

**Central Administrative Tribunal
Principal Bench**

OA No.4664/2015

New Delhi, this the 8th day of September, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Brijpal S/o Chohal Singh,
SE (Civil),
R/o D-215A/SF-I, Ramprastha Colony,
Ghaziabad, UP.

... Applicant

(By Advocate : Shri M. K. Bhardwaj)

Versus

1. Delhi Development Authority
through its Vice-Chairman,
Vikas Sadan, INA,
New Delhi.

2. Commissioner (P),
DDA, Vikas Sadan,
INA, New Delhi.

... Respondents

(By Advocate : Shri Arun Birbal)

O R D E R

Justice Permod Kohli, Chairman :

While serving as Superintending Engineer (Civil), the applicant was served with a charge-sheet dated 19.10.2010. In the year 2012, he was placed under suspension in another contemplated disciplinary proceedings vide order dated 18.09.2012. A DPC was held on 28.01.2013 to consider the eligible Superintending Engineers (Civil) for promotion to the post of Chief Engineer (Civil). On account of

impending charge-sheet and suspension, sealed cover procedure was adopted in case of the applicant by the DPC. Suspension of the applicant was revoked vide order dated 13.03.2013 and the period of suspension was also treated as on duty. In the pending disciplinary proceedings, he was exonerated on 05.08.2013. However, prior to that he was served with the second charge-sheet on 22.04.2013. The second disciplinary proceedings culminated in imposition of the penalty of reduction of pay by two stages for one year without cumulative effect not adversely affecting the pension, vide order dated 13.04.2015. The applicant made representation for opening of the sealed cover on being exonerated in the first disciplinary proceedings initiated on the basis of the charge memorandum dated 19.10.2010. The respondents have, however, not passed any order opening the sealed cover. The applicant has accordingly approached this Tribunal through present OA seeking the following reliefs:

- “(i) To declare the action of respondents in not opening the sealed cover of the DPC held on 28.01.2013 in respect of the applicant as illegal, arbitrary and issue directions to the respondents to open the sealed cover of DPC held on 28.01.2013 in which name of applicant was considered for promotion to the post of Chief Engineer and implement the recommendations of the DPC by granting promotion to the applicant from the date of similarly placed persons and junior with all consequential benefits including arrears of pay.
- (ii) To direct the respondents to open the sealed cover resorted in the case of applicant in January 2013 and grant promotion to the applicant to the post of

Chief Engineer with all consequential benefits including arrears of pay and interest @ 12%.

- (iii) To allow the OA with cost.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

2. The contention of Mr. Bhardwaj, learned counsel appearing for the applicant, is that the sealed cover procedure was adopted for his promotion in the DPC held on 28.01.2013 on two counts - (i) pendency of the disciplinary proceedings arising out of the charge memorandum dated 19.10.2010; and (ii) the suspension of the applicant vide order dated 18.09.2012. It is contended that the applicant having been exonerated of the charges in the disciplinary proceedings initiated vide charge memorandum dated 19.10.2010, and his suspension being revoked vide order dated 13.03.2013 treating the period of suspension as on duty, the respondents were under legal obligation to open the sealed cover and consider the applicant for promotion in the event the DPC had recommended him for promotion. His further contention is that the disciplinary proceedings initiated vide the second charge-sheet dated 22.03.2014 cannot come in his way for opening of the sealed cover and consequential promotion, if recommended by DPC.

3. The claim of the applicant is, however, resisted by the respondents. It is stated that apart from the charge-sheet dated 19.10.2010 and the suspension of the applicant in another contemplated disciplinary proceedings, the applicant was also under a cloud due to the proposal of the disciplinary authority to initiate major penalty proceedings against him on 03.12.2014. It is, however, admitted that the second charge-sheet was issued to the applicant only on 22.04.2013, i.e., after revocation of his suspension. The respondents have relied upon DOP&T guidelines issued vide office memorandum No.22011/4/91-Estt.(A) dated 14.09.1992. It is contended that since the second charge-sheet had been issued against the applicant during the currency of the proceedings in the first charge-sheet notwithstanding his exoneration later, he is not entitled to be considered for promotion, and the sealed cover cannot be opened, particularly when the applicant has suffered penalty in the second charge-sheet. Para 2 of the aforesaid office memorandum reads as under:

“2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories

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.”

4. In view of the above guidelines, the DPC is required to consider the circumstances indicated therein at the time of consideration of the Government servant for promotion. Under para 2.1 of the OM dated 14.09.1992 the DPC is required to assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2, and keep the assessment and grading awarded in the sealed cover. Paras 3 and 3.1 of the OM deal with the situation where on conclusion of the disciplinary case/criminal prosecution a Government servant is either exonerated resulting in dropping of the allegations against him, or a penalty is imposed upon him in the disciplinary proceedings or he is found guilty in the criminal prosecution. Para 3 and 3.1 are reproduced hereunder:

“3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of

allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enunciate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

Paras 3 and 3.1 of the aforesaid memorandum deal with the opening of sealed cover on account of pendency of disciplinary proceedings or criminal prosecution against a Government servant. Though there

is no specific condition, however, from a conjoint reading of paras 3 and 3.1 it can be inferred that the situation where a Government servant is exonerated in a case where the sealed cover procedure was adopted but another disciplinary proceedings or criminal proceeding is initiated against him, has also been dealt with.

5. Based upon the aforesaid memorandum, learned counsel for the respondents submits that the second disciplinary proceedings having been initiated and penalty imposed upon the applicant, the sealed cover cannot be acted upon. In support of his contention, the learned counsel also relied upon the judgment of the Apex Court in ***Union of India and another v R. S. Sharma*** [(2000) 4 SCC 394]. In the said case, the relevant Government memorandum under consideration of the Hon'ble Supreme Court was OM No.22011/2/86-Estt.(A) dated 12.01.1988. The said memorandum contained the following stipulation in para 7 thereof:

“Sealed cover applicable to an officer coming under cloud before promotion.—A government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.”

In para 7 of the 1988 memorandum extracted above, reference is made to para 2 thereof. Para 2 of the 1988 memorandum has also been noticed by the Hon'ble Supreme Court in para 5 of the judgment, which is reproduced hereunder:

“Cases where ‘Sealed Cover Procedure’ applicable. — At the time of consideration of the cases of government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i) government servants under suspension;

(ii) government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;

(iii) government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;

(iv) government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise.”

Para 2(ii) of the 1988 memorandum read with para 7 thereof provides that not only where disciplinary proceedings are pending, even where a decision has been taken to initiate disciplinary proceedings, the sealed cover would not be opened. Relying upon the aforesaid para 7 of the 1988 memorandum, following observations have been made in *R. S. Sharma's* case (supra):

“15. We are not impressed by the said arguments for two reasons. One is that, what the Department did not do is not the yardstick indicated in para 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the government servant who is not “actually promoted” by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the second para, the recommendations of DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of para 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the Department for not opening the sealed cover immediately after 31-7-1991.”

“18. In our opinion the Tribunal has erred in overlooking para 7 of the “Sealed Cover Procedure” (*supra*) and hence the direction issued by it as per the impugned judgment cannot be sustained. We, therefore, allow these appeals and set aside the said direction.”

6. The memorandum of 1988, however, came to be superseded vide memorandum dated 14.09.1992, as is evident from para 1 thereof, which is reproduced hereunder:

“The undersigned is directed to refer to Department of Personnel & Training O.M.No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in *Union of India etc. Vs. K.V. Jankiraman etc.* (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the

authorities concerned is laid down in the subsequent paras of this O.M. for their guidance (emphasis supplied)."

Thus the judgment in *R. S. Sharma's* case (supra) has no application, same having been delivered on the basis of particular Government policy. Para 3.1 of the 1992 memorandum brought about the change in the earlier policy, and instead of the contemplated disciplinary proceedings, it was provided that only in cases where penalty has been imposed in subsequent disciplinary proceedings or a person is found guilty in a criminal prosecution, the findings of the sealed cover are not to be acted upon. The 1992 memorandum was issued pursuant to the judgment of the Hon'ble Supreme Court in *Union of India etc. v K.V. Jankiraman etc.* [(1991) 4 SCC 109 : AIR 1991 SC 2010]. The 1992 memorandum, however, again came to be reviewed by the Government, and another memorandum No.22034/4/2012-Estt.(D) dated 02.11.2012 was issued with the following caption:

"Comprehensive review of instructions pertaining to vigilance clearance for promotion"

By further clarification, following paras have been introduced:

"5. The O.M No. 22012/1/99-Estt. (D) dated 25th October, 2004 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No. 22011/4/91- Estt. (A) dated 14.09.1992, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. No promotion can be withheld merely on the basis of

suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover."

"10. Opening of sealed cover on conclusion of proceedings, is covered in the instructions in para 3 of the O.M. dated 14.9.92. In cases where by the time the Departmental Proceedings are concluded and the officer is fully exonerated but another charge sheet has been issued, the second charge sheet will not come in the way of opening of sealed cover and granting promotion notionally from the date of promotion of the junior and para 7 of O.M. dated 14.9.92 will not apply as clarified in the O.M. No. 22011/2 / 2002-Estt.(A) dated 24.2.2003. After the disciplinary proceedings are concluded and penalty is imposed, vigilance clearance will not be denied. The details of the penalty imposed are to be conveyed to the DPC." (*emphasis supplied*)

A conjoint reading of paras 5 and 10 of the memorandum dated 02.11.2012 clearly demonstrates the change in the earlier policy decision of the Government. The 1992 memorandum to the extent it provided for non-opening of sealed cover where a Government servant has suffered fresh charge-sheet (disciplinary proceedings), has been made inapplicable. Under this policy, it is provided that where the sealed cover procedure has been adopted on account of pendency of disciplinary proceedings and the officer has been exonerated in disciplinary proceedings, notwithstanding the fact that fresh charge-sheet in some other matter has been issued, in such

eventuality, the second charge-sheet will not come in the way of opening of the sealed cover and granting promotion notionally from the date of promotion of the junior. Para 10 further prescribes that even after conclusion of the disciplinary proceedings in the second charge-sheet if penalty is imposed, vigilance clearance will not be denied.

7. Mr. Bhardwaj has placed reliance upon the latest memorandum dated 02.11.2012, which is in fact applicable in the present case, in supersession of the earlier memorandum of 1992. Even prior to issuance of this memorandum, the Hon'ble Supreme Court in *Union of India and others v Sangram Keshari Nayak* [(2007) 6 SCC 704], considering the earlier judgment in *K. V. Jankiraman's* case (supra), held that second charge-sheet would not be a bar for opening the sealed cover.

8. In the case before us, admittedly on 28.01.2013 when DPC was held the applicant was under suspension, and charge-sheet dated 19.10.2010 was being inquired into in the disciplinary proceedings, hence the sealed cover procedure. It is also admitted position that the suspension of the applicant was revoked on 13.03.2013 and the period of suspension treated as on duty. The applicant was also exonerated in the charge-sheet on 05.08.2013 and thus it was obligatory upon the respondents to have opened the

sealed cover and give effect to the recommendations of the DPC. The respondents, however, refused to open the sealed cover on account of the second charge-sheet which came to be issued only on 22.04.2013, i.e., after revocation of the suspension. The sealed cover procedure had been adopted on account of the first charge-sheet wherein the applicant was exonerated. Initiation of the second charge-sheet could not have been adopted as a ground to refuse opening of the sealed cover, as is the clear mandate of the Government policy/instructions contained in the latest memorandum dated 02.11.2012, which was applicable at the time the DPC was held and continue to be in vogue. Thus the refusal of the respondents to open the sealed cover is not legally justified.

9. In the above circumstances, this Application is allowed with the following directions:

- (1) The respondents are directed to open the sealed cover adopted in the case of the applicant in the DPC meeting held on 28.01.2013.
- (2) The recommendations of the DPC be given effect to. In the event the applicant has been recommended for promotion, he may be promoted notionally from the date his immediate junior was promoted, and actually from the date of such promotion.

- (3) In the event direction (2) is applicable, the entire exercise of promotion be completed within a period of three months.

No order as to costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/as/