consequential benefits including arrears of pay;*
- (iv) *to direct the respondents to promote the applicant to the post of AE (Civil) by holding review DPC/opening sealed cover as per his entitlement with all consequential benefits including further promotions to the post of EE & SE etc.;*
- (v) *To allow the OA with costs;*
- (vi) *to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."*

3. The facts of the case, in brief, are that the applicant was appointed as Junior Engineer (Civil) [hereinafter referred to as JE (C)] in the year 1979 in Municipal Corporation of Delhi [hereinafter referred to as MCD] and became eligible for promotion to the post of AE(C) after having rendered 5 years of service in the year 1984. However, in 1991 the applicant was subjected to a chargesheet in disciplinary proceedings on the basis of which he was overlooked for promotion in the years 1994, 1996 and 2000 while his juniors had been promoted over him. In the meantime, a criminal case also came to be instituted against the applicant in the year 2001 thereby becoming further ground for not promoting him. Subsequently, the applicant approached this Tribunal in OA No. 3628/2011 which

quashed the chargesheet vide order dated 8th May, 2012 and directed the respondents to consider him for promotion from the date of his immediate junior had been promoted provided there being no other impediments in his case. The respondents in their reply dated 11.07.2012 in a subsequent contempt petition filed by the applicant submitted that the Commissioner, NDMC had ordered that the case of promotion of the applicant at par with his immediate junior and the same be processed in a time bound manner. The applicant submits that the respondents were required to undertake to convene a review DPC to consider the case of the applicant in place of which they convened a normal DPC on 01.01.2013 wherein the case of the applicant does not appear to have been considered. However, the respondents failed to promote the applicant on the ground that a chargesheet had been submitted in FIR No.1443/SIO(P)/Vig./2000/CBI pending against him. The CP was, therefore, disallowed and the applicant was given the option to file a fresh OA, hence, the instant OA has been filed for the relief(s) extracted above.

4. The case was heard and reserved on 05.01.2016. While the order was in the process of being prepared, it was noticed that the latest position of the criminal case pending against the applicant has not been indicated by the

applicant. Therefore, the OA was directed to be listed under the head of 'For Being Spoken' on 19.02.2016 on which date the learned counsel for the applicant was asked to provide the latest position regarding pendency of criminal case. However, even after several oral reminders, the learned counsel for the applicant has failed to provide the requisite information. Under these circumstances, presumption in law is that since the applicant wishes to derive advantage from the information, the onus is upon him to prove that notice had not been issued in the criminal case instituted against him under FIR No.1443/SIO(P)/Vig./2000/CBI.

5. The applicant has principally relied on the grounds that though admittedly a chargesheet had been issued against him by the respondents, the charges had not been framed. The pendency of FIR cannot be made the basis for sealed cover proceedings and charges have to be framed by the Court of competent jurisdiction in a criminal proceeding in order to attract this provision. The applicant has submitted that he is free from the vigilance angle and the criminal case has been pending against him for the last 15 years, and he will have retired after having rendered 33 years of service without earning any promotion. He has also alleged *mala fide* by stating that mere pendency of FIR is not a bar in granting promotion as held by the Hon'ble Supreme Court in

Union of India & Ors. Vs. K.V. Jankiraman [1991 (4) SCC 109] which has been followed by this Tribunal as well as by the Hon'ble High Court of Delhi in *Union of India Vs. Om Prakash* decided by the Hon'ble High Court vide order dated 27.11.2008.

6. The respondents in their counter affidavit, while admitting the factual matrix, have submitted that the respondents no.1, Commissioner, N.D.M.C., had dropped the RDA case No. 1/24/91 pending against the applicant in compliance to the order dated 08.05.2012 of this Tribunal in OA No.3628/2011. The Vigilance Department, however, had shown a police case No.1443/SIO(P)/Vig./2000/CBI in which chargesheet had been filed on 17.02.2001 pending against the applicant. Moreover, the DPC held on 30.08.2012 examined the RDA/Police/CBI case reports and directed that its recommendations be placed under sealed cover in light of OM dated 14.09.1972.

7. We have gone through the pleadings of rival parties and perused the documents so adduced by the respective parties and patiently heard the arguments advanced by the learned counsel for both the parties. The only issue to be considered by us is that when does the criminal prosecution take effect i.e. from the date of filing of chargesheet or from the date of

taking cognizance by the criminal courts of competent jurisdiction.

8. We take note of the fact that the chargesheet is filed under Section 173 of Cr.PC and thereafter cognizance of offence is taken under Section 190 while processes are issued under Section 204 of Cr.PC. It is to be noted that chargesheet is a final culmination of the investigation process commenced by institution of FIR under Section 154 of Cr. PC and thereafter the case is taken over by the process of the Court. This was one of the substantive issues for consideration in the case of *Union of India & Ors. Vs. K.V. Jankiraman* (supra) wherein the Hon'ble Supreme Court answered this issue squarely that the sealed cover procedure is to be resorted to only after the chargesheet is issued in disciplinary proceedings or in criminal prosecution. Even here, there was a debate as the government counsel had submitted that initiation of FIR should be sufficient for resorting to sealed cover procedure which contention had been thoroughly rejected. The Hon'ble Supreme Court took note of the fact that investigations involve an inordinate length of time and are often stalled at the behest of vested interest groups deliberately so much so that at times they never see the end of the day. Such cases would result in gross injustice to employees. Therefore, submission of

chargesheet under Section 173 CrPC has been made as the border line for putting a closure to the process when sealed cover procedure has to be initiated. For the sake of greater clarity, we extract the relevant portion from the judgment in *Union of India & Ors. Vs. K.V. Jankiraman* (supra), which reads thus:-

“6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that 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. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes 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., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay

cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2).....

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench-has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/ criminal proceedings are pending against the employee. To deny the said benefit they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

The challenge to the sealed cover in the instant case arises from the arguments that mere filing of chargesheet would not mean that the charges would certainly be framed against the applicant. The applicant had relied upon the decision of the Ernakulam Bench of this Tribunal in **Chacko Eapen & Ors. Versus Union of India & Ors.** [OA No.941/2011 and OA No.1131/2011 decided by a common order dated 08.02.2012] wherein the Tribunal had taken note of the decision in **Radhamani S. Menon & Ors. Vs. Union of India & Ors.** [OA No. 557/2011 decided on 20.10.2011] wherein it had been held that sealed cover proceedings are applicable only when the prosecution of criminal charges is

pending i.e. after the court has framed charges against the delinquent therein. The Coordinate Bench of this Tribunal taking note of OMs dated 14.09.1992, 25.10.2004 and the decision of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. K.V. Jankiraman*** (supra) arrived at the conclusion which, reads thus:-

“19. In disciplinary proceedings, it is after issue of charge sheet that the delinquent officer is termed as the ‘ charged officer’ and similarly it is after charges are framed that the alleged offender is termed as ‘ the accused’. Sealed Cover Procedure is adopted when the stage of issue of charge sheet is reached See Delhi Development Authority Vs. H.C. Khurana [(1993) 3 SCC 196].

20. Thus, apart from the reasons given in the earlier order in OA No. 557 of 2011, the above reasons also concretize the decision of this Bench that it is only after the charges are framed by the Court that the criminal proceedings would be said to be pending.”

9. The applicant has also relied upon the decision of the Hon'ble High Court in *Union of India Vs. Shri Om Prakash* [WP(C) No. 7810/2008 decided on 27.11.2008] in which the respondent was under investigation in respect of a criminal case instituted by the CBI. DPC recommended his promotion and a select list was drawn out on the basis of the recommendations of the DPC. In the meantime on 09.03.2007, the Central Government gave sanction to the CBI to prosecute the respondent. The Hon'ble High Court in para 13 of the decision held as under:-

“13 Under these circumstances, it appears to us quite clear that since there is no rule or Office Memorandum which entitles the petitioner to withhold the physical promotion of the respondent only because

sanction for his prosecution has been granted, the Tribunal took the correct decision in allowing the OA filed by the respondent.”

However, in the instant case we feel that this judgment is not applicable as here the prosecution has been sanctioned and the case is pending before the courts of competent jurisdiction. We have taken note of the fact that a chargesheet had been filed by the CBI on 17.02.2001 and the same was shown, as per the vigilance letter, dated 26.07.2011. The DPC held on 28.08.2012 had examined the matter of promotion of the applicant and directed the recommendation to be placed in sealed cover on account of pendency of the case against the applicant under the terms of OM dated 14.09.1992. In this regard, we are swayed by two facts. In the order dated 08.05.2012 in OA No.3628/2011, this Tribunal had only considered the fact of submission of chargesheet pending against the applicant and quashed the same on ground of inordinate delay. However, the criminal proceeding pending against the applicant had not been taken note of. For the sake of clarity, we extract para no.15 of the order, which reads thus:-

“15. Thus, as there has been no progress on the charge memo dated 10.12.1991 for over two decades the delay stands unexplained and the related records are stated to be unavailable/not traceable, the continuance of disciplinary proceedings in so far as this charge is concerned is not warranted any longer. The charges against the applicant initiated vide

chargesheet dated 10.12.1991 are, therefore, deemed to be dropped.

The respondents are now required to take further action in the matter, deeming the charge memo dated 10.12.1991 as dropped, and consider the case of the applicant for promotion to the post(s) that his immediate junior(s) had been promoted to, provided there is no other impediment in his case. Action as above may be concluded with expedition and preferably within six weeks from the date of receipt of a copy of this order.”

However, subsequently when contempt petition was filed for non-implementation of the Tribunal's order, referred to above, this Tribunal had observed as under:-

“17. But the DPC had on 30.08.2012 perused the latest status of the second CBI case, in respect of which the report was received from the vigilance Department through their letter dated 27.07.2012, which has not been brought on record either by the petitioner, or by the respondents. But when once the DPC has applied its mind to the same, and has come to the conclusion that the Criminal Court's Trial case against the applicant was still not over, and had decided to keep its recommendation regarding the matter of promotion of the applicant in sealed cover due to pendency of the criminal case against him, merely on the basis of dropping of the departmental charge sheet dated 10.12.1991 through the orders in the O.A., the applicant cannot be said to have come out of the cloud.”

The Tribunal finally disposed of the contempt petition vide order dated 16.05.2013 holding as under:-

“16. Therefore, there appears to be no contumacious act on the part of the respondents, committed by them in their individual capacity, which may make them liable to be punished for contempt, and the Contempt Petition is dismissed, as the respondents before us cannot be faulted for the decision of the DPC, which is an independent body in itself, and is free to frame its own Rules and procedure, having placed the case of the petitioner/applicant in a Sealed Cover till the disposal of the criminal Trial case against him. Notices issued to the respondents are discharged.”

10. Now, we take note of the fact that the principal reliance of the applicant is on the decision of Ernakulam Bench of this Tribunal in case of **Chacko Eapen & Ors. Versus Union of India & Ors.** (supra) where we find that there is nothing on record from the side of the applicant to show what is the status of the case. Since the applicant is an accused in the case and privy to the documents in the court, it was for the applicant to have provided the status of the case. We also find that neither the applicant nor the respondents have filed any affidavit indicating the status of the decision. However, in respect to para 4.13 of the OA, the averments have been denied by the respondents on the ground that these paras are matter of record and anything to the contrary is wrong.

11. We further disdain to accept the decision in **Chacko Eapen & Ors. Versus Union of India & Ors.** (supra) as guiding precedent. By earlier decisions of the Hon'ble Supreme Court on the subject, a duty has been cast upon every court to minimize litigation by bringing it to speedy conclusion and not to proliferate it. We note that the judgment in **Union of India & Ors. Vs. K.V. Jankiraman** (supra) has attained finality and can only be upset by decision of a larger Bench of the Hon'ble Supreme Court. It

is incumbent upon all other courts of the land to decide cases accordingly.

12. In **Special Land Acquisition Officer Vs. Karigowda & Ors.** [2010 (5) SCC 708], the Hon'ble Supreme Court has held as under:-

"105. An established maxim "Boni judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium", casts a duty upon the Court to bring litigation to an end or at least endure that if possible, no further litigation arises from the cases pending before the Court in accordance with law. This doctrine would be applicable with greater emphasis where the judgment of the Court has attained finality before the highest Court. All other Courts should decide similar cases particularly covered cases, expeditiously and in consonance with the law of precedents. There should be speedy disposal of cases particularly where the small land owners have been deprived of their small land-holdings by compulsive acquisition. Any unnecessary delay in payment of the compensation to them would cause serious prejudice and even may have adverse effect on their living. In these circumstances, we consider it necessary to issue appropriate directions to the State authorities and request the Courts, where cases are pending arising from the same notification, to dispose of the pending proceedings without any further delay."

13. We are further constrained to note that statutes are subject to interpretation by the Hon'ble Supreme Court including the words of the statutes. However, the judgments of the Hon'ble Supreme Court are not subject to interpretation as has been clearly held in **Collector of Central Excise, Calcutta Vs. M/s. Alnoori Tobacco Products & Anr.** [2004 (6) SCALE 232]. For the sake of clarity, the relevant portion of the afore decision is reproduced hereunder:-

"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."

14. In totality of facts and circumstances of the case, we find that there is marked difference between the decision of the Ernakulam Bench in **Chacko Eapen & Ors. Versus Union of India & Ors.** (supra) and the facts of case in hand. Therefore, the decision in the former will not be applicable to the facts of the instant case. Taking further note of the decisions in **Special Land Acquisition Officer Vs. Karigowda & Ors.** (supra) and **Collector of Central Excise, Calcutta Vs. M/s. Alnoori Tobacco Products & Anr.** (supra), we hold that the judgement rendered by the Hon'ble Supreme Court in **Union of India & Ors. Vs. K.V. Jankiraman** (supra) has attained finality and all the lower courts are expected to abide by the same, and while the

statutes are open to interpretation, the judgements are not. We, therefore, hold that the conditions in ***Union of India & Ors. Vs. K.V. Jankiraman*** (supra) are satisfied with submission of the chargesheet in a criminal case, and we are not to extend it to the framing of charges by the court concerned.

15. Finding no merit, the instant OA stands dismissed with no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

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

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