

(2003) 02 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5771 of 2000

Prakash Chander Khurana

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-02-2003

Acts Referred:

Citation : (2003) 2 MPHT 245 : (2004) 1 MPLJ 201

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : R.K. Shrivastava, for the Appellant; B. D'Silva, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the pregnability of the order dated 11-7-2000 in O.A. No. 144/92, passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (hereinafter referred to as "the Tribunal"), dismissing his original application.

The petitioner by filing an original application before the Tribunal challenged his supersession on the post of Additional General Manager (Senior Administrative Grade) on the ground of pendency of enquiry. He further sought relief and prayed for a direction against the respondents to open the sealed cover and promote him on the basis of the recommendations of the DPC to the post of Additional General Manager (Senior Administrative Grade) retrospectively and for grant of seniority over his junior with all consequential benefits.

The Tribunal vide its order dated 5-1-95 (Annexure A-8), allowed the application. However, on an application for review filed by the Union of India, the said order was set aside on 9-2- 95 vide Annexure A-9. Finally the Tribunal dismissed the original application of the petitioner vide the impugned order (Annexure A-10)

dated 11-7-2000.

In brief the case of the petitioner before the Tribunal was that he joined Indian Ordnance Factory Service, Class-I on 20-11-1967 in the pay scale of Rs. 400-950. Thereafter, he was promoted to the posts of Deputy Manager, Deputy General Manager and finally to the post of Deputy General Manager (Selection Grade) carrying a pay scale of Rs. 4,500-5,700 w.e.f. 31-10-89. The meeting of Screening Committee was convened in February-March, 1991 for promotion to the post of Additional General Manager in the Senior Administrative Grade (SAG). On the basis of select list prepared by the Screening Committee, large number of officer were promoted to the SAG carrying pay scale of Rs. 5,900-6,700 ignoring the claim of the petitioner.

According to the petitioner, adverse remarks were not communicated to him though he rendered a very good service all through his service carrier. No enquiry was pending against him on the date of the meeting of the Screening Committee convened but a charge memo was issued to him subsequently on 16-4-1991. The petitioner protested against his case being placed in the sealed cover by the Screening Committee on the ground that no departmental enquiry was pending against him. According to him, merely because administrative decision was taken to charge-sheet him, that in itself did not amount to holding an enquiry against him. It could only be so when a charge-sheet was issued to him. Since the charge-sheet was issued to him on 16-4-1991, prior to the meeting of Screening Committee, i.e., in February-March, 1991, his case ought not to have been placed in the sealed cover. The petitioner filed several representations, but he did not receive any reply. Hence, he filed the original application before the Tribunal.

The respondents by filing a return stated that the petitioner was duly considered by the Departmental Promotion Committee for the post of Senior Administrative Grade, but his case was kept in a sealed cover in accordance with the Government of India Department of Personnel and Training OM No. 22011/2/86-Estt (A) dated 12-1-88 and subsequent amendment on 31-7-91, wherein it is clearly stated that the assessment of those officers against whom the decision has been taken to initiate disciplinary proceedings should be kept in a sealed cover. Since the decision to initiate the disciplinary action against the petitioner was taken before the date of the DPC, recommendations against the applicant were kept in a sealed cover.

Further the case of respondents is that the officers including some juniors to the petitioner were promoted to Senior Administrative Grade on 1-10-91. The charge-sheet was issued on 16-4-91 before the date of promotion of his juniors, therefore, the petitioner could not be promoted. It was putforth by the respondents before the Tribunal that because the petitioner was charge-sheeted on 16-4-91, he was not eligible for promotion on 1-10-91 when his juniors were promoted. The instructions do provide that in respect of those employees in whose cases the decision is taken to initiate disciplinary action after the

recommendations of the DPC, before he is actually promoted, it should be considered if his case has been placed in a sealed cover by the DPC. The case of the petitioner was considered and it was decided that no action is required to be taken on that particular stage regarding the recommendations of the DPC. It was brought to the notice to the Tribunal that the respondents have ultimately passed an order dated 28-10-94 by which a penalty of "Censure" has been imposed on the petitioner. The petitioner in another case M.A. No. 6/95 prayed for direction to grant him promotion to Senior Administrative Grade w.e.f. 1-10-91 as the penalty of Censure does not impose any bar in considering an employee from the date his promotion is due. The Tribunal passed final order on 5-1-95 in the Original Application which was later on reviewed and the order dated 5-1-95 was recalled.

It is found from the order of the Tribunal that vide M.A. No. 727/96, the petitioner, further prayed for grant of ad hoc promotion to the Senior Administrative Grade from 16-4-93 with all back wages as per Government order on various grounds mentioned in the said M.A. However, the contentions of the petitioner were denied by the respondents in their reply.

The Tribunal after hearing the parties, found that the petitioner was not exonerated and as the penalty was imposed on him in October, 1994, it dismissed his Original Application.

We have heard Shri R.K. Shrivastava, learned Counsel for the petitioner and Shri B. D'Silva for the respondents.

It is not dispute that the DPC for promotion of Senior Administrative Grade was held in February, 1991, and on that date petitioner was eligible for promotion. Since, Departmental Enquiry was contemplated, his case was kept in a sealed cover. It is no more in dispute that major penalty charge-sheet was issued on 16-4-91. However, on the basis of recommendations of the DPC, the case was proceeded by the respondents. After the approval of the select list, the promotion to the post of Senior Administrative Grade were made on 1-10-91. The employees who were junior to the petitioner were also promoted from this date but he was not promoted on account of the adoption of sealed cover procedure and also the charge-sheet having been issued prior to this date.

The next DPC was convened in May, 1994 and at that time the departmental proceedings against the petitioner were in progress and, therefore, his case was kept in a sealed cover. In the departmental enquiry, the minor penalty "Censure" was imposed on the petitioner on 28-10-94 as a result of which he was also not promoted on the ad hoc basis. Merely, because the major penalty proceedings came to an end by order of penalty to Censure in October, 1994 would in itself, is no ground to promote the petitioner on the basis of recommendations of the DPC held in May, 1994. The Tribunal in its order has held that on account of DOPT instructions, unless an employee is exonerated of the charges, he could not be promoted by opening the sealed cover where such recommendation may exist.

Where the proceedings comes to an end even with a minor penalty such as "Censure", his case is required to be considered in the next DPC. We have given our anxious consideration to this finding of the Tribunal and on a deeper scrutiny we find no infirmity in the order of the Tribunal and we do hereby give the stamp of approval to the said finding.

In the context, we may profitably refer to the decision rendered in the case of Union of India Vs. Kewal Kumar, , wherein in Paras 3 and 4, it has been held as under :--

"3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceedings or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. In a case like the present, where the First Information report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.

The question to examine in each case is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection ? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that, in a case like the present, where the CBI had recorded the FIR; sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be faulted."

To us, it is manifest that the aforesaid decision squarely covers the entire controversy of the case specially and in the peculiar facts and circumstances that

the petitioner no where challenged the order of punishment. In this context it will be apposite to refer to another decision of the Supreme Court State of Madhya Pradesh and another Vs. Syed Naseem Zahir and others,

Shri Shrivastava, learned Counsel for the petitioner placed heavy reliance on the decision of Union of India Vs. K.V. Jankiraman, etc. etc., , but that case is distinguishable on the facts and thus not applicable in the facts and circumstances of the present case.

On the basis of reasons assigned herein above, the petition is bereft of merit and is hereby dismissed without any order as to costs.