
(2021) 03 CAT CK 0175

In the Central Administrative Tribunal

Case No : Original Application No. 142, 257 Of 2019, Miscellaneous Application No. 166 Of 2019

K. Timothy Zimik

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Citation : (2021) 03 CAT CK 0175

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Arvind Kumar, Aditya Hooda

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. Since common question of law and facts are involved and common arguments are advanced, these two O.A.s are being disposed of through a common order.

2. The applicant in OA.142/2019 is an Indian Revenue Service (IRS) Officer of 1985 batch and the applicant in OA. 257/2019 is an officer of IRS of 1986 batch. For the convenience they are referred to as applicants 1 and 2 respectively. At present they are holding the post of Chief Commissioner of Income Tax. The next promotion is to the post of Principal Chief Commissioner of Income Tax, Level-16 of the pay matrix. The DPC met on 06.12.2018 for recommending one officer for supplementary panel of the year 2017-2018 and 29 officers for the panel year 2018. The cases of the applicants were also considered and the DPC recommended their names, on finding them to be fit for promotion. After necessary processing, the panel was forwarded to the Appointments Committee of Cabinet (ACC) for taking a decision regarding the empanelment. The ACC did not approve the names of the applicants and another officer, on the ground that their vigilance is not clear and there are certain factors against them. It cleared the names of other officers and the resultant order of appointment was issued on

31.12.2018. It contained the names of several officers who are juniors to the applicants.

3. The applicants contend that they did not face any criminal or departmental proceedings much less they were under suspension, by the time the DPC met and obviously for that reason, no sealed cover procedure was followed in their cases. They contend that once the DPC found them fit and recommended their names, there was absolutely no basis for not including their names for empanelment for the post of CCIT.

4. The respondents filed counter affidavits as well as the additional affidavits. It is stated that though the DPC found the applicants fit for promotion, and no sealed cover procedure was followed, the ACC has its discretion and power to verify the vigilance and other aspects of the officers, before clearing their names for promotion. It is stated that the applicants were facing serious allegations and that disciplinary proceedings were in the process.

5. Sh. Arvind Kumar, learned counsel for the applicants submits that the law laid down for the selection through process of selection is fairly well settled, in view of the judgement of the Hon'ble Supreme Court in Union of India & Ors vs. K.V.Janaki Raman (1991) 4 SCC 109 and even where an officer is facing disciplinary or criminal proceedings or is under suspension, the sealed cover procedure is required to be followed. He contends that once an officer is not subjected to that procedure, the consequential and resultant appointment on selection cannot be denied. He has placed reliance upon the judgement of the Hon'ble Supreme Court in Union of India & Ors vs. Anil Kumar 2013 (4) SCC 161 and certain other judgements.

6. Shri Aditya Hooda, learned counsel appearing for respondents in OA No. 142/2019 and Shri Subhash Gosain and Shri Rajeev Kumar, learned counsels appearing for respondents in OA No. 257/2019, on the other hand, submit that the DPC no doubt cleared the cases of the applicants on account of there not being any disciplinary or criminal proceedings and were not under suspension at the relevant point of time, but the ACC has its own discretion to verify the relevant circumstances and to decide whether or not to clear the promotion or empanelment. It is stated that the applicants were facing serious charges and the departmental proceedings were also in progress, so much so, a charge memo was issued to the applicant no.1 within a short time. He placed reliance upon the judgement of the Hon'ble Supreme Court in Union of India Vs. R.S.Sharma, AIR 2000 SC 2337.

7. The applicants are holding the position of the Chief Commissioner of Income Tax. The next promotion is to the post of Principal Chief Commissioner. On account of their seniority and gradings in their ACRs, they became entitled to be considered by the DPC, which met on 29.12.2018. Their cases were in fact considered and the DPC found them fit and accordingly recommended the cases. The DOP&T forwarded the names of the officers recommended by the DPC, to the

ACC for its consideration and clearance. It is at this stage, that the names of the applicants and another officer were withheld and the rest were cleared.

8. The applicants have naturally, a grievance about it. This is not a case in which any sealed cover procedure was adopted. The applicants were treated on par with other eligible officers and their names were recommended. It is fairly well settled that the Appointing Authority has its own discretion to appoint or promote/empanel a candidate or officer recommended by the selecting agency. Though it is under a disability, not to appoint or promote any candidate, unless recommended by the selecting committee or agency, it can, for the reasons to be recorded, refuse to accept the recommendations. The factors like vigilance clearance and any other objectionable background of the selected candidate, becomes relevant.

9. Much of the law in the context of promotions was in relation to the stage of consideration by the DPC. The Hon'ble Supreme Court has settled law in this behalf in its judgement in K.V.Janaki Raman's case. It was held that it was only when an officer faces any of the three circumstances, namely, departmental proceedings, criminal case or suspension; that the sealed cover procedure can be resorted to. The situation of that nature did not exist in the instant case and the applicants have crossed that stage. The DOP&T issued OM dated 14.09.1992 incorporating the gist of the judgement of the Hon'ble Supreme Court in K.V.Janaki Raman's case. After incorporating various aspects, the OM proceeded to indicate the procedure to be adopted where the factors such as the initiation of disciplinary, criminal case or suspension came into existence after recommendation of the DPC, but before the actual order of appointment/promotion takes place. In such cases the procedure of deemed sealed cover is indicated. The result would be that the fruits of the recommendation of the DPC would be available to such officers only on conclusion of the proceedings that came into being, after the recommendation, but before the order of appointment to be issued. Para 7 thereof, reads 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 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."

10. In the case of the first applicant, there are serious allegations with reference to the period, when he was working at Nagpur. It is stated that without applying for any leave or seeking permission, he proceeded to the Baba Saheb Ambedkar International Airport, Nagpur for Mumbai through Jet Airways flight and in the check-in baggage of the applicant, huge amount of cash was detected by the scanning machine. The applicant is said to have avoided answering and after leaving the Airport, violating the procedure, he took another flight. The case was

taken up by the CBI and ultimately a charge memo was issued to the applicant on 08.05.2019. Therefore para-7 of the OM 14.09.1992 gets attracted. Almost on the similar lines is the case of the second applicant.

11. In Union of India Vs. R.S.Sharma, the Hon'ble Supreme Court observed in paras-11, 12 and 13 as under :

"11. Without conceding to the above position, Shri Mukul Rohtagi, Additional Solicitor General, adopted an alternative contention based on Paragraph 7 of the Sealed Cover Procedure which reads thus:

"Sealed cover applicable to officer coming under cloud before promotion:- 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".

12. The conditions necessary to invoke the said clause are:

(1) Recommendations of the DPC should have been made for promoting the Government servant.

(2) After such recommendations and before he is actually promoted any, one of the circumstances in clause (ii) of the second paragraph (supra) should have arisen.

13. Two factual aspects are admitted. One is that respondent was not actually promoted even now. The other is that formal sanction has been accorded to prosecute him in the meanwhile. If that be so, paragraph 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by the DPC in respect of the respondent have to remain in the sealed cover until he is completely exonerated of the charges against him.

12. The plea that delaying the promotion of an officer and then invoking para-7 would amount arbitrariness, was turned down by the Hon'ble Supreme Court with its observation in para-15. It reads as under :

15. We are not impressed by the said arguments for two reasons. One is that, what the Department did not do is not the yardstick indicated in paragraph 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the Government servant who is not actually promoted by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the second paragraph, the recommendations of the DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of paragraph 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the

Department for not opening the sealed cover immediately after 31.7.1991.

13. Though reliance is placed upon other judgements, we are of the view that any further discussion at this stage would have its own impact upon merits of the allegations, which, the applicants are facing. The applicants have to await the outcome of the proceedings that are initiated against them.

14. We do not find any merit in these OAs and the same are dismissed accordingly. There shall be no order as to costs.