

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3485/2016

Order Reserved on: 11.09.2017
Order pronounced on 21.09.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Ambika Mahto (Aged about 56 years)
[Grade-II/DASS Inspector in GNCT of Delhi]
S/o Late Sh. Shivilakhan Mahto
R/o H.No.B-430, Gali No.30
Mahavir Enclave Part-II
New Delhi – 110 059. ... Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
A-Wing, 5th Floor
Delhi Secretariat, I.P.Estate
New Delhi.
2. The Principal Secretary (Services)
GNCT of Delhi
7th Level, `B' Wing
Delhi Secretariat, I.P.Estate
New Delhi.
3. The Commissioner
Food Supplies Consumer Affairs
K-Block, Vikas Bhawan, I.P.Estate
New Delhi – 110 002. ... Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Grade-II DASS Inspector, in the respondent-Govt. of NCT of Delhi, filed the OA, seeking a direction to promote him to the post of DASS Grade-I, with all consequential benefits.

2. It is submitted that a DASS Grade-II Officer is entitled for consideration for promotion to the post of DASS Grade-I, on completion of 5 years regular service as DASS Grade-II.

3. It is further submitted that the respondents conducted a DPC on 19.12.2014 for consideration and promotion of DASS Grade-II Officers to the post of DASS Grade-I. Since the applicant completed 5 years regular service as DASS Grade-II, as he was promoted as DASS Grade-I, in July, 2008, on regular basis, he expected that he will be promoted as DASS Grade-I along with other eligible persons. But the respondents vide Annexure A1-Order No.804 dated 30.12.2014, promoted 340 DASS Grade-II officers, including three juniors to the applicant, however, not promoted the applicant that too without assigning any reasons.

4. Heard Shri Ajesh Luthra, the learned counsel for the applicant and Shri Vijay Pandita, the learned counsel for the respondents, and perused the pleadings on record.

5. The learned counsel for the applicant submits that either on 19.12.2014, i.e., the date of DPC or on 30.12.2014, i.e., the date on which promotions to the juniors of the applicant to the post of DASS Grade-I were ordered, neither departmental chargesheet was issued nor any charges were framed against him in any criminal case, and hence, denying the promotion to the applicant is illegal and arbitrary.

6. The learned counsel, however, while admitting that a Charge Memorandum vide Annexure A3 dated 15.01.2015 was issued to the applicant, leveling certain charges against him, pertaining to the period from 28.02.2011 to 09.05.2012, however, submits that as per the Judgement of the Hon'ble Apex Court in **Union of India and Others v. K. V. Jankiraman & Others**, (1991) 4 SCC 109 keeping DPC recommendation in sealed cover is illegal. He further submits that in any event the respondents are required to review the decision to keep the result of DPC recommendations in sealed cover, after every six months.

7. Shri Vijay Pandita, the learned counsel for the respondents, submits that a Departmental Promotion Committee for promotion to the post of DASS Grade-I was convened on 19.12.2014 and the DPC was informed that Secretary-cum-Commissioner, Food and Supplies Department, has recommended for departmental proceedings under Rule 14 against the applicant and the same was referred to Directorate of Vigilance, GNCTD and DOV has returned the case for taking action by Food and Supplies Department, and accordingly the DPC, after

considering the report, has decided to keep the findings in respect of the applicant in sealed cover. The learned counsel further submits that since as on today Annexure A3-Charge Memorandum dated 15.01.2015 is pending against the applicant, he is not entitled for the relief(s) claimed in the OA.

8. The respondents in their counter also stated that vide Annexure R-9, the administrative department was requested to provide the updated Vigilance Status Report along with Integrity Certificate and updated ACRs/APARs in respect of the applicant and all efforts are being made to arrange the requisite documents from the concerned department so that the same may be placed before the Review DPC for its consideration.

9. In **K. V. Jankiraman** (supra), the Hon'ble Apex Court held as under:-

"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.”

10. In the present case, admittedly, only preliminary investigation was pending as on the date of DPC and also as on the date of actual promotion of the juniors to the applicant and that no departmental chargesheet was issued or no charges were framed in any criminal case, against the applicant. Hence, in view of **K.V.Jankirman** (supra), the action of the respondents in keeping the DPC recommendations of the applicant for promotion to DASS Grade-I in sealed cover is unsustainable.

11. Once, we find that keeping of the findings of the DPC, in respect of the applicant, in sealed cover itself is unsustainable, the question of subsequent review need not be gone into.

12. In the circumstances, the OA is allowed and the respondents are directed to open the sealed cover in respect of the applicant and to consider the case of the applicant for promotion to DASS Grade-I, with effect from the date of his immediate junior's promotion, with all consequential benefits, however, notionally. This exercise shall be completed within 90 days from the date of receipt of a copy of this order. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)