

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1871/2016

Order reserved on 19th January 2017

Order pronounced on 10th February 2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mr. Subrata Nag
Aged about 48 years
s/o Late Parimal Nag
R/o C-11, Ramgarh
Kolkata – 47, West Bengal
(presently working as Manager (Tech) in NHAI)

..Applicant

(Mr. S K Gupta, Advocate)

Versus

The Chairman
National Highways Authority of India
Through its Chairman
G-5 & 6, Sector 10, Dwarka
New Delhi – 110 075

..Respondent

(Mr. Hanu Bhasker, Advocate)

O R D E R

Mr. K.N. Shrivastava:

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) quash and set aside the action of respondent in resorting to sealed cover in respect of promotion of the applicant to the post of Dy. General Manager (Tech) in the selection committee met on 15.10.2014;

(ii) quash and set aside the minutes of the meeting dated 10.08.2015 and 12.08.2015 by which, it was decided not to open the sealed cover in respect of the applicant;

(iii) direct the respondent to open the sealed cover of the applicant in respect of his promotion to the post of Dy. General Manager (Tech) and in case of the applicant is found fit, he may be awarded all

consequential benefits like salary, seniority etc at par with his juniors.”

2. The brief facts of the case are as under:-

2.1 The applicant joined the Public Works Department (PWD) of Govt. of West Bengal as an Assistant Engineer on 22.03.2000. Pursuant to an Advertisement of the respondent-organization – National Highways Authority of India (NHAI), he applied for appointment in the NHAI on deputation basis. He was selected. He joined NHAI on 23.01.2006.

2.2 NHAI brought out a circular dated 28.09.2012 regarding absorption of deputationists, which, *inter alia*, stipulated that deputationists, who have put in more than two years of service as on 01.01.2012 in NHAI, were eligible for applying for absorption. The applicant applied for absorption. He was selected and absorbed as Manager (Tech.). He completed his one year probation period on 26.04.2014 and was thereafter finally confirmed.

2.3 In terms of Annexure A-3 Recruitment Rules of the NHAI, the applicant became eligible for promotion to the post of Deputy General Manager (Tech.) on completion of four years of service as Manager (Tech.).

2.4 Several of his juniors were promoted vide Annexure A-5 (colly.) office order dated 29.12.2014 by the NHAI but the applicant and his two colleagues, namely, Mr. Sanjeev Kumar Sharma and Mr. K Srinivasulu, were denied the same purportedly on the ground that vigilance clearance had not been given to them and thus their cases were kept in sealed cover.

2.5 On the representations of the applicant and the other two, the Selection Committee met on 10.08.2015 and 12.08.2015 for reviewing the

recommendations in respect of these three Managers (Tech). In its Minutes (Annexure A-1), the Selection Committee, in case of the applicant, observed as under:-

“3.1 Sh. Subrata Nag

That Disciplinary Authority cum Chairman, NHAI has approved Minor penalty of “Censure” against him in the matter of delay in filing of affidavit-in-opposition in Kolkata High Court on encashment of Bank Guarantee for the work “Dalkhola Bypass on NH-34 and the advice of CVC is still awaited in this case.”

2.6 The applicant’s contention is that the promotion can be withheld and sealed cover procedure can be followed in case of a candidate only under the following situations as ordained in DoPT O.M. dated 14.09.1992 (Annexure A-6 (colly):-

“i) Government servants under suspension

ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

iii) Government servants in respect of whom prosecution for criminal charge is pending.”

2.7 The applicant further contends that in terms of DoPT O.M. dated 02.11.2012 (Annexure A-6 (colly.)), vigilance clearance could not have been denied to him. Relevant paragraph of the O.M. is extracted hereinbelow:-

“12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in Para 2 of this Department's O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings.”

2.8 The applicant further contends that neither any show cause notice nor was any charge-sheet was ever issued to him. He further contends that the case of his colleague Mr. K Srinivasulu was also similar and that Mr. K Srinivasulu approached this Tribunal in O.A. No.4495/2015, which was allowed vide order dated 10.03.2016, the operative part of which reads as under:-

“10. Accordingly, we dispose of this OA with a direction to the respondents to open the sealed cover and consider the promotion of the applicant in accordance with the recommendation of the Selection Committee and the provisions of the relevant rules specially para 7 of the DOP&T OMs dated 14.09.1992 and 02.11.2012. Needless to say that the applicant will be entitled to consequential benefits in the event he gets promoted following the opening of the sealed cover in accordance with law. These directions shall be complied with within a period of six weeks from the date of receipt of a copy of this order. No costs.”

The applicant prays for similar reliefs to him as have been granted by this Tribunal to Mr. K Srinivasulu in O.A. No.4495/2015.

3 Pursuant to the notice issued, the respondent filed his reply. Applicant thereafter filed his rejoinder. With the completion of pleadings, the O.A. was taken up for hearing the arguments of the parties on 19.01.2017. Mr. S K Gupta, learned counsel for applicant and Mr. Hanu Bhasker, learned counsel for respondent argued the case.

4. In the reply filed on behalf of the respondent, it is stated that the Chairman, NHAI has approved imposition of minor penalty of “censure” on the applicant after consultation with the Central Vigilance Commission (CVC) and a draft charge sheet has been prepared. This development was taken cognizance of by the Selection Committee that met on 10.08.2015

and 12.08.2015. Taking cognizance of this development, the Selection Committee chose to keep the case of the applicant in sealed cover.

5. The respondent has also admitted in the reply that Mr. K Srinivasulu, Manager (Tech.) was charged with a disproportionate asset case by Anti Corruption Bureau (ACB), Hyderabad and a case had been filed in the competent court against him by the ACB. His case for promotion to the post of Deputy General Manager (Tech.) was also considered by the Selection Committee along with that of the applicant. The Selection Committee, in his case too, had decided to adopt the sealed cover procedure. But after the *ibid* order of this Tribunal in O.A. No.4495/2015 filed by Mr. K Srinivasulu, the sealed cover was opened and he has since been promoted.

6. We have heard the arguments of learned counsel for the parties and perused the material placed on record.

7. It is seen from the records that the Selection Committee, in its meeting held on 10.08.2015 and 12.08.2015, decided to keep the case of the applicant in sealed cover after taking cognizance of the fact that a minor penalty charge sheet for imposition of the penalty of “censure” on the applicant was in the process of being issued. The Selection Committee had taken note of a communication from NHAI in this regard, which read as under:-

“That Disciplinary Authority cum Chairman, NHAI has approved Minor penalty of “Censure” against him in the matter of delay in filing of affidavit-in-opposition in Kolkata High Court on encashment of Bank Guarantee for the work “Dalkhola Bypass on NH-34 and the advice of CVC is still awaited in this case.”

8. Accordingly, in its meetings in the case of the applicant, the Selection Committee recorded as mentioned in paragraph 2.5 above. Further, in the case of Mr. K Srinivasulu, the Selection Committee, in the same meetings, had recorded as under:-

“3.4 In the case of Sh. K. Srinivasulu, Selection Committee reviewed the status of the case as received from ACB Hyderabad vide letter dated 13.02.2015 & 21.04.2015, which is as under:-

i. Letter dated 13.02.2015: A case for possession of disproportionate assets to the known sources of income against Sh. Srinivasulu is under investigation. Upon completion of the investigation, a notice will be served for his explanation. Thereafter a draft final report will be finalized and the same will be sent to the Government.

ii. Letter dated 21.04.2015: The investigation in the case of Sh. Srinivasulu, Manager (T), presently posted at RO- Hyderabad, for possession of dis-proportionate assets to the known sources of income is in advanced stage and will be completed in about 608 weeks. A notice will be served to Sh. K. Srinivasulu giving 45 days for explanation.”

9. What is surprising is that when the Selection Committee met for the second time on 30.03.2016 and 28.04.2016, there had not been any change with regard to the vigilance status of the applicant. It only took note of a communication from the NHAI, which read as under:-

“That Disciplinary Authority cum Chairman, NHAI has approved Minor penalty of “Censure” against him in the matter of delay in filing of affidavit-in-opposition in Kolkata High Court on encashment of Bank Guarantee for the work “Dalkhola Bypass on NH-34. The CVC has also been consulted. The Charge-sheet is presently at draft stage.”

10. The Selection Committee, considering the fact that there is no change in the vigilance status of the applicant, recommended that the case of the applicant may continue to be kept in the sealed cover. From the Minutes of the Selection Committee and from the communications from respondent-

NHAI to the Selection Committee, it is quite clear that neither any show cause notice nor any charge sheet had ever been issued when the Selection Committee met on two different dates in the years 2015 and 2016.

11. The DoPT O.Ms. dated 14.09.1992 and 02.11.2012 (Annexure A-5 (colly.)) have laid down guidelines, in unambiguous terms, with regard to promotion of government servants against whom disciplinary/ court proceedings are pending or whose conduct is under investigation, as also on the issue of vigilance clearance for promotion of government servants. We find that those guidelines have not at all been followed by the respondent in the case of the applicant.

12. The Selection Committee also failed in its duty to act in accordance with the DoPT O.Ms. and thus has treated the applicant unfairly. The Selection Committee ought to have taken note of the fact that on or before the dates when it conducted its proceedings, the applicant had not been issued any show cause notice or any charge sheet. As such his case for promotion must have been considered if he was found eligible otherwise. This Tribunal has taken similar view in its order dated 10.03.2016 in O.A. No.4495/2015 filed by Mr. K Srinivasulu. Therefore, the applicant deserves the same relief that has been granted to Mr. K Srinivasulu.

13. In the conspectus of the discussions in the foregoing paragraphs, the respondent is directed to open the sealed cover of the applicant and if it is found that he has been recommended for promotion to the post of Deputy General Manager (Tech.) by the Selection Committee, then grant him promotion from the due date, i.e., 29.12.2014 when similar candidates were promoted on the recommendations of the Selection Committee. This shall

be done by the respondent within a period of six weeks from the date of receipt of a copy of this order.

14. Accordingly, the O.A. stands allowed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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