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Central Administrative Tribunal, Principal Bench

O.A.No.167 of 2003

New Delhi, this the 11th day of March, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)

Shri S.K. Handa  
S/o late B.R. Handa  
R/o F-535, Sector-9  
Vijay Nagar Colony, Ghaziabad  
Uttar Pradesh

....Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Union of India,  
Through its Secretary,  
Ministry of Finance,  
North Block, New Delhi
2. The Commissioner  
Central Excise Commissionerate  
Delhi-I, C.R. Building, I.P.Estate,  
New Delhi
3. The Addl. Commissioner (P&V)  
Central Excise Commissionerate  
Delhi-I, C.R. Building, I.P.Estate,  
New Delhi

....Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant Shri S.K. Handa is an Inspector in the office of the Central Excise Commissioner. By virtue of the present application, he seeks quashing of the order of 27.3.2003 and directing the respondents to conduct a review Departmental Promotion Committee meeting and consider his claim for promotion from the date his juniors were so considered.

2. The sole controversy agitated was that when the departmental promotion committee meeting took place, there was no chargesheet served on the applicant and, therefore,

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his claim could not have been ignored nor the sealed cover procedure should have been adhered to.

3. The reply has been filed. The respondents contend that a vigilance case was pending against the applicant on the date the departmental promotion committee meeting took place for considering eligible Inspectors including the applicant for promotion to the grade of Superintendent. It is not disputed that the departmental promotion committee meeting was convened in July, 2002. According to the respondents, the Central Vigilance Commission's 1st stage advice had been received on 17.4.2002 in which it was mentioned that minor penalty proceedings should be taken. The draft charge-sheet was received from the Director General of Vigilance on 24.7.2002. However, on 11.2.2003 the advice was received from the Director General of Vigilance for initiating major penalty proceedings against the applicant and charge-sheet was finally served on 21.2.2003.

4. The resume of the facts given above, clearly indicates that on the date the departmental promotion committee meeting took place, there was no charge-sheet served to the applicant. The matter was only under consideration. We are informed that the departmental promotion committee adopted the sealed cover procedure in case of the applicant.

5. Once these facts are admitted, the consequences are obvious and do not deter us. We refer with advantage

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to the decision of the Supreme Court in the case of Union of India vs. K.V. Jankiraman, AIR 1991 S.C. 2010. The said question of adopting the sealed cover procedure came up for consideration before the Supreme Court. The Supreme Court held:

"On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc., does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings

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against an official:

(2).....

(3).....

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

6. When the facts are examined on the touch stone of the conclusions arrived at by the Apex Court, it is obvious that the departmental promotion committee meeting took place in July, 2002 and the charge-sheet was served in February, 2003. In such an event the departmental promotion committee meeting or the respondents were not justified, therefore, in adopting the sealed cover procedure and in this process, the impugned order cannot be sustained.

7. Resultantly, we hold that the sealed cover procedure could not have been adopted in the present case. We dispose of the present petition directing the respondents to open the sealed cover and thereafter, take necessary steps in accordance with law. Necessary exercise in this regard should preferably be taken within four

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months of the receipt of the certified copy of the present order. O.A. is disposed of.

*S.K. Naik*  
( S.K. Naik )  
Member(A)

*V.S. Aggarwal*  
( V.S. Aggarwal )  
Chairman

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