

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4238/2016

Wednesday, this the 10th day of July 2019

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

Shri Prabhat Kumar Sinha,
Age about 61 years
(retired PCS Officer) Group A
c/o Mr. Prateek Sinha
211, Excellence Society
Plot No.4, Sector 18-A
Dwarka, New Delhi – 110 075

(Mr. Piyush Sharma, Advocate)

..Applicant

Versus

1. Union of India through the Secretary
Department of Personnel & Training
Govt. of India
North Block, New Delhi
2. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road, New Delhi
3. State of UP
Through Chief Secretary
UP Civil Secretariat, Lucknow
4. Principal Secretary
Appointments Department
UP Civil Secretariat, Lucknow

..Respondents

(Mr. Gyanendra Singh, Advocate for respondent No.1,
Mr. S M Arif, Advocate for respondent No.2 and
Mr. Nikhil Majithia, Advocate for respondent Nos.3 & 4)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant was an officer of Uttar Pradesh State Civil Service. His case was considered for promotion to Indian

Administrative Service (IAS) on 27.11.2012. The vacancies referable to almost ten years were dealt with at that stage. The name of the applicant was included in the select list for the year 2007 at Sl. No.5. However, it was observed that the inclusion was conditional, on account of the fact that a criminal case was pending against him. Several officers, above and below the applicant in that select list, were promoted to IAS but the result of consideration of his name was kept in sealed cover. The name of the applicant was included in the select lists for subsequent years also. The same situation ensued since the criminal case was pending against him.

2. A criminal case, that was pending against the applicant, ended in an acquittal on 15.09.2014. The applicant retired from service on 31.05.2014, i.e., four months before his acquittal. The respondents denied the promotion to the applicant on the ground that he ceased to be in service by the time he was acquitted by the criminal court. This O.A. is filed with a prayer to direct the respondents to open the sealed cover and to direct the respondents to promote the applicant on the basis of the inclusion of his name in the select list for the year 2007, with effect from the date on which his immediate junior, Mr. Hira Lal Gupta was promoted.

3. The respondent No.2 on the one hand and respondent Nos. 3 & 4 on the other, filed separate counter affidavits. The

basic facts, that the name of the applicant figured in the select list for the year 2007 and that the sealed cover procedure was adopted, are not disputed. It is, however, stated that the case of the applicant was not considered on account of the pendency of the criminal case and that by the time he was acquitted by the criminal court, he ceased to be in service, and accordingly, the promotion was not extended to him.

4. We heard Mr. Piyush Sharma, learned counsel for applicant, Mr. Gyanendra Singh, learned counsel for respondent No.1, Mr. S M Arif, learned counsel for respondent No.2 and Mr. Nikhil Majithia, learned counsel for respondent Nos. 3 & 4, at length.

5. The steps for promotion of Uttar Pradesh State Civil Service officer to IAS were not taken almost for a decade, for one reason or other. It was only with the intervention of the Supreme Court, that the proceedings were initiated in the year 2012. The select lists with reference to the vacancies of the each year were prepared and the name of the applicant was figured at Sl.No.5 of the select list for the year 2007. However, the sealed cover procedure was adopted since a criminal case was pending against him. His name figured in the select lists of subsequent years also.

6. The respondents were certainly justified in not promoting the applicant as long as the criminal case was pending. The case

ended in an acquittal through judgment dated 15.09.2014. The applicant retired from service on 31.05.2014, i.e., four months before his acquittal.

7. To the commonsense, it may appear to be just and proper to deny the promotion to an officer, who has already retired from service, particularly when the criminal case is ended only after his retirement. However, if one takes into account the concept of sealed cover procedure, a totally different picture emerges. If the sealed cover procedure is adopted in the case of an employee and he retires from service, by the time he is cleared from disciplinary proceedings, two situations would emerge. First is that, in case no junior to such employee has been promoted on the basis of the consideration by the Departmental Promotion Committee (DPC) with effect from any date anterior to the retirement of such employee, no benefit needs to be extended to him. If on the other hand, an employee, who is junior to the one in respect of whom the sealed cover procedure was adopted, is promoted with effect from the date anterior to the retirement of the senior, the latter, i.e., the senior, would be entitled to be extended the notional promotion and consequential benefits.

8. This very aspect was dealt with by the Department of Personnel & Training (DoPT) in its O.M. dated 25.01.2016. After referring to the procedure to be adopted in the case of

sealed cover procedure, the one, as regards the retired employees, is dealt with in paragraphs 3, 4 & 5 of the O.M. They read as under:-

“3. The applicability of above provisions in so far as it relates to cases where the Government Servant, who has retired by the time he is exonerated of all the charges has been considered in respect of the following cases:

- i. Where the promotion order pertaining to the relevant DPC has been issued and the officers empanelled have assumed charge prior to the date of superannuation of the retired Government Servant; and
- ii. The retired Government Servant would have been in service and assumed charge of the post had the disciplinary proceeding not been initiated against him/her.

4. It has been decided in consultation with the Department of Expenditure, Department of Pensions & Pensioners' Welfare and the Department of Legal Affairs that notional promotion and payment of arrears of pay, if any, for the period of notional promotion till the date of retirement, to such a retired Government servant if found fit on opening of the sealed cover is to be decided by the appointing authority in terms of Para 3 of OM No.22011/4/91-Estt.(A) dated 14/9/1992.

5. A retired Government employee who is considered for notional promotion from the date of promotion of his next junior after opening of the sealed cover would also be entitled to fixation of pension on the basis of such notional pay on his notional promotion.”

9. The principle enunciated therein squarely applies to the cases where the sealed cover procedure was adopted on the ground that a criminal case was pending against the employee, at the relevant point of time. What is exoneration for an employee facing disciplinary proceedings, is acquittal for the

one who faced criminal proceedings. The case of the applicant was considered by the DPC and was kept in a sealed cover. It is rather incidental that the applicant retired from service by the time he was acquitted in criminal case. However, his right remains intact, once an officer junior to him was promoted with effect from a date, anterior to his retirement.

10. A situation, in a way, similar to the one on hand, was dealt with by this Tribunal in O.A. No.830/2014, in the order dated 02.01.2019, and relief was granted.

11. We, therefore, allow the O.A. and direct the respondents to open the sealed cover adopted in case of the applicant, with reference to his inclusion in the select list for the year 2007. If the DPC found the applicant fit, he shall be extended the benefit of notional promotion with effect from the date, on which his immediate junior was promoted to IAS. The result of such notional promotion, if extended to the applicant, shall be reflected in his pensionary benefits also.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

July 10, 2019
/sunil/