

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/871/2018

Date of decision: 22.01.2019

(Reserved on 07.01.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

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Dr. Pramod Kumar Gupta, age about 43 years S/o Sh. Nirmal Kumar Gupta, Associate Professor, Department of Biostatics, Post Graduate Institute of Medical Education and Research, Chandigarh R/o H. No.2892, First Floor, Sector 38/C, Chandigarh. Pin code-160036, Group A.

... APPLICANT

VERSUS

1. Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh through its Director. Pin code-160012.
2. Governing Body of Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh through its President. Pin code-160012.
3. The Standing Selection Committee of Postgraduate Institute of Medical Education & Research, Sector-12, Chandigarh through its Chairman. Pin code-160012.

... RESPONDENTS

PRESENT: Sh. Karan Singla, counsel for the applicant.
Sh. Sanjay Goyal, counsel for the respondents.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant herein assails action of the respondents in keeping his matter of promotion under the Career Progression Scheme in sealed cover and has sought issuance of direction to the respondents to open sealed cover and to give effect to recommendation of the Committee meant for his promotion as Additional Professor.

2. Facts which led to filing of the present O.A. are not broadly in dispute.
3. Applicant commenced his career as Assistant Professor of Biostatics, Department of Biostatics in Postgraduate Institute of Medical Education & Research (for short PGIMER) on 01.08.2008. As per recommendations made by the recommendations made by the Committee selected vide letter dated 28.5.1985, a Scheme was framed known as Assessment Promotion Scheme, which was later revised as Career Progression Scheme (for short CPS) vide letter dated 12.01.2010. It was implemented w.e.f. 31.12.2008. later on preponed to 1.7.2008. An Associate Professor with 03 years of regular service in the grade at the PGIMER is entitled to up-gradation/promotion under CPS. The applicant became eligible for consideration as Associate Professor under CPS w.e.f. 1.7.2011 i.e. the date other incumbent have been granted promotion. He was promoted w.e.f. 1.7.2012. He submitted representation for antedating his promotion from the date when other eligible persons were promotion i.e. 1.7.2011. Pending decision applicant became eligible for promotion to the post of Additional Professor under CPS w.e.f. 1.7.2014. Vide letter dated 20.06.2018 all eligible persons were called for interview for promotion to the post of Additional Professor which was scheduled to be held on 22.6.2018. On that date applicant along with other eligible persons was interviewed. It is the case of the applicant that while result of other candidates was declared vide order dated 29.6.2018 but his result was withheld. No reason for the same was communicated to him, which led to filing of representation. Then he was informed that a recommendation of the

Committee has been kept under sealed cover, which led to filing O.A. No.60/97/2015, where action of the respondents in keeping recommendation under sealed cover has been set aside vide order dated 14.08.2015 and direction was issued to open sealed cover and give effect to recommendation made therein. Hence the present O.A.

4. The applicant has also alleged malafide against respondents without impleading them as a party stating that earlier also when his case was to be considered for promotion from Assistant Professor to Associate Professor under CPS recommendations of the Committee were kept under sealed cover due to alleged inquiry which is yet to be initiated against him. That was challenged by filing O.A. No.60/97/2015, which was allowed by this Court holding that on the date of consideration, there was nothing against the applicant, therefore, respondents cannot resort to sealed cover procedure in terms of law laid down in the case of **U.O.I. vs. K.V. Jankiraman** 1991 SCC (4) 109, therefore, the applicant has taken various grounds including malafide in keeping his case under sealed cover for promotion to the post of Additional Professor under CPS in the present petition.
5. Respondents while resisting the claim of the applicant have denied allegations leveled therein. They have submitted that in terms of CPS, case of the applicant was considered for promotion as Associate Professor but since he did not possess experience on the cut off date of eligibility i.e. 1.7.2013 as he was appointed on 1.8.2012 and had completed three years on 30.7.2011 and not on 1st July, therefore, he was given promotion w.e.f. 1.7.2012 and subsequently, his case was considered for promotion from Associate Professor to Additional

Professor. Since chargesheet had been issued to applicant on 11.2.2017 and 25.2.2017, therefore, governing body decided to keep his matter under sealed cover. In reply to his representation respondents have also provided copy of standing committee meeting held on 20.03.2017, 18.11.2017 and 22.6.2018. Based upon the decision by governing body under Agenda Item No.29 dated 28.06.018, competent authority decided to defer his promotion till the decision in the pending disciplinary proceedings.

6. We have heard learned counsel for the parties.
7. Learned counsel for the vehemently argued that the impugned action of the respondents in keeping minutes of Standing Committee of CPS under sealed cover for promotion to the post of Additional Professor is illegal and arbitrary and liable to be set aside as there was nothing against the applicant when he was considered for promotion under CPS. To elaborate his arguments, he submitted that once chargesheets dated 11.2.2017 and 25.5.2017 had been set aside by Court of law vide order dated 30.01.2018, then respondents cannot take a plea that chargesheet was pending against him on the date when his case was considered for promotion under the said Scheme. To buttress his plea, he has placed reliance on judgment in the case of K.V. Jankiraman (supra), **Diwakar Singh vs. State of U.P.** 2013 (6) SLR 511, **Nirmal Singh vs. Food Corporation of India**, 2000(4) SCT 1009 and judgment passed by this Tribunal in the case of the applicant itself titled **Sonu Goel & Ors. vs. UOI & Ors.** (O.A. No.60/97/2015).
8. Per contra learned counsel for the respondents vehemently opposed prayer and submitted that merely the fact that chargesheet has been

quashed on technical grounds does not mean that there was nothing against the applicant when his case was considered for promotion under CPS. He also apprised this Court that applicant has been issued fresh chargesheet in continuation of earlier one on 29.08.2018 and proceedings are pending. Therefore, he submitted that present O.A. be dismissed being devoid of merit.

9. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with able assistance of learned counsel for the parties.
10. Conjunctive perusal of the pleadings makes it clear that applicant was called for interview for promotion as Additional Professor under CPS on 22.6.2018. Before that, applicant was issued two chargesheet dated 11.2.2018 and 25.2.2017. Though both were set aside on the petition filed by the applicant i.e. O.A. No.60/291/2017 vide order dated 30.01.2018 on technical grounds that the same had not been issued by competent authority based on the ratio laid down in the case of **U.O.I. vs. B.V. Gopinath** 2014(1) SCC L&S 161. But fact remains that on the date of consideration, applicant was under cloud, though chargesheets had been set aside on technical grounds, which the respondents later issued on 29.08.2018, therefore, plea of the applicant that once chargesheet has been set aside, therefore, respondents are under obligation to open sealed cover cannot be accepted. Therefore, we find no reason to issue any direction to respondents to open sealed cover, as prayed by the applicant. We will be failing in our duty if we do not consider the judgment relied upon by the applicant. In the case of K.V. Jankiraman, Apex judicial dispensation has categorically held that if on the date of consideration

of promotion, there is nothing against the employee, then the respondents cannot resort to sealed cover procedure. Relevant paras read as under:-

"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? and
 (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? Among the three questions, we are concerned about question No.1. As per the rules applicable, 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. Inasmuch as we are concerned about first question, the dictum laid down by this court relating to the said issue is 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 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/charge sheet. 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 finalize 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.

17. 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." After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that "The Tribunal has rightly directed the authorities to open the sealed cover and if respondent was found fit for promotion by the DPC, to give him promotion from the date of his immediate junior Sh. 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... We see no reason to interfere with this order. The appeal, therefore, stands dismissed." The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by appellant-Union of India is liable to be rejected."

11. Based upon the ratio laid down in the case of K.V. Jankiraman, in earlier round of litigation, this Court found that there was nothing against him at the relevant point of time, therefore, direction was issued negating view of the respondents but as noticed above, in the present case on the date of consideration, two chargesheets were pending against applicant though the same were set aside on technical grounds as not having been issued by competent authority.

12. Accordingly the O.A. being devoid of merit is hereby dismissed. No costs.

(P. GOPINATH)
MEMBER (A)

Date: 22.01.2019.
Place: Chandigarh.

'KR'

(SANJEEV KAUSHIK)
MEMBER (J)