

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1044/2017

This the 30th day of October, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Dr. S. Anilkumar, IRS S/o V. Sadasivan Achari,
Assistant Commissioner, NACEN, Patna, Bihar,
Residing at Krishna Bhavan, Kaithavalappil,
Thathampally P.O. Alappuzha-688013. ... Applicant

(By Mr. T. V. George, Advocate)

Versus

1. Union of India
Represented by Secretary to Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
6th Floor, HUDCO Vishala Building,
Bhikaji Cama Place, R.K.Puram,
New Delhi-110066.
2. Chairman,
Central Board of Excise and Customs,
North Block, New Delhi-110002. ... Respondents

(By Mr. Gyanendra Singh, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

Hon'ble Supreme Court has been making tireless efforts to curb corruption in the public services, and various measures were being indicated for this purpose, from time to time, in

different judgments. However, equally the tireless are the efforts made by the officials charged with allegations of corruption, to sneak through the small crevices, which they find between the Judgments on the subject.

2. The applicant is an Indian Revenue Service officer of 2010 batch. He was appointed as Assistant Commissioner of Customs and Central Excise, and was posted in Cochin. He was arrested on 17.10.2013 by CBI on the basis of information gathered from one T. K. Faiz, who too was arrested on 19.09.2013. The allegation was that the applicant permitted the import of about 3.6 kg of gold and other material, while acting as the Assistant Commissioner of Customs in the Cochi Airport, at the relevant point of time.

3. The DPC for promotion to the post of Deputy Commissioner of Customs met on 30.01.2015. However, sealed cover procedure was adopted in respect of the applicant. On earlier occasion, the applicant approached this Tribunal with a prayer to direct the respondents to open the sealed cover. He was permitted to make a representation, and direction was issued for disposal thereof. On consideration of the same, the respondents passed an order dated 04.10.2016 informing the

applicant that the sealed cover cannot be opened till the criminal case pending against him is decided. The same is challenged in this OA.

4. The applicant contends that though the pendency of the criminal case is one of the grounds on which the sealed cover procedure can be adopted, no charge-sheet was filed against him, by the time the DPC met, and accordingly, the respondents are under an obligation to open the sealed cover. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Union of India & others v Anil Kumar Sarkar* [(2013) 4 SCC 161].

5. The respondents filed a counter affidavit opposing the OA. It is stated that the criminal case in respect of which the applicant was arrested, is still pending, and in view of the judgment of the Hon'ble Supreme Court in *Union of India & others v K. V. Jankiraman & others* [(1991) 4 SCC 109], and the office memorandum dated 14.09.1992, the sealed cover that was adopted in case of the applicant can be opened only on conclusion of the criminal case. It is stated that the impugned order was passed duly referring to the relevant provisions of law, and that no exception can be taken to it.

6. It is a matter of record that the applicant was arrested on 17.10.2013, and a criminal case was instituted by the CBI against him. He was also placed under suspension through an order dated 28.10.2013 with effect from 17.10.2013. The applicant made representation to the appointing authority with a prayer to revoke the suspension. On a consideration of the same, an order was passed on 03.07.2015 revoking the suspension, and he was transferred to Patna on 24.07.2015. The DPC for promotion to the post of Deputy Commissioner of Customs and Central Excise, met on 31.10.2015, and sealed cover procedure was adopted in the case of the applicant. It is stated that several officers who were junior to the applicant have been promoted. The charge-sheet in the case registered against the applicant was filed on 10.02.2016.

7. The applicant made a representation to the appointing authority, stating that the sealed cover procedure ought not to have been adopted in his case, since he was neither under suspension nor any charge-sheet was filed against him as on the date of meeting of the DPC. Alleging that no action had been taken thereon, the applicant filed OA No.2466/2016, and it was disposed of on 26.07.2016 directing the respondents to pass an order on the representation. Accordingly, the order

impugned in this OA was passed. Detailed discussion was undertaken, and reference was made to the DoP&T office memorandum dated 14.09.1992, which, in turn, is based upon the judgment of the Hon'ble Supreme Court in *K. V. Jankiraman's* case (*supra*).

8. The ratio of the judgment in *K. V. Jankiraman's* case is that an officer cannot be denied promotion unless – (a) he is under suspension; (b) a charge-sheet has been issued and the disciplinary proceedings are pending; and (c) prosecution for a criminal charge is pending. In the light of that judgment, DoP&T issued circular dated 14.09.1992.

9. It is not in dispute that a criminal case was pending against the applicant by the time the DPC met. In addition to that, he remained under suspension for a considerable time before the DPC met. Under these circumstances, the occasion to open the sealed cover would arise only when the criminal case is terminated in his favour.

10. Reliance is placed upon the judgment of the Supreme Court in *Anil Kumar Sarkar's* case (*supra*). Their Lordships referred to the judgment in *K.V. Jankiraman's* case and the DoP&T OM dated 14.09.1992. In that case, the

employee in respect of whom sealed cover procedure was adopted, was neither placed under suspension nor any charge-sheet was issued in the departmental proceedings. Though a criminal case was registered, charge-sheet was not filed, by the time the DPC met. Therefore, the Hon'ble Supreme Court took the view that the relief granted to the employee by the High Court does not warrant interference. Para 14 of the judgment reads as under:

“14. As per Para 2 of the said memorandum, at the time of consideration of the government servants for promotion, the following details of government servants in the consideration zone for promotion falling in the categories mentioned should be specifically brought to the notice of the DPC viz. (i) Government servant is under suspension; (ii) Government servant has been served with a charge-sheet and the disciplinary proceedings are pending; and (iii) Government servant is facing prosecution for a criminal charge and the said proceedings are pending. As rightly observed by the High Court, if the above conditions are available, even one of them, then the DPC has to apply the “sealed cover process”. In the case on hand, it is not in dispute that the relevant date is 21-4-2003, when the respondent's batchmates were promoted, admittedly on that date the respondent was not under suspension, no charge-sheet was served upon him nor was he facing any criminal prosecution. In such circumstances, in terms of Para 2 referred to above, the recommendation of the DPC has to be honoured and there is no question of applying “sealed cover process”.”

Specific reference was made to the judgment in *K. V. Jankiraman's* case on the point, as to when the disciplinary/criminal proceedings can be said to have commenced. It was observed that it is only when a charge-sheet in the disciplinary proceedings or a criminal case is filed, that it can be said that departmental proceedings/criminal prosecution are initiated. In the instant case, it is no doubt true that the charge-sheet in the criminal case was not filed by the time the DPC met. However, it is not in dispute that the applicant was placed under suspension in respect of those very proceedings.

11. The plea of the applicant that though he was placed under suspension earlier, he stood reinstated by the time the DPC met, and in that view of the matter, sealed cover procedure should not have been adopted, cannot be accepted. In the judgment in *K. V. Jankiraman's* case as well as in the DoP&T OM dated 14.09.1992, suspension of an employee is treated as a basis to adopt the sealed cover procedure. The same was reiterated in *Anil Kumar Sarkar's* case also. In none of them, it is mentioned that the suspension must be in force as on the date of the meeting of the DPC. The following observations contained in para 16 in *K. V. Jankiraman's* case,

referred to by the Hon'ble Supreme Court in *Anil Kumar Sarkar's* case, assumes significance in this regard:

"....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.... (emphasis supplied)"

From this, it becomes clear that the factum of an employee having been placed under suspension provides adequate ground to adopt the sealed cover procedure, as long as the proceedings/allegations in relation to which, the employee was placed under suspension, have not assumed finality. The fact that he was reinstated after some time does not make much difference.

12. We do not find any basis to interfere with the impugned order. The OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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