

**Central Administrative Tribunal
Principal Bench**

OA No.4495/2015

Order reserved on : 22.02.2016
Order pronounced on : 10.03.2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Shri K. Srinivasulu,
Aged about 51 years,
S/o Shri K. Partha Sarathi,
R/o 102, South Block,
Express Towers, White Fields,
Kondapur, Hyderabad
(Presently working as Manager (Tech)
in NHAI at Hyderabad)

...applicant

(By Advocate : Shri S.K. Gupta)

Versus

Union of India through

1. Secretary,
Ministry of Road, Transport and Highways,
1, Parliament Street, Transport Bhawan,
New Delhi.
2. Chairman,
National Highways Authority of India,
G-5&6, Sector 10, Dwarka,
New Delhi-110 075.

...respondents.

(By Advocate : Shri M.V. Kini)

ORDER

Mr. V.N. Gaur, Member (A) :-

The applicant has filed this OA with the following prayers :-

“(i) declare the action of respondents resorting to sealed cover procedure in respect of applicant for promotion to

the post of Dy. General Manager (Tech) illegal and arbitrary and the action may kindly be set aside;

- (ii) direct the respondents to open the sealed cover in respect of the applicant for promotion to the post of Dy. General Manager (Tech) and award all consequential benefits at par with his juniors like difference of pay, salary, seniority etc;
- (iii) award the cost of the application;
- (iv) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. The undisputed facts in brief, as relevant to the issue in this case, are that the applicant who was an Assistant Executive Engineer in State of Andhra Pradesh (now Telangana), joined respondent No.2 on deputation on 28.08.2001 as Manager (Technical). He was absorbed in the Organisation on 19.11.2012 and confirmed on 27.10.2014. On 21.02.2014, the applicant was arrested by Anti Corruption Bureau City Range-I, Hyderabad and sent to judicial remand till 07.03.2014 on the charges of possession of assets disproportionate to known sources of income Under Section 13 (2) read with 13(1) (e) of the Prevention of Corruption Act, 1988. In view of the arrest, the applicant was deemed to be suspended from the date of arrest. But later, the respondents revoked the suspension by order dated 11.08.2014.

3. According to the averments made in the reply filed by respondent No.2 the ACB, Hyderabad have confirmed as early as on 18.01.2016 that the case against the applicant was still under investigation at final stage.

4. The applicant in the meanwhile, was considered for promotion to the next higher post through the process of interview by a Selection Committee on 15.10.2014 for the post of Deputy General Manager (Tech). The case of the applicant, however, was kept under sealed cover because he was not cleared from the vigilance angle. On 10.08.2015 and 12.08.2015, the respondent No.2 reviewed the recommendations kept in sealed cover, but taking cognizance of the fact that ACB Hyderabad was still investigating the case, decided to continue with the sealed cover.

5. The learned counsel for applicant submitted that the DOP&T OM dated 14.09.1992 lays down the conditions, in which the sealed cover procedure can be followed up by DPC and one of the conditions is when the prosecution for criminal charge is pending against the Government servant. At present, there is nothing against the applicant except the case registered by the ACB, Hyderabad. On the date of the Selection Committee meeting in the year 2014, he was neither under suspension nor there was any prosecution pending and, therefore, the Selection Committee wrongly adopted the sealed cover procedure. The DOP&T has reiterated those instructions in the OM dated 02.11.2012. Even till date there is no departmental proceeding initiated against the applicant and in the criminal case no police report has been filed. The learned counsel relied on Hon'ble High Court judgment in WP(C) No.7960/2012 ***Union of India and Ors. Vs. Doli Loyi***

wherein Hon'ble High Court had after considering various judgments including ***Union of India & Ors. Vs. Sangram Keshari Nayak*** 2007 (2) SCC (L & S) and ***Union of India Vs. K.V. Janakiraman*** 1991 5 SLR 602 came to a conclusion that mere issuance of sanction order would not sufficient for a DPC proceedings to be kept in sealed cover. In this case, there is not even a sanction order and only a case has been registered.

6. The learned counsel for respondents submitted that the applicant was deemed suspended following his arrest in the corruption case registered by ACB, Hyderabad in connection with conduct while he was serving in the State Government. However, once deemed suspended on the basis of the corruption charge, the applicant cannot be considered absolutely free from any cloud even after the revocation of the suspension. The act of revocation of suspension is not linked with the progress of the investigation in the Anti Corruption case against him. The NHAI with a view to maintain high standards of integrity amongst officers, have taken a no tolerance approach to corruption and, therefore, a decision was taken to keep his case for promotion in sealed cover. Once it is a fact that he is facing the charges under Prevention of Corruption Act and he was arrested for sometime, the department has followed the procedure and reviewed his suspension on 10.08.2015 and 12.08.2015 and decided to continue with the sealed cover. The respondents are continuously following up with the ACB,

Hyderabad and it has been learnt that the case is going to be finalised shortly.

7. We have heard the learned counsels for the parties and perused the record. The conditions under which the sealed cover is to be followed has been specifically mentioned in para 2 of the OM dated 14.09.1992 and reads as follows :-

“2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee.

- 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.”

8. These conditions have been reiterated in the “Comprehensive review of instructions pertaining to vigilance clearance for promotion” issued by DOP&T on 02.11.2012. In the present case the Selection Committee met and interviewed the applicant on 15.10.2014 while the suspension of the applicant had been revoked on 11.08.2014. Thus on the date of interview by Selection Committee, the applicant was not under suspension. It is also not the case of the applicant that there is a disciplinary proceeding initiated against him. The applicant is facing the Anti Corruption case filed by ACB, Hyderabad followed by arrest on 21.02.2014. The question is whether registration of a case by Anti Corruption

Bureau against the applicant under PCA 1988 can be a sufficient ground for following sealed cover procedure in respect of his promotion. This question is linked to the question whether it can be said that there is a prosecution for criminal charge pending against him. This issue is no more *res-integra*. The Hon'ble Supreme Court in **K.V. Janakiraman** (supra) expressed its concern while taking note of the OM contained in 30.01.1982 that Union of India could not deny the promotion for years together even on account of preliminary investigation continuing endlessly and when no departmental action was initiated either or charge sheet before the competent court filed. In such a situation, the court found equities in favour of the government servant. The Hon'ble High Court of Delhi in **Doli Loyi's** case specially dealt with the question whether registering a regular case by the CBI would entail invocation of Clause 2 (iii) of the O.M dated 14.09.1992 and thereby necessitating adoption of the sealed cover procedure. The Hon'ble High Court held that when the charge sheet is filed in the court of law, it should be treated that prosecution for a criminal charge against such a person is pending. Clause 2(iii) of O.M dated 14.09.1992 would thus get attracted. In the case before the Hon'ble High Court, the chargesheet was filed by the CBI before the Special Judge only on 25.10.2008 much after the date of DPC, and the cognizance of the same was taken in the month of November, 2008.

The Hon'ble High Court took a view that Clause 2 (iii) of the O.M dated 14.09.1992 would not be attracted.

9. Applying the above ratio to the facts of this case, it can be seen that since the charge sheet has not been filed against the applicant till now, at no point in time it could be said that the prosecution for a criminal charge was pending against him. We are of the view that the respondents do not have any ground to apply the sealed cover procedure in terms of Clause 2(iii) of the OM dated 14.09.1992 and, therefore, the question of its review subsequently would not arise.

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 OM 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.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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