

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00116 of 2018

Wednesday, this the 17th day of July, 2019

CORAM

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

Smt.Sumathi Ravichandran, aged 56 years
W/o.R.Ravichandran, Postmaster General
Central Region, Kochi, Residing at PMG's Quarters
Kadavanthra P.O, Kochi – 682 020

... Applicant

(By Advocate Mr.Shafik M.Abdulkadir)

Versus

1. Union of India, represented by the Secretary
Department of Posts/Director General, Posts
Ministry of Communications
New Delhi – 110 011
2. The Director (Staff)
Ministry of Communications & IT,
Department of Posts, Dak Bhawan
Sansad Marg, New Delhi -110 116 **..... Respondents**

(By Advocate Mr.N.Anilkumar,SCGSC)

The above application having been finally heard on 9.7.2019, the Tribunal on 17.07.2019 delivered the following:

ORDER

*Per: **Mr.E.K.Bharat Bhushan, Administrative Member***

The Original Application 180/00116/2018 is filed by Smt.Sumathi Ravichandran, at present working as Postmaster General, Central Region, Kochi, aggrieved by denial of her claim for promotion to Senior Administrative Grade of Indian Postal Service for the vacancy year 2008-2009.

2. The applicant is an officer of the IPoS 1987 batch and is a native of Chennai. She was eligible for promotion to Senior Administrative Grade for the vacancy year 2008-2009. She was one of the officers who were recommended for promotion by the Department Promotion Committee held on 16.01.2009. Her selection was duly approved by the competent authority and further by the Appointments Committee of the Cabinet (ACC for short). A copy of the Civil List brought out on 07.03.2008 is at Annexure A-3. Extract of the file of the UPSC that considered the assessment of the Officers for the vacancies of 2008-2009 is at Annexure A-4. In Annexure A-4(X), the applicant figures as serial no.6 above one Mr.L.Narayan Sharma in the select panel for the year 2008-2009. The approval of the ACC is indicated in the order of DoP&T dated 13.4.2009 at Annexure A-6. In the said list, the applicant is included in the same position as in the minutes of the DPC held on 16.1.2009. However, before the issue of formal order of

promotion to her, the applicant came to be placed under deemed suspension as per the order of the Ministry of External Affairs dated 5.5.2009 (Annexure A-7). At that time, she had been working on deputation as Regional Passport Officer, Chennai and consequent to a raid conducted at her residence on 24/25.4.2009, she was jailed. The deemed suspension order placing the applicant under suspension as per Annexure A-7 came into effect from 25.4.2009 and was in terms of sub rule (2) of Rule 10 of CCS (CCA) Rules, 1965.

3. This turn of events resulted in the applicant not being considered for promotion despite the approvals already obtained. As per Annexure A-8, the Ministry of External Affairs revoked her suspension by order dated 20.8.2009 and she was reverted back to her parent department, viz, the Department of Posts. Meanwhile, as per orders issued by the first respondent dated 10.6.2009, 25 officers excluding the applicant, were promoted (Annexure A-1). She represented to the first respondent against being passed over for SAG promotion in Annexure A-1 for filling up the vacancies of 2008-2009 and received a reply that the case of her promotion will be considered after finalisation of C.B.I cases registered against her (Annexure A-2).

4. It is the contention of the applicant that her selection process for

SAG promotion was complete with the ACC approval on 13.4.2009 and she was under no cloud whatsoever at that time and had been declared fit for promotion. However, it is so happened that Annexure A-1 came to be issued only on 10.6.2009 by which time some unfortunate incidents had occurred in the applicant's career. Three charge sheets were issued by the CBI, Chennai against her and three criminal cases were charged in three different CBI Courts against her. The promotion of a Government servant against whom disciplinary proceedings are pending are covered by the guidelines envisaged in O.M No.22011/4/01-Estt(A) dated 14.9.1992 of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, Public Grievances and Pensions marked as Annexure A-9. The said O.M issued in the wake of the judgment dated 27.8.1991 in ***Union of India etc. v. K.V.Janakiraman etc.*** (AIR 1991 SC 2010) specifies that employees who fit in any of the three categories below are liable to be excluded when DPC meetings are held. They are:

“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. Admittedly, when the DPC meeting for 2008-2009 vacancies met

on 16.1.2009 or at the time the ACC accorded approval to the proposals on 13.4.2009, the applicant did not fall in any of these categories. The officer's suspension had ended on 20.8.2009 and the applicant had no disability on account of other situations like a charge sheet having been issued and the disciplinary proceedings are pending or prosecution for criminal charge is pending against her. When the next DPC met on 27.10.2009, there was no occasion according to the applicant for a 'deemed sealed cover' procedure to have been adopted on and from 20.8.2009. The second respondent had addressed the UPSC on 26.10.2009 (Annexure A-10) pointing out that the applicant stood already declared fit for promotion to SAG as per the previous DPC and under the circumstances, her name may be deleted from the zone of consideration for promotion to SAG and also to reduce the number of vacancies available by one. Possibly due to this communication sent by the 2nd respondent, the DPC which met on 27.10.2009 did not consider the applicant's case. A copy of the DPC minutes dated 27.10.2009 is at Annexure A-12.

6. As time went by and not getting relief as anticipated by her, applicant approached the Principal Bench at New Delhi by filing O.A No.392/2010 and obtained an order dated 05.04.2010 (Annexure A-15). The following directions were contained in the said order:

“The applicant has been ignored for promotion to the Senior Administrative Grade twice when DPC met on 16.1.2009 and 20.7.2009.

2. In the present OA filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, her claim is to give effect to the promotion from the date the persons' junior to her were promoted on 11.2.2010 pursuant to the DPC that was held on 27.10.2009. **Applicant stakes no claim for promotion as per DPC which met on 16.1.2009.** (emphasis supplied)

3. We need not give facts in detail. Suffice it to mention that admittedly, when the DPC met on 27.10.2009, the applicant was neither under suspension nor a charge had been framed against her under Section 240 Cr.PC as regards case of corruption pending against her. None of the circumstances under which the case of the applicant could be put under sealed cover were in existence. There may have been some dispute with regard to applicability of OM dated 14.12.2007 or 7.7.2008 when the matter came up before us on the last date of hearing, but as on today, there is no dispute that the OM that should be applicable would be dated 14.9.1992. OM dated 25.10.2009 is only a reiteration of OM dated 14.9.1992. The OM referred to above of the year 1992 Page 1/2 CENTRAL ADMINISTRATIVE TRIBUNAL (OA) Original Appl./392/2010 JUDGEMENT came into being after decision of the Supreme Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors., AIR 1991 SC 2010. We are conscious of the fact that the applicant is involved in three corruption cases but concededly, in none of the cases aforesaid, the charge under Section 13(1) and 13(1) (d) of Prevention of Corruption Act, has been framed against the applicant. The applicant was not under suspension nor any departmental inquiry was pending against him at all. In OA No. 1919/2008, decided on 11.8.2009, we have observed as follows:-

6. Before we may part with this order, we may mention that in Om Prakash (supra), the applicant therein was facing criminal charge, which also included allegations constituting offences under Section 13(2) and 13(1)(d) of the Prevention of Corruption Act. We may also mention that the law makes no distinction between ordinary delinquency or misconduct like corruption. The Government may think to deal separately with the misconduct which may be serious enough like bribery and corruption, but as long as there is no distinction made on the gravity of the offence for an employee may be charge-sheeted, the courts shall have no choice but for to take the view as has been taken by us.

4. Once there is no distinction as regards seriousness of the criminal case against an employee, the case of the applicant for promotion could not be put under sealed cover. The applicant in the DPC held on 27.10.2009 was, in fact, not even considered, least putting her case under sealed cover. No criminal charge has been framed against the applicant till date. Surely, it was not framed on the date when persons junior to the applicant were promoted on 11.2.2010.

5. In the facts and circumstances as mentioned above, we direct the respondents to convene a review DPC to consider the case of the applicant for promotion to the SAG. If the applicant is found fit on the basis of her service record, she shall be promoted with effect from the date her juniors were promoted, with all consequential benefits. Let the exercise ordained above be completed within eight weeks from today. O.A is disposed of. No costs. (emphasis supplied)

7. After waiting for nearly two years and seeing no effort on the part of the respondents to comply with the directions of the Principal Bench, the applicant filed a Contempt Petition. Thereupon the respondents sent a proposal to UPSC for holding a Review DPC including a proposition that the applicant stakes no claim for promotion as per DPC which met on 16.1.2009 and recommending promotion to the applicant only for the vacancy year 2009-2010 on the ground that at present she was not clear from the vigilance angle as two criminal cases registered by the CBI were pending against her. Accordingly, a Review DPC was held on 4.1.2012 and the date of entry of the applicant into the cadre of SAG was given effect from 11.2.2010 which is the date of promotion of Mr.K.Balasubramanian who is just below the applicant.

8. The grievance of the applicant is that she has been repeatedly seeking to get herself assigned to SAG vacancy of 2008-2009 instead of 2009-2010, that she was ultimately allotted to. She submits that she had suffered a lot by this one year lag by being overtaken by five juniors to the next higher grade of HAG which they got from 30.01.2017.

9. The respondents filed detailed reply statement disputing the contentions raised in the OA. A preliminary objection is raised stating that the applicant is attempting to unsettle a seniority position, settled more than seven years ago and the OA is liable to be dismissed on the ground of delay alone. Referring to the OM issued by the Department of Personnel and Training dated 14.09.1992 (Annexure A9), the respondents maintain that under Para-7, it is laid down that if any of the three circumstances, mentioned as disqualifying the candidate occurs, even after the recommendation of DPC, but before the date he/she is actually promoted, his/her case is liable to be placed in a sealed cover and the person will not be promoted until he/she is completely exonerated of the charges. In this case, while admitting that the DPC had been held on 16.01.2009, the applicant came to be suspended from service before the issue of the consequent promotion order relating to the selected candidates on 10.06.2009. The applicant's suspension was revoked vide MEA Order dated 20.08.2009. Thus her exclusion from the list originally approved by

the DPC that met on 16.01.2009 was fully justified.

10. The respondents again placed reliance on Annexure A9 OM which states that the sealed cover relating to a candidate is liable to be opened only on the conclusion of disciplinary case/criminal prosecution which has resulted in dropping of charges against the Government servant. Even after the revocation of suspension order, the RCs registered by the CBI against her and subsequent departmental proceedings stood in the way of her promotion.

11. The applicant had approached the Principal Bench of this Tribunal by filing OA No.392/2010 and vide order dated 05.04.2010 the Principal Bench directed the respondents to convene a Review DPC to consider the case of the applicant for promotion to SAG. Accordingly, a Review DPC was held on 04.01.2012 and the applicant was assigned to one of the vacancies of the year 2009-2010 and promoted with effect from 11.02.2010. Further looking at the order of the Principal Bench in OA No.392/2010, the following statement is clearly seen that "*applicant stakes no claim for promotion as per DPC which met on 16.1.2009*". This is an indication of eligibility that the applicant herself recognizes as being considered for 2008-2009 vacancy, and the attempt to raise the claim now is apparently to disturb a settled issue.

12. Heard Shri Shafik M.A., for the applicant and Shri N.Anilkumar, learned SCGSC on behalf of the respondents. Shri Shafik dwelt at length on the adverse consequences that the applicant had suffered from, on account of the train of events narrated. He submits that out of three criminal cases charged by the CBI , one came to be closed by the CBI Court on the recommendation of the CBI itself, whereas other two have concluded entirely acquitting the applicant. Now the respondents are pursuing the applicant with two departmental charge sheets relating to the same issues that have been decided in the three criminal cases before the CBI Court. On the question of delay, Shri Shafik pointed out that the applicant had been repeatedly representing to the authorities in the respondent department and by attributing delay to her, respondents cannot be allowed to take advantage of their own failure to act in time. While admitting that she had been placed under suspension on 25.04.2009, he submitted that the said suspension was revoked with effect from 20.08.2009 and orders ought to have been issued promoting her to SAG grade against the 2008-2009 vacancy for which she had been found eligible as per DPC which met on 16.01.2009, when there was absolutely no cloud over her. Again the fact that she was not considered for second DPC of the year held on 27.09.2009 shows that even the department was of the view that she stood already cleared. Hence at that point there was absolutely no reason to resort to “deemed sealed cover

procedure". The failure of the respondents to act led to the applicant approaching the Principal Bench of this Tribunal which has issued the following direction:

"5. If the applicant is found fit on the basis of her service record, she shall be promoted with effect from the date her juniors were promoted, with all consequential benefits. Let the exercise ordained above be completed within eight weeks from today".

Finally the applicant had to resort to Contempt of Court proceedings to get promoted to SAG grade, *albeit* for 2009-2010 vacancy.

13. The administrative action taken by the respondents in this case grossly fails when considered against the touchstone of the 2009 OM, as the Department had failed to review the sealed cover case as per stipulated time frame. A still more important point to be considered according to Mr.Shafik is that the selection process with regard to her promotion to SAG grade as per 16.01.2009 DPC was already completed when her suspension intervened. All that respondents were required to do was to consider her promotion as soon as the suspension was revoked, which they failed to do. She was entitled for a position above Shri L.Narayan Sharama, as per the original minutes of the DPC/ACC approval. The injustice done to her has continued to the stage of promotion to HAG also with five of her juniors overtaking her. Shri Shafik maintains that the administrative action in Annexure A32 minutes dated 19.05.2016 in passing over the applicant for

HAG selection calls for judicial review.

14. Shri Anilkumar sought to rebut the contentions raised by Shri Shafik, learned Counsel for the applicant. He drew our attention to the sequence of events in the case which are paraphrased below:

. 1st DPC held on - 16.01.2009 (for the year 2008-09)

. Applicant was arrested on - 25.04.2009

. Applicant was under deemed suspension - 25.04.2009 to 20.08.2009

. Promotion order was issued on - 16.06.2009 (at this time applicant was under suspension.

. Next DPC was held on - 27.10.2009 (For the year 2009-10). In this DPC also she was not considered.

Against this the applicant approached the Hon'ble Principal Bench.

. Principal Bench gave Order - 05.04.2010 (Annexure A15)

. Based on PB order, Promotion was given from - 11.02.2010.

He reiterates that Para-7 of the OM of DOP&T at Annexure A9 clearly

ordained that a person who is recommended for promotion by DPC and in whose case any or all the three circumstances mentioned in para-2 of the OM arises after the recommendation but before actual promotion, his case is to be placed in a sealed cover. Moreover in the order of the Principal Bench it is clearly stated that “the applicant stakes no claim for promotion as per DPC which met on 16.1.2009”. The applicant seeks to portray this as an inconsequential error, she having made no such concession. If this was the case no attempt was made by the applicant to get the order corrected.

15. Further he submitted that the Principal Bench of this Tribunal have come to a conclusion that she is to be considered for promotion along with her juniors and there was no claim with respect to DPC of 16.01.2009 to revive a settled claim as the applicant is trying to do through this OA. It violates the principles of *res judicata*. Further Shri Anilkumar maintains that the applicant is at present facing departmental proceedings and had been granted promotion to SAG with effect from 11.02.2010, only in compliance with the Principal Bench order. Even if she is acquitted from the criminal trial, the departmental proceedings would continue to attract the sealed cover procedure.

16. We have considered the contentions made in the OA in detail as also the arguments made in the reply statement by the respondents. We

have also attentively perused the arguments of the contending Counsel. Based on the facts before us no error or procedural impropriety can be attributed to the respondent department in having excluded the applicant from selection list approved by the DPC which met on 16.01.2009. This is in view of following the principle contained in OM dated 14.09.1992 (Annexure A9):

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M will be applicable in his case also.

17. The applicant challenged her exclusion from the second DPC which met in October, 2009 and was successful in obtaining an order in OA NO.392/2010 from the Principal bench, directing the respondents to promote her from the date her juniors were promoted. The second paragraph of the order reads as follows:

“2. In the present OA filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, her claim is to give effect to the promotion from the date persons junior to her were promoted on 11.2.2010 pursuant to the DPC that was held on 27.10.2009. Applicant stakes no claim for promotion as per DPC which met on 16.1.2009.”

18. The respondents did promote her with effect from 11.02.2010 including her among the candidates who were selected at the DPC dated

27.10.2009, but the direction excluded her from being considered for the first DPC met on 16.01.2009, as she staked no claim. The applicant, if she believed that an error had crept in the order of the Principal Bench, ought to have got the same corrected which she did not do. From this perspective, by trying to get her promotion antedated to the date of promotion of those candidates who had cleared at DPC which held on 16.01.2009, she would be raising an issue barred by *res judicata*.

19. At present all the three cases pending in the CBI Court have been settled without any detriment to the applicant. However, we were informed that two departmental charge sheets are pending against the applicant, both of which have been challenged before this Tribunal through separate proceedings. From this perspective, at present also, she is not clear from the purview of the disqualifying clause in Annexure A9 OM and the dictum laid down in **K.V.Janakiraman**. Interestingly, in the statement of the reply of respondents in Para-13, the following admission is made:

“Once the CBI cases are finalized, the officer's case for promotion as per the DPC recommendations dated 16.01.2009 and ACC's approval dated 13.04.2009 will be considered as per rules and instructions on the subject especially in terms of Paragraph 3 of DOP&T OM dated 14.09.1992.”

20. Elsewhere in Para-23 also, it is reiterated that:

“.... once the applicant is fully exonerated of all the charges framed against her, then her promotion case for the year 2008-09 will be considered”.

21. We take this to mean that once she comes out of the disqualifying conditions mentioned in DOP&T OM at Annexure A9, the respondent department will consider her case for 2008-2009 vacancy as per the DPC selection dated 16.01.2009. We dispose of the OA with the observation that the respondents will duly act as per their admission above once the department proceedings also are concluded. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

- Annexure A1 - True copy of the order No.1-2/2009-SPG dated 10.6.2009 issued by the 2nd respondent
- Annexure A2 - True copy of the letter No.1-49/2009-SPG dated 12.1.2010 from the 2nd respondent
- Annexure A3 - True extract copy of the Civil List of Officers of the Indian Postal Service
- Annexure A4 - True copy of DPC held on 16.1.2009 and select panel list for the vacancy year 2008-09
- Annexure A-5 - True copy of the Indian Postal Service (Group A) Amendment Rules, 1994
- Annexure A-6 - True copy of ACC approval No.24/3/2009-EO(SM.II) dated 13.4.2009 of Ministry of PPG & Pension, New Delhi
- Annexure A7 - True copy of the suspension order dated 5.5.2009
- Annexure A8 - True copy of the order of revocation of suspension passed by MEA
- Annexure A9 - True copy of the OM No.22011/4/01—Estt(A) dated 14.9.1992 of DOP&T, New Delhi
- Annexure A10 - True copy of the letter dated 23/26.10.2009 from Director (Staff) to the Secretary, UPSC
- Annexure A-11 - True copy of the vigilance clearance given by Department of Post as per Memo No.33-1/2009-Vig dated 22.10.2009 for the DPC
- Annexure A-12 - True copy of the Minutes of the DPC held on 27.10.2009
- Annexure A-13 - True copy of the order dated 11.2.2010 issued by 1st respondent ordering promotion to SAG
- Annexure A-14 - True copy of representation dated 14.10.2009 submitted to 1st respondent

Annexure A-15 - True copy of the order dated 5.4.2010 of Hon'ble Principal Bench New Delhi in O.A 392/2010

Annexure A-16 - True copy of the letter sent to UPSC to the 1st respondent to promote the applicant against vacancy year 2008-09

Annexure A-17 - True copy of the letter sent by 2nd respondent on 24.10.2011 to the UPSC to consider for vacancy year 2009-2010

Annexure A-18 - True copy of the letter dated 2.11.2011 sent by 2nd respondent o UPSC

Annexure A-19 - True copy of the Minutes of the Review DPC held on 4.1.2012

Annexure A-20 - True copy of the order dated 13.11.2013 giving promotion tot he applicant to SAG

Annexure A-21 - True copy of the judgment of the Supreme Court in Special Leave to Appeal No.CRL MP No.1274-1275/2016 passed on 1.2.2016

Annexure A-22 - True copy of the order dated 30.1.2017 promoting 5 junior SG officers HAG

Annexure A-23 - True copy of the representation submitted on 16.10.2017

Annexure A-24 - True copy of the judgment dated 3.3.2017 in CC No.37/2011 in RC/20/A/2009 of the Principal Special Judge for CBI cases,IX Additional Special Court for CBI cases, Chennai

Annexure A-25 - True copy of the order dated 7.10.2010 in Crl MP No.6196/2011 in RC No.67/A/2009 of the Principal Special Judge for CBI cases Chennai

Annexure A-26 - True copy of the letter sent by the CBI on 13.4.2017 to the Department of Posts

Annexure A-27 - True copy of the clarificatory OM No.22034/4/2012-Ett(D) dated 2.11.2012 of DoPT

Annexure A-28 - True copy of the DoPT OM

No.22034/4/2012-Estt(D-II) dated 23.1.2014 pertaining to vigilance clearance

Annexure A-29 - True copy of the DoPT OM No.22011/2/99-Estt(A) dated 21.11.2002

Annexure A-30 - True copy of the extract of the Civil List of Officers of Indian Postal Service Group A as on 1.10.2012

Annexure A-31 - True copy of the minutes of the DPC held on 20.9.2016 for promotion to HAG

Annexure A-32 - True copy of the DPC minutes dated 19.5.2016 along with the RTI reply dated 23.4.2018

Annexure A-33 - True copy of the Empanelment List issued as per Letter No.24/10/2016-EO(SM-II) dated 31.7.2016 by the Under Secretary

Annexure A-34 - True copy of the order No.1-3/2016-SPG dated 26.8.2016 issued by the DDG (Personnel)

Annexure A-35 - True copy of the extract of the Civil List of Officers of Indian Postal Service Group A as on 1.10.2016

Annexure A-36 - True copy of the Indian Postal Service Group A (Amendment) Rules, 1997

Annexure A-37 - True copy of the letter No.24-11/2018-SPG dated 15.2.2018 issued by the ADG (SGP)

Annexure A-38 - True copy of the Notes Sheet File No.1-2/2009-SPG of the office of the 1st respondent obtained under RTI

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