

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

O.A. No. 2839/2017

The 28th day of November, 2018

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)

Pawan Kamra,
DANICS (Ad hoc), Group "B"
Presently posted as SREO
Directorate of Employment
S/o Late Shri Raj Krishan Kamra
Aged about 57 years,
R/o B-18, Suvidha Apartments,
Sector 13, Rohini, Delhi-110085.

.. Applicant

(By Advocate: Shri Nilansh Gaur)

Versus

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary,
Delhi Secretariat, New Delhi.
2. Special Secretary,
Services Department,
Govt. of N.C.T. of Delhi,
Delhi Secretariat, 7th Level,
B-Wing, I.P. Estate,
New Delhi.

.. Respondents

(By Advocate: Shri Sameer Sharma)

ORDER (ORAL)

By Mr. V. Ajay Kumar, Member (J)

The applicant, an Adhoc DANICS Officer and working as SREO under the respondents, filed the O.A. aggrieved by the action of the respondents in not granting the 3rd MACP benefit, along with all

others, to him though the same was due to him w.e.f. 01.09.2008 by virtue of O.M. dated 19.05.2009, as adopted by the respondents by Order No.56 dated 03.02.2015.

2. Heard Shri Nilansh Gaur, learned counsel for the applicant and Shri Sameer Sharma, learned counsel appearing for the respondents and perused the pleadings on record.

3. A perusal of the impugned annexures clearly reveals that the Screening Committee, which met on 23.09.2016 for consideration of 3rd financial upgradation under MACP Scheme, deferred its consideration for the same on the ground of contemplation of departmental proceedings against the applicant. Admittedly, the respondents issued a charge-memorandum only on 18.04.2017 to the applicant.

4. The learned counsel for the respondents, while drawing our attention to the office memorandum dated 02.11.2012, submits that there is no irregularity in the action of the respondents since as on the date of consideration of the case of the applicant, disciplinary proceedings were contemplated against the applicant.

5. On the other hand, the learned counsel for the applicant submits that contemplation cannot be treated as pendency of the

disciplinary proceedings and placing reliance on a decision of the Hon'ble Apex Court in **Union of India etc. vs. K.V. Jankiraman etc.**, 1991 (4) SCC 109, submits that only on issuance of a charge-sheet or framing of charges in a criminal case can be treated as a disciplinary or criminal case is pending against an employee.

6. We agree with the submission made by the learned counsel for the applicant. In **K.V. Jankiraman** (supra), the Hon'ble Apex Court held as under:

"6. 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 would 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;"

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.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

7. In view of the categorical declaration of law, it is clear that disciplinary proceedings can be said to be pending against an employee if a charge sheet is issued in a disciplinary case or charges are framed in a criminal case. Even O.M. dated 02.11.2012, on which the learned counsel for the respondents placed reliance, also refers to **K.V. Janakiraman** (supra) and it only states "Govt. servant in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending". Since, admittedly, no charge

sheet was issued and no charges were framed in any disciplinary proceedings or in any criminal case registered against the applicant as on the relevant date, non-granting of the 3rd financial upgradation under MACP Scheme to the applicant is unsustainable.

8. In the circumstances, the O.A. is allowed and the impugned orders are quashed and the respondents are directed to grant the 3rd financial upgradation under MACP Scheme with all consequential benefits to the applicant with effect from the due date, if he is otherwise eligible. This exercise shall be completed within 60 days from the date of receipt of a certified copy of this order. However, this order shall not preclude the respondents from taking any appropriate action against the applicant, if the circumstances warrant, depending on the gravity of the charges levelled against him. No order as to costs.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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