

(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1061 of 2003

New Delhi, this the 1st day of May, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Dr. P. Ravindra Babu,
Deputy Commissioner of Customs and Central Excise,
(M.O.D.), 7, 2nd Floor,
Gagandeep Building, Rajindra Place,
New Delhi.

....Applicant
(By Advocate : Shri A.D.N. Rao)

Versus

1. Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
2. Central Board of Excise & Customs
Through the Chairman,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.

....Respondents

ORDER (ORAL)

SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN :

The applicant - Dr. P. Ravindra Babu seeks a direction to open the sealed cover to which the applicant's case for promotion as Joint Commissioner has been relegated.

2. Some of the facts are pointed can be delineated. The applicant had joined Indian Customs and Central Excise Service Group 'A' as Assistant Commissioner. The name of the applicant did not figure in the list of the promotee officers on 24.9.2002 and the grievance of the applicant in this regard is that his matter has been kept under deemed sealed cover. According to the learned counsel, the

Ms Ag

(2)

(2)

case of the applicant had been considered on 20.5.2002 when the Departmental Promotion Committee met. The name of the applicant was not kept in the sealed cover. When the charge-sheet was served on 7.8.2002 by that date the applicant had not been promoted and his name has been kept in the sealed cover.

3. These facts are also borne from the impugned order of 5.2.2003.

4. According to the learned counsel, once the name of the applicant had been cleared subsequent service of the charge-sheet should not jeopardise his promotion.

5. The DOP&T's guidelines of 14.9.1992 reads :-

"At the time of consideration of the 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.

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

MS Ag

(3) *J*

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."

Perusal of the same clearly shows that in case those officers whose names have been recommended for promotion by the Departmental Promotion Committee but before they are actually promoted, the charge-sheet is served, in that event, the case can be kept in a sealed cover by the department. Identical is the position herein, because before the applicant could be actually promoted, a charge-sheet had been served and, therefore, the rigours of the said instructions will not help him. In that event, learned counsel had relied upon the celebrated decision in the case of Union of India and others Vs. K.V. Jankiraman and others reported as (1991) 4 Supreme Court Cases 109. The learned counsel specifically relied upon paragraph 32 of the judgement of the Apex Court. For sake of convenience, we reproduced the same :-

"32. In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri 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. The Tribunal has further stated in the impugned order that its order would

MS Ag

not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs."

6. Perusal of the same clearly shows that in the case which is being relied upon, no charge-sheet was served on the alleged delinquent/employee when the Departmental Promotion Committee meeting took place. Yet, sealed cover procedure was adopted. This prompted this Tribunal to declare that the sealed cover could not have been adopted and that finding had been upheld by the Supreme Court.

7. What is the position herein? Herein it is not that the deemed sealed cover procedure was adopted when Departmental Promotion Committee met but seemingly the problem arose after the meeting of the Departmental Promotion Committee when a charge-sheet was served on the applicant. Therefore, the decision so much thought of by the learned counsel does not come to his rescue.

8. Resultantly, OA being without merit, must fail and is dismissed in limine.

9. It is made clear that nothing said herein should be taken as an expression of opinion on the merits of the matter.

(GOVINDAN S. TAMPI)
MEMBER (A)

/ravi/

(V.S. AGGARWAL)

CHAIRMAN