

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**

**No. O.A. 1882 OF 2015**

**Date of order: 21.02.2018**

**Present: Hon'ble Ms. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Shri Tapas Kumar Datta,  
Son of Late Phani Bhushan Datta,  
Aged about 57 years,  
Working as Senior Accounts Officer,  
O/o. Director of Postal Life Insurance,  
Kolkata - 2,  
Permanently residing at 77/A/12,  
Raja S.C. Mallick Road,  
P.O. - Ragent Estate,  
Kolkata - 700 092.**

**.. Applicants**

**Vs.**

- 1. The Union of India,  
Through the Secretary,  
Ministry of Communication,  
Department of Posts,  
Dak Bhawan,  
New Delhi - 110 001.**
- 2. Assistant Director General (PA & F),  
Postal Directorate, PA Wing, Dak Bhawan,  
New Delhi - 110 001.**
- 3. The Director (Budget & Admn.),  
Ministry of Communications & IT,  
Dept of Posts (PA Wing), Dak Bhawan,  
New Delhi - 110 001.**
- 4. The Chief Post Master General,  
West Bengal Circle,  
Yogayog Bhawan,  
C.R. Avenue,  
Kolkata - 700 012.**
- 5. The Controller of Communication Accounts,  
West Bengal Circle,  
Kolkata - 700 069.**

**.. Respondents**

For the Applicant : Mr. A. Chakraborty, Counsel  
Ms. P. Mondal, Counsel

For the Respondents : Mr. P.N. Sharma, Counsel

### **O R D E R**

#### **Per Dr. Nandita Chatterjee, Administrative Member:**

This Original Application has been filed under Section 19 of the Administrative Tribunal, 1985 seeking the following reliefs:-

- (a) Speaking order dated 14.10.2015 issued by Assistant Director General (P. Admn) Department of Post (PA Wing) cannot be sustained in the eye of law and therefore the same may be quashed.
- (b) An order do issue directing the respondents to grant the benefit of promotion in favour of the applicant with effect from 12.2.2010 instead of 28.2.2013 as the private respondents, Junior to the applicant was granted promotion with effect from the said date and to grant all the consequential benefits.
- (c) An order do issue directing the respondents to grant of arrears with interest.”

2. Heard Ld. Counsel for both sides, examined documents as annexed with the application and the reply as well as those furnished during hearing by Ld. Counsel.

3. The facts of the case, briefly put, are as follows:-

As submitted by the Ld. Counsel for the applicant, the applicant was initially appointed as a Steno and posted in the office of the Sr. Superintendent of Post Offices, Nadia North Division, Krishnanagar and thereafter promoted to the post of Junior Account Officer in the office of Director of Accounts (Postal), Kolkata. Subsequently, he was further promoted to the post of Assistant Accounts Officer in 1997.

That, vide PA Wing Memo No. 2-24/2009 to 3014 dated 14.1.2001 and DOT No. 51-1/2010-SEA-11 dated 3.2.2010, the Accounts Officer (Postal) issued an Office Order from which it is evident that some Assistant Accounts Officers of Indian P&T Accounts & Finance Service Group 'B' have been

promoted to the cadre of Accounts Officer on regular basis.

That, private respondent, Shri Debasis Jana, AAO, who is junior to the applicant had also been promoted to the post of Accounts Officer with effect from 12.2.2010 by virtue of such order.

That, the applicant while working in Kolkata as AAO, received an Office Memorandum dated 28.2.2013, promoting him to the post of Accounts Officer on regular basis and he was posted at Shillong.

That, the applicant made a representation dated 8.12.2010 before the Member (Finance), Telecom Communication stating, inter alia, that his name had not been considered for promotion when that of other 147 AAOs have been so considered and as his case was kept under sealed cover on ground of non-receipt of vigilance clearance, the DPC had not recommended him in its meeting resulting in promotions dated 12.2.2010.

That in the meanwhile, a chargesheet under Rule 16 of the CCS(CCA) Rules, 1965 was served upon the applicant on the allegation that he has contravened the provisions of Rule 3(1)(ii) and (iii) of CCS Rules. The said chargesheet was issued vide memorandum No. 8/13/2010-Vig.II dated 10.3.2010 issued by the Member (Finance) Telecom Commission. Upon conclusion of the proceedings the applicant was held guilty and he was imposed the following punishment vide order dated 14.12.2010:

“ Reduction to a lower stage in the time scale of pay by one stage for a period of two years without CE and not adversely affecting pension.”

That, the applicant filed an appeal before the President of India which was dismissed vide Office Order dated 30.10.2013.

That, given the ratio in **Union of India v. K.V. Jankiraman** as reported in **AIR 1991 SCC 2010** the authority concerned cannot deny the benefit of granting promotion to the applicant on the ground of investigation of certain charges and also for non-receipt of vigilance clearance.

That, on being aggrieved by the non-consideration of his representation dated 31.7.2015 praying for promotion to the post of Accounts Officer w.e.f. 12.2.2010, the applicant moved O.A. No. 350/01249/2015 which was disposed of by the Tribunal on 1.9.2015 with the following orders:-

“ The Respondent Authorities shall consider the representation dated 30.7.2015 of the applicant and see as to whether there were grounds for not giving effect to the promotion with retrospective effect so to say from 12.2.2010 i.e. from the date of his junior having been promoted and a speaking order would be issued in this regard within a period of two months from the date of receipt of a copy of this order.”

Thereafter, a speaking order was issued to the applicant on 14.10.2015 in compliance with the order of the Tribunal dated 1.9.2015. Being aggrieved with the said speaking order the instant application has been filed by the applicant.

4. Per contra, the Ld. Counsel for the respondents argued as follows:-

That, the applicant is at present working as Sr. Account Officer in the O/o ICO (SB), Kolkata Region, West Bengal Circle under the PMG, Kolkata Region.

That, while working as Assistant Communication Accounts Officer in the Circle in PLI Branch of the O/o the Chief Postmaster General, West Bengal Circle during the period from 3.2.2003 to 11.6.2003, he was entrusted with checking of the surrender value of Postal Life Insurance cases and had failed to follow the instructions laid down by the Directorate of PLI vide letter No. 29-14/98-LI dated 18.11.2003 to the effect that no bonus would be payable on the paid up value if a PLI Policy is surrendered before completion of 5 years and if a policy is surrendered after 5 years then proportionate bonus on paid up value would be payable in addition to paid up value.

That, during Audit Inspection carried out by the P&T Audit in August, 2005 it was revealed that at the time of checking/sanctioning the surrender

value of 61 PLI surrender cases, the applicant was entrusted with the duties of checking of calculation of all PLI surrender cases. This resulted in excess payment of bonus to the tune of Rs. 4,03,171/-. Out of the said excess paid amount only Rs. 20,578/- could be recovered, thus the Govt. sustained a net loss of Rs. 3,82,593/-.

That, the applicant was held responsible for this incident and a charge sheet under Rule 16 of the CCS (CCA) Rules, 1965 was issued vide Memo No. 8/13/2010-Vig.II dated 10.3.2010.

That, when all these activities were under progress, the Postal Directorate, the PA Wing vide its Memo No. 2-24/2009-PACE/2839 to 3014 dated 14.1.2010, issued promotion order of 147 Assistant Accounts Officers to the post of Accounts Officer on regular basis. Though the name of the applicant appeared at Sl. No. 231 of the All India Eligibility list of JAO/AAO, he was not awarded with the promotion whereas his immediate junior, Shri Debasish Jana (Sl. No. 232) was included in the promotion list. This was due to non-receipt of Vigilance Clearance as well as contemplation of departmental proceedings against the applicant. The recommendations of DPC in respect of the applicant was kept in sealed cover. In the meantime, the applicant was awarded with a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of two years without cumulative effect and not adversely affecting his pension vide Member (Finance), Telecom Commission Memo No. 8-13/2010-Vig. II, dated 14.12.2010. The applicant appealed before the President of India but his punishment was upheld by the President vide Order No. 1-71/2011-Vig. HI dated 30.10.2013. On expiry of currency of punishment, the officer was found fit for promotion to Accounts Officer cadre by the DPC held on 29.1.2013 and accordingly he was promoted to Accounts Officer cadre vide Memo No.

2-24/2013-PACE/4195 to 4338 dated 28.2.2013.

That, the applicant in his representation dated 30.7.2015 had requested for considering his case for promotion to the post of Accounts Officer w.e.f. 12.2.2010 by convening a review DPC. Since no reply was received from the DDG (PAF), Postal Directorate, the applicant had filed an O.A. before the Central Administrative Tribunal, Calcutta Bench bearing No. 350/01249/2015 praying for grant of promotion to the post of Accounts Officer with effect from 12.2.2010. The case was disposed of on 1.9.2015 with the order that the Respondent Authority shall consider the representation dated 30.7.2015 of the applicant and see as to whether there were grounds for not giving effect to the promotion with retrospective effect so to say from 12.2.2010 i.e. from the date of his junior having been promoted and a speaking order would be issued regarding such promotion within a period of two months from the date of receipt of a copy of this order.

That, a speaking order was issued on 14.10.2015 wherein it was stated that on expiry of currency of punishment the officer was found fit for promotion and accordingly he was promoted to AO cadre.

5. During hearing, the Ld. Counsel for the applicant had furnished in his support the DOP&T O.M. dated 14.9.1992 on the subject matter of revised guidelines for promotion/confirmation of employees against whom the disciplinary/Court proceedings is pending or whose conduct is under investigation as well as DOPT O.M. dated 14.12.2017 on guidelines regarding grant of vigilance clearance to members of the Central Civil Services/Central Civil post.

6. The respondents, on the other hand, have relied on two pronouncements of the Hon'ble Apex Court as follows:-

**(i) Delhi Development Authority v. H.C. Khurana Civil Appeal No.**

**1240 of 1993 decided on April 7, 1993.**

**(ii) Harsh Kumar Sharma, IFS v. State of Punjab & anr. SLP (Civil)**

**No. 24338-24339 of 2014 decided on 14.12.2016, 2017 (3) SLR 24 (S.C.).**

7. The moot issue to be adjudicated upon in this matter is as follows:-

As to whether the applicant is entitled to benefits of promotion w.e.f. 12.2.2010 instead of 28.2.2013 as the private respondent, junior to the applicant, was granted promotion w.e.f. the said date, given the fact that departmental proceedings had not been initiated against the applicant prior to or as on the date of convening of the DPC, namely 12.1.2013.

### **FINDINGS**

8. To decide on the above mentioned issue, we examined in detail the speaking order of Assistant Director General (PA-Admn), respondent No. 2 dated 14.10.2015 issued in compliance to decision of the Tribunal in O.A. No. 1249 of 2015:-

“ No. 19-115/2015-PACE/350/01249/2015/3996  
Government of India  
Ministry of Communications & IT  
Department of Posts : (PA Wing)  
Dak Bhawan, New Delhi - 110 001

Dated: 14.10.2015

### **SPEAKING ORDER**

Subject:- Promotion to the Accounts Officer of IP & TAFS Gr. 'B' Cadre with retrospective date case of Shri Tapas Kumar Datta - reg.

Shri Tapas Kumar Dutta, filed an O.A. No. 350/01249 of 2015 in the Hon'ble CAT, Calcutta Bench, Kolkata regarding his promotion in Accounts Officer cadre. The Hon'ble CAT has passed an order in the O.A. on 1.9.2015. The operative part of the order as follow:-

“ The Respondent Authorities shall consider the representation dated 30.7.2015 of the applicant and see as to whether there were grounds for not giving effect to the promotion with retrospective effect so to say from 12.2.2010 i.e. from the date of his junior having been promoted and a speaking order would be issued in this regard within a period of two months from the date of receipt of a copy of this order.”

In compliance of the orders of Hon'ble CAT, Calcutta Bench, Kolkata in the ibid O.A., the representation dated 30.7.2015 of the officer has been examined with the following observations:-

1. Shri Tapas Kumar Datta, while working as Assistant Accounts Officer (AAO) in the office of CCA, W.B. Circle, Kolkata was in the zone of consideration for promotion to Accounts Officer (CAO) cadre in the DPC to be held on 12.1.2010.
2. Since a disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 was pending against him as on the date, the recommendations of DPC were kept in Sealed Cover in term of DOP&T O.M. No. 22011/4/91-Estt.(A) dated 14.9.1992.
3. The disciplinary proceeding against the officer came to an end with the conclusion of punishment of reduction to a lower stage in the time scale of pay by one stage for two years without cumulative effect vide Dot (Vig.) Memo No. 8.13/2010-Vig.II dated 14.12.2010.
4. As the penalty was imposed on the officer as a result of the disciplinary proceeding against him, the finding of the Sealed Cover was not acted upon in terms of DOP&T O.M. ibid.
5. On expiry of currency of punishment, the officer was found fit for promotion to AO cadre vide Memo No. 2-24/2013-PACE/4195 to 4338 dated 28.2.2013.
6. Taking into consideration all the above facts the request of the officer for grant of promotion to AO cadre w.e.f. 12.2.2010 i.e. from the date of promotion of his junior as mentioned in his representation dated 30.7.2015 is not in order and accordingly the same cannot be acceded to by the Competent Authority.

This issues with the approval of the Competent Authority.

(R.S. Rawat)

Asstt. Director General (PA-Admn.)

Shri Tapas Kumar Datta,  
Sr. Accounts Officer,  
O/o. Director (PLI), Kolkata.”

9. It appears that the only grounds on which the applicant's promotion was not considered in the DPC held on 12.1.2010 was that as “a disciplinary proceeding under Rule 14 of CCS (CCA) Rules, 1965 was pending against him as on the date, the recommendations of DPC were kept in Sealed Cover in term of DOP&T O.M. No. 22011/4/91-Estt.(A) dated 14.9.1992.” The recommendations of DPC were reportedly kept in sealed cover in terms of DOP&T O.M. No. 22011/4/91-Estt.(A) dated 14.9.1992 and as punishment was imposed on the officer as a result of disciplinary proceedings against

him, the finding of the sealed cover was not acted upon excepting upon the expiry of currency of punishment.

10. In DOP&T O.M. dated 14.9.1992, it has been clearly laid down as to which are the cases of Government servants against whom sealed cover procedure will be applicable. The same reads as follows:

"At the time of consideration of 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 a criminal charge is pending."

11. According to DOP&T O.M. dated 14.12.2007, the circumstances under which vigilance clearance shall not be withheld shall be as under:-

"2.(a)       xxxxx                   xxxxx                   xxxxx                   xxxx  
(b)        xxxxx                   xxxxx                   xxxxx                   xxxx

(c)       Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) a charge-sheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iii) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority, provided that the charge-sheet is served within three months from the date of passing such order (iv) charge-sheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending (v) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority, provided that the charge-sheet is served within three months from the date of initiating proceedings (vi) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (vii) an FIR has been filed or a case registered by the concerned Department against the officer, provided that the charge-sheet is served within three months from the date of filing/registering the FIR/case and (viii) the officer is involved in a trap/raid case on charges of corruption and investigation is pending."

12. In the instant matter, admittedly, the memorandum of charges dated 10.3.2010 were issued to the applicant on 7.4.2010 (Annexure "A-6" to the

O.A.).

The date of decision of the competent authority regarding the disciplinary proceeding has been brought to our notice by the arguing Counsel for the respondents during the hearing and forms part of communication dated 13.9.2009 of the Office of General Manager (Posts Accounts & Finance), West Bengal Circle, Kolkata.

Herein, although the decision to institute disciplinary proceedings against the officer had been taken by the disciplinary authority on 18.5.2009, the charge-sheet had been served on the charged officer/applicant only on 7.4.2010 (Annexure A-6 to the O.A.) which is more than three months from the date of decision of the competent authority namely CPMG, West Bengal Circle dated 18.5.2009.

Consequently, in obedience with the guidelines of DOP&T O.M. dated 14.12.2007, the vigilance clearance against the applicant should not have been withheld.

The O.M. of DOPT dated 14.9.92 lays down that there are three situations in which the sealed cover procedure will be applicable:

- (1) Government servants under suspension;
- (2) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and
- (3) Government servants in respect of whom prosecution for a criminal charge is pending.

The Ld. Counsel for the applicant has referred to the ratio laid down in **Union of India v. K.V. Jankiraman** (ibid) where it has been held:

“The promotion etc. cannot be withheld merely because some disciplinary/criminal proceeding 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.”

The respondents, on the other hand, have relied on **Delhi Development Authority v. H.C. Khurana (1993) 3 SCC 196** in which the Ld. Counsel for the respondents has drawn our attention to para 13, which states as follows:-

“13. It will be seen that in Jankiraman also, emphasis is on the stage when ‘a decision has been taken to initiate the disciplinary proceedings’ and it was further said that ‘to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee’. The word ‘issued’ used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word ‘issued’ has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.”

Most interestingly, although relied upon by the respondents to support their case, the ratio of the Apex Court in *DDA v. H.C. Khurana (ibid)* further confirms the view that the point of time when the decision to initiate disciplinary proceedings is taken and translated into action by dispatch of the charge-sheet will be the deciding factor as to when the decision has been taken to initiate the disciplinary proceedings.

This confirms the ratio that it is only when the decision to initiate disciplinary proceedings is translated into action by dispatch of charge-sheet can it be said that the disciplinary proceeding has been initiated against a public servant.

Clearly in this case, the decision of 18<sup>th</sup> May 2009 was translated into such action in March/April, 2010 and hence 10<sup>th</sup> March, 2010/7<sup>th</sup> April, 2010 will be the relevant point of time for deciding when the disciplinary proceeding was initiated.

The Ld. Counsel for the respondents has also relied on **Harsh Kumar Sharma IFS v. State of Punjab & anr. 2017 (3) SLR 24 (SC)** in which the Hon'ble High Court has held as follows:-

“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 experienced 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.....”

As this ratio, however, was held in the context of prosecution of criminal charges, it may not serve as a ratio decidendi in the instant matter before us.

13. Although the respondents were directed to be present with certain records vide Tribunal's order dated 2.11.2017, no minutes of the DPC meeting have been produced before us. Ld. Counsel for the respondents while arguing also mentioned that the date when the DPC was held has incorrectly been noted as 12.1.2010 in the speaking order. At this stage, while there has been no such admission in their reply, we are unable to accept any such amendment in this regard.

14. Hence, we hold that given the ratio in Jankiraman (*ibid*), reiterated in Khurana (*ibid*) and in accordance with DOPT's Memorandum dated September, 1992 and December, 2007, the DPC should have considered

the case of the applicant during its review meeting dated 12.1.2010 as because the applicant was neither under suspension nor was a chargesheet issued to him, nor was he being prosecuted in a criminal case as on date. The sealed cover procedure will hence not apply to the applicant in this case on 12.1.2010.

15. Hence, we set aside the speaking order dated 14.10.2015 of respondent No. 2 and direct the respondents for holding a review DPC to consider granting of the benefit of promotion in favour of the applicant w.e.f. 12.2.2010 instead of 12.2.2013 as the private respondent, junior to the applicant, had been granted promotion w.e.f. the said date.

16. The O.A. succeeds. Parties will bear their respective costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

SP

**(Manjula Das)**  
**Judicial Member**

