

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/00623/2018**

Jabalpur, this Wednesday, the 01st day of August, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Dr. Ajit Kumar Shrivastava, S/o Late Shri Brij Mohan Shrivastava, aged about 54 years, Chief Conservator of Forest, Address : CCF (Finance & Budget) Satpuda Bhawan, Bhopal 462001

-Applicant

(By Advocate – Shri Manoj Sharma)

V e r s u s

1. Union of India through its Secretary, Ministry of Environment, Forest & Climate Change, Jorbag, New Delhi 110001.
2. State of Madhya Pradesh through Additional Chief Secretary of Forest Department, Mantralaya, Vallab Bhawan, Bhopal (M.P.) 462001.
3. Chief Secretary, State of Madhya Pradesh, Mantralaya, Vallab Bhawan, Bhopal (M.P.) 462001.
4. Principal Chief Conservator of Forest (Head of Forest Force (HOFF) Forest Department, Satpura Bhawan, Bhopal (M.P.) 462001.
5. Shri Anand Kumar, Regional Additional Principal Chief Conservator of Forest, Working Plan, Bhopal (M.P.) 462001

- Respondents

(By Advocate – Shri Vijay Pandey)

(Date of reserving order : 30.07.2018)

ORDE**By Navin Tandon, AM.**

The applicant is aggrieved by his non promotion due to faulty implementation of “sealed cover procedure”, and hence, this Original Application has been filed.

2. The undisputed facts of the case are as under:

2.1 The applicant is an Indian Forest Officer (IFS) 1987

Batch and presently posted as Chief Conservator of Forest.

2.2 The applicant claims that within the jurisdiction of the applicant, against a Timber Merchant, a forest offence was registered and appropriate action was taken including filing of Challan in the Court of learned Additional District Judge at Niwas, District – Mandla.

2.3 The said Timber Merchant, Shri Ashok Ranga, alleged that the applicant has asked for Rs.55 lakhs as bribe and claimed to have audio recording of the same. Accordingly, Government of Madhya Pradesh, vide its order dated 09.12.2015 (Annexure A-3), ordered constitution of two member committee consisting of (i) Shri Basant Pratap Singh, Additional Chief Secretary, Home (Chairman) and,

(ii) Shri Jitendra Agrawal, Principal Chief Conservator of Forest.

2.4 Meanwhile, a Departmental Promotion Committee (DPC), for the purpose of promotion to the next higher post of Additional Principal Chief Conservator of Forest, was convened on 05.02.2016 (Annexure A-2) under the Chairmanship of Chief Secretary, Government of Madhya Pradesh. The DPC decided to keep the recommendations of the applicant in the sealed cover, to be opened only when the Committee set up on 09.12.2015, fully exonerates the applicant.

2.5 The promotion orders were issued on 05.03.2016 (Annexure A-1), wherein six officers of IFS 1987 Batch, were promoted as Additional Principal Chief Conservator of Forest. The applicant claims that he is senior to respondent No. 5, whose name appears at serial no. 3 of the said promotion order.

2.6 The Enquiry Committee, which was set up on 09.12.2015, submitted its report on 17.02.2016 (Annexure A-4), wherein the allegation of asking for bribe of Rs.55 lakhs, was found to be false. However, the Committee

commented that the manner of discussions between the applicant and the said timber merchant & his family, was not befitting the stature of a senior officer of All India Services.

2.7 Consequently, the Forest Department of Government of Madhya Pradesh, issued a Show Cause Notice on 22.04.2016 (Annexure A-5), asking for his explanation within 15 days, as to why departmental enquiry should not be instituted against him and why penalty should not be imposed as per relevant rules.

2.8 The applicant submitted his explanation on 24.05.2016 (Annexure A-6), which included annexures in 47 pages, praying that all his action was to safeguard the Forest property and to maintain the morale of the Forest force. To maintain the dignity of the applicant against the false allegations by the family of a criminal, the whole proceedings should be dropped.

2.9 The applicant submits that subsequently he has submitted a total of 08 representations at regular interval, the last being on 30.05.2018 (collectively Annexure A-8). However, no further action has been taken by the respondents.

3. The applicant has sought for the following reliefs:

“8.(i) Summon the entire relevant record from the possession of the official respondents for its kind perusal;
8.(ii) Command and direct that sealed cover procedure followed by the DPC held on 05.02.2016 is illegal and bad in law, further pleased to direct opening of the sealed cover and giving effect to the recommendation as contained therein forthwith;
8.(iii) Command and direct the official respondents to grant all consequential benefits including restoration of seniority above the immediate juniors with all consequential benefits like pay, perks and status and arrears therein on the promotional post of Additional Principal Chief Conservator of Forest;
8.(iii) (sic) Any other order/orders, which this Hon’ble Court deems, fit proper.
8.(iv) Cost of the petition may also kindly be awarded.”

4. During the argument stage, learned counsel for the applicant placed reliance on a decision of Hon’ble Supreme Court in the case of **Union of India and Others vs. K.V. Jankiraman and Others**, (1991) 4 SCC 109, wherein the Hon’ble Apex Court has deliberated upon the “sealed cover procedures” and held that the “sealed cover procedure” can be resorted to only after a charge memo is served on the concerned official.

4.1 Learned counsel for the applicant also brought to the notice of this Court the decision of the Hon’ble Supreme Court in **Union of India and Others vs. Anil Kumar Sarkar**, (2013) 4 SCC 161,

wherein the cases of **K.V. Jankiraman** (supra) and **Union of India vs. R.S. Sharma**, (2000) 4 SCC 394, have been referred to. He submitted that since no decision about issuance of chargesheet has been taken on file, as was the case in **R.S. Sharma** (supra), there is no occasion for invoking the sealed cover procedure.

4.2 Learned counsel for the applicant brought to our notice the communication dated 24.05.2016 (Annexure A-11) from the office of Lokayukta to the respondents that the complaint against the applicant has been filed.

5. Learned counsel for the applicant also took us through Para 2 of Office Memorandum dated 14.09.1992 of DoP&T (Annexure A-9) and Para 2 (1) of Office Memorandum of Government of Madhya Pradesh dated 30.06.1994 (Annexure A-10), wherein the conditions have been specified for “sealed cover procedure”. None of the provisions apply in the instant case as no charge sheet has been issued to the applicant so far.

6. With the above assertions, learned counsel for the applicant prayed that the applicant should immediately be promoted to the post of Additional Principal Chief Conservator of Forest.

7. Learned counsel for the respondents strongly argued the case and submitted that the applicant is not entitled for any relief and the O.A is liable to be dismissed.

7.1 Learned counsel for the respondents submitted that since on the date of DPC viz; 05.02.2016, the High Level Committee constituted on 10.12.2015, had not submitted the report, therefore, it was within the competent jurisdiction of the DCP to keep it in the sealed cover.

7.2 It is the case of the respondents that the Show Cause Notice, reply of the applicant and representations are still pending and necessary orders will be passed after examination of all the facts and circumstances of the case.

7.3 Learned counsel for the respondents brought to the notice of the Court Para 7 of the orders dated 30.06.1994 of Madhya Pradesh Government (Annexure A-10), which reads as under:

“(7) कोई शासकीय सेवक, जिसकी विभागीय पदोन्नति समिति द्वारा पदोन्नति की सिफारिश तो की जाती है, परन्तु जिसके मामले में पैरा 2(1) में उल्लेखित कोई हालात विभागीय पदोन्नति समिति की सिफारिशें प्राप्त होने के बाद, परन्तु वास्तविक रूप में उसकी पदोन्नति होने से पहले सामने आते हैं तो उसके मामले में यह मानकर कार्यवाही की जावेगी कि विभागीय पदोन्नति समिति द्वारा उससे संबंधित अनुशंसा मुहरबंद लिफाफे में रखी गई है, अर्थात् ऐसे

प्रकरण में पदोन्नति नहीं की जाएगी और मुहरबंद लिफाफे की प्रक्रिया उसमें लागू हो गई मानी जायेगी। ऐसे शासकीय सेवक को तब तक पदोन्नत नहीं किया जायेगा, जब तक उसे उसके विरुद्ध लगाये गये आरोपों से पूरी तरह दोषमुक्त न कर दिया जाए। यदि अपचारी अधिकारी दोषमुक्त नहीं होता है तो विभागीय पदोन्नति की सिफारिश पर अमल नहीं किया जायेगा।”

8. We have heard the learned counsel for the parties and perused the pleadings and documents available on record.

9. The law on the subject of “sealed cover procedure” has been settled by the Hon’ble Apex Court in the case of **K.V. Jankiraman** (supra). The relevant paragraphs of the judgment read as under:

“**8.** The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:--(1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' The 'sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over'. Hence. the relevance and importance of the questions.

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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 chargesheet 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/chargesheet. 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.

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32. In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the

DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.”

10. The Office Memorandum dated 14.09.1992 (Anneuxre A-9) of DoP&T also specify the sealed cover procedure, para 2 of which reads as under:

“2. Cases of government servants to whom sealed cover procedure will be applicable. – At the time of consideration of the cases of government servants for empanelment 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;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.”

11. From the aforesaid, it is very clear that on the date the DPC met to consider the promotion of the applicant for Additional Principal Chief Conservator of Forest, no charge-sheet was served

on the applicant, and neither any decision to issue such a charge-sheet was taken on file. Therefore, as per the respondents' own procedures orders, as well as judicial pronouncements, keeping the promotion recommendation of the applicant in sealed cover, is bad in law.

12. Accordingly, the O.A is allowed. The respondents are directed to open the sealed cover and if the applicant is found fit for promotion by the DPC, he shall be promoted from the date his immediate junior Shri Anand Kumar (respondent No. 5) was promoted in terms of promotion order dated 05.03.2016 (Annexure A-1) with all consequential benefits. This exercise should be completed within a period of 30 days from the date of receipt of certified copy of this order. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

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**(Navin Tandon)
Administrative Member**