

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 4566/2013

Reserved on : 07.10.2015

Pronounced on : 26.10.2015

**HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN  
HON'BLE MR. P.K. BASU, MEMBER (A)**

Sobaran Singh,  
S/o Late Shri Pooran Singh,  
R/o H.No.4/2, Radhika Vihar,  
Income Tax Colony, Phase-II,  
Krishna Nagar, Mathura (U.P.).

.. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India,  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
Government of India, New Delhi.
  2. Directorate of Income Tax (Vigilance),  
North Zone, Ministry of Finance,  
Department of Revenue,  
Government of India, New Delhi.
  3. The Chief Commissioner of Income Tax (CCA),  
UP (West) Region, 16/69 Aayakar Bhawan,  
Civil Lines, Kanpur (UP).
  4. The Commissioner of Income Tax-I,  
Aayakar Bhawan, Sanjau Place,  
Agra.
  5. The Additional Commissioner of Income Tax,  
Range-3, Aayakar Bhawan, Radhika Vihar,  
Phase-II, Mathura.
- .. Respondents

(By Advocate : Shri R.N. Singh)

**ORDER****By Hon'ble Mr. P.K. Basu**

The applicant was initially appointed on 16.06.1981 as Lower Division Clerk (LDC). He was subsequently promoted to the post of Upper Division Clerk (UDC) on 24.12.1993 and further promoted to the post of Senior Tax Assistant on 20.07.2001. Lastly, he was promoted to the post of Office Superintendent on 09.02.2012. He retired on superannuation on 31.07.2013.

2. In the year 2003, while the applicant was posted in Income Tax Office, Mathura, there was Refund Stamp case in which an FIR was lodged against number of employees. The name of the applicant was also included in the challan filed by the prosecution. On coming to know all this, the applicant approached the Hon'ble High Court of Allahabad and the Hon'ble High Court was pleased to stay all the proceedings pending in the court of the learned Chief Judicial Magistrate, Mathura in all the cases, in which the name of the applicant was included.

3. While this was going on, the promotion of the applicant to the post of Office Superintendent became due. The Competent Authority vide order dated 01.12.2011 gave vigilance clearance to the applicant, and the Competent

Authority vide order dated 09.02.2012 promoted the applicant to the post of Officer Superintendent w.e.f. 31.03.2010 based on this vigilance clearance.

4. It is submitted that the next promotional post, i.e. of Income Tax Inspector, for which the department conducted the DPC on 27.11.2012, the applicant was within the zone of consideration and was considered by the DPC along with his juniors but the applicant's name was kept in sealed cover for want of vigilance clearance. The applicant states that there was no new adverse action against him which could justify withholding of vigilance clearance for the applicant for the post of Income Tax Inspector, when the same Department had given vigilance clearance for promotion to the post of Office Superintendent.

5. The applicant states that he filed a representation dated 11.12.2012 for considering his case for promotion after opening the sealed cover. Since no reply was received, the applicant filed O.A. No.477/2013 before the Allahabad Bench of this Tribunal and the Tribunal directed the respondents to decide the representation of the applicant by reasoned and speaking order, vide its order dated 29.04.2013. The applicant states that in his representation, he had also relied upon the judgment in the case of Ashish Saxena Vs. Union of India passed by this Tribunal vide order dated 20.07.2010 in O.A.

No.2898/2009 for the same and identical issue but the respondents did not consider these factors at all. The applicant further states that though the applicant retired on 31.07.2013, no retirement benefits have been released to the applicant for want of vigilance clearance.

6. The respondents have issued an Office Memorandum dated 31.07.2013 in compliance of directions of the Tribunal in O.A. No.477/2013, in which it has been communicated that it is not possible to open the sealed cover which was made as per the advice of the DPC held on 27.11.2012. The reason in this order is quoted below for ready reference:

“In the case of Shri Sobran Singh, SC (OS), sealed cover has been made as per findings of the DPC held on 27.11.2012 for promotion to the post of ITI in R.Y. 2012-13 on the basis of vigilance clearance provided by the competent authority vide its letter dated 26.11.2012. However, it is not out of place to mention here that as per DoPT O.M. dated 02.11.2012, vigilance clearance for promotion may be denied only in the following three circumstances:-

- (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 a criminal charge is pending.

Brief discussion has been made in para no.8 of the O.M. dated 02.11.2012 with respect to point no. (iii), which is reproduced as under:-

“As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 provides as under:-

(b) judicial proceedings shall be deemed to be instituted-

(i) in the cases of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made.”

Further, the CIT-1, Agra vide his letter F.No. CIT-1/vig./Agra/MACP/2013-14/1771 dated 23.07.2013 has submitted that as per status report received from the Standing Counsel, Shri Radhey Shyam Srivastava, 30 criminal cases are found registered in the court of CJM, Mathura against Shri Sobran Singh, OS. No charges have been framed against the official so far in any of these cases. The matter is still pending in the court of CJM, Mathura. The Hon’ble High Court, Allahabad in the case of Sobran Singh vs State of UP and another in various case nos. (all connected with Criminal Application No.33503 of 2008) has held that further proceedings of complaints under section 420, 467, 468, 471, 120-B IPC pending in the court of learned Chief Judicial Magistrate, Mathura shall remain stayed till the next date of listing.”

7. Being aggrieved by this, the applicant has filed this O.A. seeking the following relief(s):

- “(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 31.07.2013 and consequently pass an order directing the respondents to open the sealed cover of the applicant and to consider the applicant for his promotion to the post of Income Tax Inspector from the due date or the date of promotion of junior persons with all consequential benefits including the difference of pay and allowances with interest and with revision of retirement benefits.
- (ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to release the retirement benefits i.e. main pension, gratuity and commutation of pension immediately with 18% interest.
- (iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant.”

8. The learned counsel for the applicant stated that the case of the applicant is fully covered by the judgment passed by the

Hon'ble Tribunal in the identical issue of the same department and related to the same FIR in the case of Abha Prasad Vs. Union of India in O.A. No.4369/2010 decided on 30.08.2011. Therefore, the O.A. of the applicant should be allowed in the light of that judgment.

9. It is further argued that it is well settled principle of law that consideration of a promotion in fair manner is a legal right as held by the Hon'ble Supreme Court in the case of **Dwarka Prashad and Ors. Vs. Union of India & Ors.**, 2004 (1) ATJ (SC) 591 in which the Hon'ble Supreme Court held "right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and fundamental right under Articles 14 & 16 of the Constitution of India." Therefore, denying the promotion to the applicant by adopting sealed cover procedure only because the police authorities illegally included his name in the charge sheet is totally illegal and arbitrary.

10. It is further stated that the respondents denied prosecution sanction to the Police Authorities and now adopting the sealed cover amounts to review or reconsideration of the decision not to sanction prosecution which is not permissible in the eyes of law as held by this Tribunal in the judgment dated 16.12.2009 in T.A. No.731/2009 in the matter of Z.I. Khan Vs. Delhi Jal Board by

referring the Delhi High Court's judgment in the case of **Abha Tyagi Vs. Delhi Energy Development Agency & Anr.**, 2002 (3) AD (Delhi) 641.

11. It is further stated that the case of the applicant is fully covered by the recent judgment of the Principal Bench of this Tribunal in the case of Ashish Saxena Vs. Union of India, O.A. No.2898/2009, dated 20.07.2010, and also in the case of Shri S.K. Sharma Vs. Union of India & Ors. of the same department and of same police case.

12. Lastly, it is stated that till the date of retirement, i.e. 31.07.2013, no charge sheet was issued to the applicant departmentally; till date no charge has been framed against the applicant in the judicial proceedings, and therefore, his pensionary benefits cannot be withheld.

13. The respondents in their reply states that the impugned order dated 31.07.2013 has been passed by the competent authority in compliance of the directions of Allahabad Bench of this Tribunal vide order dated 29.04.2013 in O.A. No.477/2013 and there is no illegality or infirmity in the impugned order. It is stated that the commuted value of Pension was not allowed and gratuity was not released in the absence of vigilance clearance from the competent authority and for the same reason, sealed cover could not be open. It is

stated that since the police has filed charge sheet before the Chief Judicial Magistrate, it has to be inferred that the criminal proceedings are still pending against the applicant. Regarding the case of Shri Ashish Saxena, it is stated that in the case of Shri Ashish Saxena, specific vigilance clearance was available. In Saxena's case, the DPC had decided to categorise him 'fit' but in the case of the applicant, the specific vigilance clearance was not available and, hence, his matter was kept in the sealed cover.

14. Lastly, it is clarified that Provisional Pension is being allowed regularly and leave encashment totalling an amount of Rs.3,72,240/- was allowed vide Bill dated 29.08.2013 but regular pension and gratuity are withheld for want of vigilance clearance.

15. Heard the learned counsel for both the sides and perused the relevant orders.

16. We find from the orders of this Tribunal in O.A. 4369/2010 in the case of Abha Prasad that the Tribunal had gone into the similar issue and examined the judgment of Hon'ble Supreme Court in the case of **Union of India & Others Vs. K.V. Jankiraman & Others**, 1991 (4) SCC 109 and DoPT O.M. dated 14.09.1992 issued pursuant to this judgment. In that case, this Tribunal held that the sub-clause



(iii) of DoPT O.M. dated 14.09.1992, viz. "Govt. servants in respect of whom prosecution for a criminal charge is pending" would mean as interpreted in para 6 of the O.A. No.2898/2009 (Ashish Saxena Vs. Union of India) that "a charge has been framed in a criminal case." In this case, there is no disciplinary proceeding pending against the applicant. The applicant is neither suspended nor any charge has been framed by the Trial Court.

17. However, we find from the order dated 31.07.2013 that the respondents have examined this issue and relied on para 8 of the O.M. dated 02.11.2012 with respect to Point No.(iii), which has been reproduced in the order and we reproduce below for convenience as under:

“As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 provides as under:-

(b) judicial proceedings shall be deemed to be instituted-

(i) in the cases of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made.”

18. The order of this Tribunal was dated 30.08.2011 and hence, before the O.M. dated 02.11.2012. Thus, the order in *Abla Prasad (supra)* or *Ashish Saxena (supra)* will not apply as precedent.

19. To fully understand the issue of when a criminal proceeding can be said to be pending against an employee, we may examine what their Lordships held precisely on this issue, in their judgment in **K.V. Janakiraman** (supra), which is reproduced below:

"16. 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 should 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."

17. 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."

20. The respondents have removed this ambiguity by issuing the O.M. dated 02.11.2012 and expressly clarifying when judicial proceedings shall be deemed to be instituted.

21. In this case, the facts are that a charge sheet has been filed in the criminal proceeding against the applicant. Thus, it will be treated that prosecution for a criminal charge is pending against the applicant. In view of these facts, it is clear

in our opinion that since there is a prosecution for a criminal charge pending against the applicant, the order dated 31.07.2013 is legally valid and need not to be interfered with. Moreover, the respondents are also justified in withholding final pension and gratuity as per rules. As informed, provisional pension is being paid and leave encashment amount due was allowed.

22. The O.A., therefore, does not succeed and is dismissed.

No order as to costs.

**(P.K. Basu)**  
**Member (A)**

**(Syed Rafat Alam)**  
**Chairman**

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