

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA NO.3625/2015**

Reserved on 28.03.2016  
Pronounced on 05.04.2016

**HON'BLE MR V.N. GAUR, MEMBER (A)**  
**HON'BLE DR B.A. AGRAWAL, MEMBER (J)**

C.K. Jain,  
Aged 55 years,  
S/o Late Shri S.B. Jain,  
Deputy Commissioner,  
Office of the Chief Commissioner of  
Central Excise, Delhi Zone,  
R/o Flat No.D-403, Aashiyana  
Apartments, Mayur Vihar Phase-I,  
Extension, Delhi-110091.

...Applicant

(By Advocate: Mr. Piyush Kumar with Ms. Shikha Sapra)

**VERSUS**

1. Union of India through  
The Secretary (Revenue),  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi-110001.

2. The Chairman,  
Central Board of Excise and Customs,  
North Block,  
New Delhi-110001.

...Respondents

(By Advocate: Mr. Gyanender Singh)

**:O R D E R:**

**HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J):**

The applicant, a Deputy Commissioner of Customs, Central Excise and Service Tax, craves for his promotion to the post of Joint Commissioner on a par with his juniors promoted on ad hoc

basis, vide the respondents' Office Order No.88/2015 dated 30.06.2015 (Annexure A-9), the DPC meeting wherefor had been held on 17.06.2015. As, on 17.06.2015, the applicant was under suspension, the DPC's recommendation vis-à-vis him was kept in "sealed cover".

2. The applicant had been placed under suspension on 04.10.2013 (Annexure A-1) on account of his alleged involvement in facilitating clearance of certain undeclared offending goods, which was revoked only on 25.06.2015 (Annexure A-10).

3. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

4. While the respondents contend that the applicant was denied promotion on account of the investigation pending against him (wherein CVC's advice is awaited), the applicant's plea is that he could not be denied promotion because none of the three situations envisaged under the DoP&T's OM No.22011/4/91-Estt.(A) dated 14.09.1992 (providing for "sealed cover procedure") existed at the material date, i.e., 30.06.2015, and they are:

- “(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.”

5. It is apparent from the pleadings that the matter against the applicant was and is even now only at a preliminary investigation stage and never reached the stage of issue of charge sheet.

6. In **Union of India & Ors. Vs. Anil Kumar Sarkar** [2013 (3) SCALE 542], the Hon’ble Supreme Court upheld the contention of the respondent therein that there was no impediment in promoting him, as on the date, when his juniors were promoted, neither he was under suspension nor any charge sheet was served upon him and he was not facing any criminal prosecution.

7. In the light of the above, we are of the view that the instant OA deserves to succeed. We, therefore, direct the respondents to open the “sealed cover” and, if found fit, promote the applicant from the due date. He shall also be entitled to consequential benefits. The exercise shall be completed within four weeks from the date of receipt of a copy of this Order.

8. The OA is allowed accordingly. No order as to costs.

**(Dr. B.A. Agrawal)**  
**Member (J)**

**(V.N. Gaur)**  
**Member (A)**

/jk/

