

**Central Administrative Tribunal
Principal Bench**

**OA No.4590/2018
MA No.844/2019**

New Delhi, this the 4th day of April, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sh. K. Srinivasulu,
Aged about 53 years,
S/o Shri K. Partha Sarathi,
R/o 102, South Block,
Express Towers, White Fields,
Kondapur, Hyderabad
(Presently working as Dy. General Manager (Tech) in
NHAI at Warangal, Hyderabad)

...Applicant

(By Advocate : Shri S.K.Gupta)

Versus

National Highways Authority of India,
Through Chairman
G-5 & 6, Sector-10, Dwarka,
New Delhi-110 075.

...Respondent

(By Advocate : Shri Naresh Kaushik)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant was appointed as Assistant Executive Engineer in the State of Andhra Pradesh. Thereafter, he came on deputation to National Highways Authority of India (for short, NHAI), the respondent herein, and

continued uninterrupted. He was permanently absorbed as Manager (Tech) on 19.11.2012. It is stated that he became eligible to be promoted to the post of Deputy General Manager (DGM)(Tech), but the sealed cover procedure was adopted in the year 2014, on the ground that an FIR was lodged against him by the ACB of State of A.P., alleging that he held the assets disproportionate to his known sources of income. At that stage, he filed OA No.4495/2015. Through a judgment dated 10.03.2016, the Tribunal allowed the OA and accordingly, the applicant was promoted to the post of DGM (Tech) on 05.05.2016.

2. Promotion for the next higher post of General Manager was considered by the DPC in December, 2017. The respondents adopted the sealed cover procedure in respect of the applicant this time also. He submitted representations dated 16.05.2018 and 25.08.2018 in this behalf. Through a communication dated 24.10.2018, the respondents informed the applicant that the sealed cover procedure was adopted, based on the vigilance case and that it has been decided to initiate the disciplinary proceedings against him for violation of Rule 18(2) and

18(1)(ii) of the Central Civil Services (Conduct) Rules, 1964. The same is challenged in this OA.

3. The applicant contends that except that an FIR was lodged by the ACB of the State of Andhra Pradesh, no progress whatever, has taken place in the proceedings. He contends that neither any criminal case was registered much less charge sheet was filed; nor any disciplinary proceedings were initiated against him; and still the sealed cover procedure was adopted. He seeks a direction to the respondents to open the sealed cover and to promote him to the post of General Manager with all consequential benefits.

4. The case was adjourned on several occasions to enable the learned counsel for respondents to obtain the instructions. Today, the matter is argued at length on the instructions obtained from the respondents.

5. We heard Shri S.K. Gupta, learned counsel for applicant and Shri Naresh Kaushik, learned counsel for respondents.

6. This is the second time, that the applicant has approached the Tribunal in the context of the respondents adopting the sealed cover procedure. Earlier, it was in respect of promotion to the post of DGM (Tech). The applicant places reliance upon the judgment of Hon'ble Supreme Court in ***Union of India Vs. K.V. Janakiraman*** 1991 SCC 4 (109).

7. The plea of the respondents in OA No. 4495/2015 as well as this OA is that the disciplinary proceedings were contemplated against the applicant and, accordingly the sealed cover procedure was adopted. Detailed discussion was undertaken and OA No. 4495/2015 was allowed through a judgment dated 10.03.2016. The sealed cover adopted for promotion to the post of DGM (Tech) was opened and the applicant was promoted to the post of DGM (Tech) on 05.05.2016. The respondents adopted the sealed cover procedure in December, 2017, in respect of the applicant in the context of the promotion to the post of General Manager (Tech).

8. Things would have been different altogether, had there been any substantial development bringing the case of the applicant within the three parameters mentioned in ***Janakiraman's*** case (supra), after OA

No.4495/2015 was allowed and before, the impugned order was passed. The only development, which the learned counsel for the respondents mentions, is that the concerned authority has sought sanction from the NHAI, to initiate prosecution and the same is pending. Even if that is taken as true, it hardly constitutes any basis to adopt the sealed cover procedure. In categorical terms, the Hon'ble Supreme Court held in ***Janakiraman's*** case (supra) that it is only when (a) an employee is placed under suspension; or (b) a charge sheet has been filed in a criminal case initiated against him; or (c) departmental proceedings have been initiated; that the sealed cover procedure can be adopted. The DOP&T has also issued OM dated 14.09.1992, incorporating these very parameters. The relevant portion thereof reads as under:-

"OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation – Procedure and guidelines to be followed.

The undersigned is directed to refer to Department of Personnel & Training O.M.No.22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the

procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. Vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.

2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category 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 criminal charge is pending.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course

after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecutions against him.

5.2 After a decision is taken to promote a Government servant on an ad-hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- i) the promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the adhoc promotion and revert at any time the Government servant to the post from which he was promoted.

Admittedly, none of the three circumstances exist in relation to the applicant, as of now.

9. Under these circumstances, the OA is allowed and the impugned order is set aside. The respondents are directed to open the sealed cover and consider the case of the applicant for promotion if the DPC meets. This

exercise shall be completed within a period of six weeks from the date of receipt of a certified copy of this order.

There shall be no order as to costs.

(Mohd. Jamshed) **(Justice L. Narasimha Reddy)**
Member (A) **Chairman**

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