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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1808/2003
MA-350/2004

New Delhi this the 8th day of March, 2004.

Hon'ble Shri Shanker Raju, Member(J)-
Hon'ble Shri S.K. Naik, Member(A)

Sh. S.P. Banwait,
Flat No.48-B,
Pocket-B, Gangotri Enclave,
Alaknanda,
New Delhi-19. Applicant

(through Sh. G.D. Gupta, Sr. Counsel with
Sh. S.K.Sinha, Advocate)

versus

1. Union of India through
Secretary,
Ministry of Urban Development &
Poverty Alleviation,
Nirman Bhawan,
New Delhi-1.
2. Central Vigilance Commission,
Satarkata Sadan, INA,
New Delhi-3.
3. Secretary,
Dept. of Personnel & Training,
Ministry of Personnel & Public
Grievances and Pensions,
Govt. of India,
North Block,
New Delhi. Respondents

(through Sh. D.S. Mahendru, Advocate)

ORDER (ORAL)
Shri Shanker Raju, Member (J)

By the amended OA applicant has sought for
the following reliefs:

- (i) Call for relevant record.
- (ii) Quash the impugned Memo A1 dated 25.9.2002 and all after-effects thereof/thereto to the prejudice of the applicant.
- (ii(a)) Declare that the applicant is entitled to be promoted to the post of Additional Director General (Works) in the CPWD with all consequential benefits including arrears of pay and allowances and seniority from the date, the

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substantive vacancies in the said post arose and the extended panel has been operated and the juniors to the applicant viz Mr. A. Chakraborty and Mr. R.A. Armugham, whose names figured below the applicant at Sl. No.2&3 respectively in the extended panel, have been promoted with effect from 3rd Feb. 2004 vide order dated 29.1.2004.

- (ii(b)) Further declare that since both on the date of DPC or on the date of DPC or on the date, the respondents operated the panel and the above-said juniors have been promoted with effect from 3.2.2004, there was no chargesheet pending against the applicant, para-7 of the Office Memorandum dated 14.9.1992 No.22011/4/91-ESTT(A) cannot be applied in the case of the applicant.
- (ii(c)) Declare and order at A1 dt. 25.09.2002 or any chargesheet pursuant thereto or otherwise issued after 20.03.2003 (date of DPC meeting that empanelled the applicant fr ADG(W) shall not come in the way of his regular promotion as ADG(W) pursuant to the said Panel dt. 20.03.2003 and that he shall be promoted as per that panel before any of his juniors in that Panel were promoted.
- (ii(d)) Quash and set aside para-7 of the Office memorandum dated 14.9.1992 No. 22011/4/91-ESTT(A).
- (ii(e)) Grant any other relief, with costs.

2. By an order dated 30.1.2004 as an interim measure it has been directed that out of two posts which had fallen vacant, one may be filled up by allowing seniormost person of the two selected persons to join and till further orders the second post may not be filled up.

3. The brief factual matrix which led to filing of this OA relevant for the purpose is enumerated. Applicant who belongs to Central Engineering (Civil) Group 'A' Service has been working

as Chief Engineer (Civil) since 10.5.97. Vide memorandum dated 25.9.2002, alleging violation of CCS (Conduct) Rules, 1964 in so far as approving supply for procurement of water based road marking paint to the company where the son of applicant was employed, an explanation has been sought for taking further action in the matter. Initially, the Ministry of Urban Development accepted the version of applicant and recommended closure of the matter, yet Central Vigilance Commission (CVC) advised conducting of proceeding under Rule 14 of the CCS (CCA) Rules, 1965 for a major penalty. A DPC was held on 20.3.2003 for regular promotion to the post of Additional Director General of Works (ADG (W), for short). The Ministry accepted the DPC panel but on some complaint made name of applicant has been withheld by the Cabinet Secretary on account of CVC's advice.

4. Applicant was recommended for promotion and his name figured at serial No.1 of the extended panel. Though junior of applicant Sh. A. Chakraborty and Mr. R.A. Armugham, figuring at serial Nos.2 and 3 of the extended panel were promoted w.e.f. 3.2.2004, despite no chargesheet was pending against applicant for major penalty under Rule 14 of the CCS (CCA) Rules, 1965, yet applicant has been denied promotion. Applicant is due to superannuate in August, 2004.

5. The post of ADG is a selection post to be filled up by promotion amongst the Chief Engineer (Civil) and (Electrical) in the combined eligibility list with three years regular service in the grade.

The approving authority for appointment to the grade of ADG (W) is the Appointments Committee of Cabinet (ACC). Recommendation of DPC after approval by the Minister of Urban Development and Poverty Alleviation are to be submitted to the Department of Personnel and Training (DoPT) for obtaining approval of the ACC. DoPT vide letter dated 15.7.2003 conveyed the approval for promotion of five officers, three in the normal panel and two in the extended panel. DoPT vide DO letter dated 17.7.2003 informed that ACC has directed the case back to the DPC for re-consideration as CVC has recommended initiation of a major penalty vide its letter dated 24.6.2003. The Union Public Service Commission (USPC) in turn vide its letter dated 3.9.2003 informed that it is not necessary to re-consider the case of applicant by reviewing the recommendations of DPC met on 20.3.2003 for promotion to the grade of ADG (W). This advise was conveyed to the DoPT on 24.9.2003 for consideration of the ACC. The ACC is yet to take a final decision in the case of applicant for promotion, giving rise to the present OA.

6. The learned Senior Counsel Sh. G.D. Gupta, appearing alongwith Sh. S.K. Sinha, learned counsel, assails the action of the respondents by referring to the following cases to contend that sealed cover procedure cannot be resorted to unless a chargesheet is issued in a disciplinary proceeding. He further contends that even clause 7 of DoPT OM dated 14.9.1992 would not come in the way of promotion of applicant as none of the conditions figuring in clause 2 exists till date.

7. He further states that once the junior has been promoted from the extended panel the cause of action has arisen and on the date of DPC and even at the time of actual promotion which was due from the date the applicant's juniors were given, as no chargesheet has been issued promotion cannot be denied. Subsequent event of issuance of chargesheet would in no manner affect the promotion and in that event law shall take its own course:

- i) Union of India v. K.V. Jankiraman, JT 1991 (3) SC 526.
- ii) Union of India v. Sudha Salan, JT 1998 (1) SC 622.
- iii) Delhi Jal Board v. Mahinder Singh, 2000 (7) SCC 210.

8. The learned senior counsel relies upon the decision of High Court of Delhi in **K.L. Goswami v. M.C.D.**, 72 (1998) DLT 642 to contend that on empanelment when no proceedings are instituted one has a right to be promoted.

9. Learned counsel further draws our attention to the decision of Delhi High Court in **M.C. Chadha v. M.C.D.**, 74 (1998) DLT 600 to contend that when the DPC is held no chargesheet was pending, would not debar applicant from being considered and promoted.

10. In the aforesaid backdrop it is stated that the CVC's advice, which has not culminated into a chargesheet under Rule 14 of the Rules was dated 24.6.2003, which is much beyond the date when the DPC was held in March, 2003.

11. Shri Gupta further relies upon the decision of the Division Bench of the Principal Bench of this Tribunal in OA-796/2003 decided on 9.2.2004 in **Ashok Kumar v. Chief Secretary, Govt. of NCT of Delhi**, a case pertaining to promotion of DASS Grade II wherein relying upon the decision of the Apex Court in **Bank of India v. Degla Suryanarayan**, JT 1999 (4) SC 489 and in the light of DoPT OM dated 14.9.92 the date of the DPC was found to be relevant for the purpose of a chargesheet and as no chargesheet was in existence in 2000 when the DPC had met, sealed cover was ordered to be opened and was given effect to regarding promotion of applicant. Referring to the above, it is stated that on all fours case of applicant is covered by the ratio.

12. On the other hand, respondents have vehemently opposed the contentions in their reply filed on 6.2.2004 it is stated that an explanation has been sought from applicant for his alleged lapses. As per para 7 of the OM dated 14.9.92 though applicant was recommended for promotion keeping in view the decision of Apex Court in **Union of India v. R.S. Sharma**, 2000 SCC (L&S) 653, paragraph 7 of the sealed cover procedure in OM dated 14.9.1992, appointing authority is not bound to approve the government servant for promotion till he is fully exonerated of the charges.

13. In the additional-affidavit what has been contended is that respondents have issued orders of promotion of all officers juniors to applicant on 29.1.2004 but has been made subject to the final outcome of the present OA.

14. In the reply filed to the amended OA on 24.2.2004, which is almost re-iteration of the earlier reply it is contended that the explanation given by applicant to the memo dated 25.9.2002 is still under consideration and paragraph 7 of the OM dated 14.9.1992 ensures that the government servant against whom none of the circumstances mentioned in para 2 of the OM exists are actual promotion to the next higher grade. As the recommendation regarding initiation of major penalty proceedings against applicant is under consideration he cannot be promoted. However, it is stated that applicant has come pre-maturely before this Tribunal, as a final decision by the ACC is yet to be taken.

15. Rejoinder re-iterates the pleas taken by applicant in the OA.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. The undisputed facts of the present case are that the DPC for the post of ADG (W) was held in March, 2003. A panel was prepared for the vacancies of 2003-2004. Applicant was placed at serial No.1 of the

h extended panel of three officers out of which two officers admittedly junior to him had already been promoted though subject to the final outcome of the present OA. It is not in dispute that on receipt of the CVC's recommendation for a major penalty the ACC has sought clarification, which was routed through UPSC and vide letter dated 24.9.2003 by the Ministry agreeing with the advice of the UPSC recommendations of DPC in case of applicant have been asked to be placed before the ACC for kind consideration.

18. DoPT vide memorandum dated 14.9.1992, in so far as, procedure and guidelines to be followed in case of government servants who are facing disciplinary proceedings regarding promotion in clause 2 provides as under:

"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 chargesheet has been issued and the disciplinary proceedings are pending; and
- iii) Government servants in respect of whom prosecution for a criminal charge is pending.

19. Clause 7 of the OA is reproduced as under:

"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 the 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 OM will be applicable in his case also."

20. If one has regard to the above, at the time of consideration of cases of government servant for promotion, i.e., when the DPC is convened a government servant to whom a chargesheet has been issued and the disciplinary proceedings are pending the promotion is to be placed under sealed cover. This is in consonance with the decision of the Apex Court in **K.V. Jankirman's case (supra)**.

21. However, clause 7 provides that even after recommendation for promotion by the DPC a government servant in whose case disciplinary proceeding is pending and a chargesheet is issued before he is actually promoted is deemed to be placed in the sealed cover and would be promoted only after he is completely exonerated of the charge.

22. *Sine qua non* for applicability of clause 7 is condition precedent in clause 2. A government servant who has been recommended for promotion and against whom no chargesheet was pending at the time when DPC was convened, sealed cover procedure cannot be resorted to. The same corollary holds good when his turn for actual promotion comes, i.e., if none of the conditions in clause 2, i.e., a chargesheet in disciplinary proceeding then his promotion cannot be

withheld. His complete exoneration and deemed sealed cover would be applicable only when a chargesheet is issued to him in the disciplinary proceedings.

23. In our considered view the explanation sought for on 25.9.2002 is still to be culminated into a formal chargesheet under Rule 14 of the CCS (CCA) Rules, 1965, as such we hold that at the time when DPC was convened no adverse material was existing against applicant and no chargesheet was issued in the disciplinary proceedings. As such the sealed cover was out question. However, the same has not been adopted.

24. Respondents' action by not promoting applicant and operating the extended panel despite his juniors have been promoted from the extended panel gives a cause of action to applicant and would be the relevant date for operating the panel in favour of applicant by promoting him to the post of ADG (W). Once a junior has been promoted the actual promotion cannot be denied to him and would relate back to the date when others have been given the benefits on promotion. As there was no chargesheet issued, served or said to be pending against applicant in the disciplinary proceedings, clause 7 would have no application in the instant case.

25. In so far as the decision in R.S. Sharma's case (supra) is concerned, the same dealt with para 2.4 of OM dated 12.1.88 and the fact that the formal sanction for prosecution in a criminal case was accorded the same has been observed to be under deemed

sealed cover. However, we are dealing with an OM issued on 14.9.92, whose validity has not been tested by the Apex Court. Moreover, case dealt with a situation where prosecution sanction was accorded and cannot be applied mutatis mutandis to a disciplinary proceeding where the penalty would be effective only from the date of issue of chargesheet in the disciplinary proceedings. The case is distinguishable and would not apply to the facts and circumstances of the present case.

26. Moreover, in **Mahinder Singh's** case (supra) the effect of promotion which has been placed in sealed cover on exoneration would relate back to the date of the original DPC and a subsequent proceeding would have no effect over the initial promotion due to the government servant. On the same analogy as it is not the case of respondents that a chargesheet had been served upon applicant or issued when the DPC had met or till date the sealed cover procedure or clause 7 cannot be brought into operation.

27. High Court of Delhi both in the case of **M.L. Chadha** and **K.L. Gowami** (supra) clearly held that promotion when pendency of disciplinry proceedings - instituted or pending against petitioner promotion cannot be denied, more particularly when junior in the panel was promoted and his promotion has given effect to in retrospect. The ratio fully covers the present case.

28. The Principal Bench in **Ashok Kumar's** case (supra) when pitted with the same consideration where provisions of clause 7 of DoPT OM dated 14.9.92 was in question held that when the DPC met as there was no case against applicant therein it took considerable time for the DPC to take place, by the time the major penalty proceeding has been initiated. If applicant had been considered along with juniors in the earlier DPC there would not have any occasion to adopt the sealed cover.

29. In nut shell what has been held on the basis of the decision of **Degla Suryanarayan** (supra) that if on a particular date when the panel has been given effect to and the juniors were promoted no chargesheet was pending against a government servant the promotion has to be given effect to and the panel is to be operated.

30. In so far as subsequent holding of disciplinary proceedings is concerned, these events would not in any manner prejudice the right of applicant for consideration for promotion and on completion of the proceedings the law shall take its own course.

31. In the result, for the foregoing reasons, though we, at this inter-locutory stage, do not wish to adjudicate as to the explanatory memorandum issued to applicant on 29.5.2002 or to set aside para 7 of the OM dated 14.9.92, hold that applicant was entitled to be promoted as ADG (W) in CPWD from the due

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date and for this respondents are directed to give effect to the extended panel and consider promoting applicant w.e.f. 3.2.2004 with grant of consequential benefits. The explanatory memo pending against applicant or recommendations of CVC would, in no manner, be an impediment for his consideration for promotion.

32. With these observations OA is partly allowed. No costs.

Naik

(S.K. Naik)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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