

(2002) 09 DEL CK 0247
In the Delhi High Court
Case No : CWP No. 252 of 2000

Rear Admiral Suhas V. Purohit

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0247

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Meet Malhotra and Raghuvinder Singh, for the Appellant; K.K. Sud, ASG, Maninder Singh, N.K. Pandey and Neeraj Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner herein was Rear Admiral with Indian Navy at the relevant time. His turn for promotion to the rank of Vice Admiral matured in February, 1998. This writ petition is filed by the petitioner whereby he is seeking, inter alia, direction to the effect that he should be promoted to the rank of Vice Admiral with effect from 1st February, 1998 in accordance with the instructions as laid down in administrative and general order No. (Special) 2/86 issued on 22nd September, 1986. This petition was filed in January, 2000. No doubt in the meantime, the petitioner has superannuated on 30th April, 2001 as Rear Admiral. The petitioner still pursued the present writ petition on the ground that if the petition is allowed and he is promoted to the rank of Vice Admiral then not only his date of superannuation would get extended to 30th April, 2003, he would be entitled to be considered for further promotions as well.

2. It is the case of the petitioner that in the vacancy resulting from the retirement of Rear Admiral V. Koithara on 31st January, 1998 the petitioner was not only considered for promotion to the said post, he was cleared for promotion by the Promotion Board No. 1 at its meeting held towards the end of the year 1997. Still, he was not given promotion and statutory complaints made on 31st January, and 1st December, 1998 and reminder dated 15th December, 1998

remain undisposed. The petitioner states that he is the victim of conspiracy and sustained vilification. The petitioner starts by making averments to the effect that he is an officer who has served to the utmost satisfaction of the entire force. He was commissioned in the Indian Navy in S&S Branch on 1st July, 1964 and kept on getting one promotion after other in time and excelled in his performance. He had the privilege of serving for four years as Controller Material Planning, Mumbai which is a key appointment in material planning dealing with ground level requirements for Naval Stores, Machinery and spares and Russian stores. He was awarded Vishist Sewa Medal (VSM) on 26th January, 1985 for his distinguished services of a high order. He was selected for the prestigious NDC Course in the year 1987. He also served as Director Logistics Support (DLS) at Naval Headquarters for two years. The case of the petitioner is that as an ex-Rear Admiral in the Indian Navy he brought out several internal papers/studies highlighting widespread and serious misappropriation in procurement of spares for the Navy. These findings were referred by the authorities to the Central Vigilance Commission which examined the same and found them, prima facie, correct and recommended further action against the defaulting parties which caused extreme discomfiture to certain firms which were supplying spares and equipment to the Indian Navy. In June, 1997 a few months before the petitioner was to be assessed for suitability for promotion to the rank of Vice Admiral in the post of Controller of Logistics, an anonymous letter was received by the Naval Headquarters containing allegations of corrupt practices against the petitioner. Normally no action is taken in such cases. In support of this the petitioner refers to OM dated 29th September, 1992 and 29th June, 1999 and particularly the relevant portion of the letter communicated on 29th June, 1999:

"One of the facts of life in today's administration is the widespread use of anonymous and pseudonymous petitions by disgruntled elements to blackmail honest officials. Under the existing orders, issued by Department of Personnel & Training letter No. 321/4/91-AVD.III dt. 29.9.22, no action should be taken on anonymous and pseudonymous complaints and should be ignored and only filed. However, there is a provision available in this order that in case such complaints contain verifiable details, they may be enquired into in accordance with existing instructions. It is, however, seen that the exception provided in this order has become a convenient loophole for blackmailing The public servants who receive the anonymous/pseudonymous complaints, generally, follow the path of least resistance and order inquiries on these complaints. A peculiar feature of these complaints is that these are resorted to especially when a public servant's promotion is due or when an executive is likely to be called by the Public Enterprises Selection Board for interview for a post of Director/CMD etc. If nothing else, the any onymous/pseudonymous petition achieves the objective of delaying the promotion if not denying the promotion. These complaints demoralise many honest public servants.

3. However, against the Government's own policy of ignoring anonymous allegations, all the allegations were investigated. The first investigation was

headed by a Vice Admiral and found noting incriminating against the petitioner. The petitioner submitted that this was even admitted by the respondents in their counter affidavit. In October, 1997 the Promotion Board cleared the name of the petitioner for promotion to the rank of Vice Admiral and the petitioner was given officiating charge as Controller of Logistics. For the reasons best known to the respondents, the Ministry of defense ordered another enquiry into the anonymous allegations against the petitioner. The enquiry headed by the defense Secretary also exonerated the petitioner. However, irrespective of the pendency of the enquiry by orders dated 4th March, 1998 a roving enquiry was marked to the CBI the promotion of the petitioner was kept in abeyance. The petitioner kept making statutory and other representations to the authorities but received no reply thereto. It transpires that on two occasions, i.e. 30th June and 8th October, 1998 the promotion of the petitioner was put up to the competent authority for approval but the competent authority returned same pending the outcome of the enquiry. It is also stated in the petition that at the time of filing this writ petition, the CBI had also submitted its final report in August, 1999 exonerating the petitioner and there was nothing found against the petitioner on the basis of which the respondents would have legally denied him the petitioner. In support of this, reliance was placed on the judgment of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., wherein it was held that investigations take an inordinately long time particularly when initiated by interested persons and that on this basis alone an employee cannot be denied promotion. The learned counsel for the petitioner specifically referred to the following observations appearing in the aforesaid judgment:

"Para 6: 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 conclusion Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusion 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 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 conclusion. 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."

4. The learned counsel for the petitioner submitted that the case of the petitioner was on the stronger footing inasmuch as admittedly between October 1997 and January 2000 and even thereafter no disciplinary proceedings were initiated or pending against the petitioner. It was also submitted that it was the admitted case of the respondents that the petitioner had been denied his promotion only on the basis of suspicion and nothing else and his petition deserved to be allowed on this ground alone. Alleging that the entire action of the respondents was mala fide and arbitrary, the learned counsel for the petitioner referred to the proceedings in this case after the filing of the writ petition which exposed the respondents' true intents i.e. to deny promotion to the petitioner by hook or by crook. It was submitted that Union of India had filed a counter affidavit seven months after notice had been issued conceding the entire factual content of the submissions made. However, in a blatantly deliberate attempt to deny the petitioner his due promotion, the respondents resorted to delaying tactics so as to ensure that the petitioner superannuated in rank as Rear Admiral in April, 2001. It was also submitted that had this writ petition been heard in time and

allowed in favor of the petitioner, he would have got the rank of Rear Admiral enabling him to serve till April, 2003. The respondents chose to deny the petitioner, even by their own record and showing, what was due to him by issuing him, during the pendency of the writ petition, a Letter of Displeasure (LoD) dated 10th April, 2000 from the Chief of Personnel for alleged irregularities in a procurement case. The LoD was on the basis of this letter and had approved an indent at a cost of Rs. 1,53,40,000/- whereas the financial power at the material time was only Rs. 1,50,000/-. The case of the petitioner was referred to a Promotion Board held in August, 2000 which did not find the petitioner fit for promotion to the rank of Vice Admiral. The respondents sought to misuse the deliberately and subsequently generated events to deny the petitioner promotion which was admittedly due to him in February, 1998. In fact LoD is the very lowest form of punishment under the Navy Act and has been malafidely misused in the present case. Inspire of various requests the petitioner has been assiduously denied inspection of the record pertaining to his promotion. The stand of the respondents is palpably illegal, unjust, arbitrary and covert. A senior officer of the Navy who made the mistake of being honest beyond the call of duty has been deliberately denied promotion on grounds of suspicion alone on his taking action against the firms involved in procurement scandal of crores of rupees. On the basis of the aforesaid submissions, legal contentions raised by the learned counsel for the petitioner were:

a. That inspire of investigation into the allegations contained in anonymous complaints, which did not merit such investigation in the first instance, when it was found that there was no substance therein, the petitioner could not have been denied the promotion to the rank of Vice Admiral particular particularly when it was cleared by the Promotion Board.

b. However, inspire of the fact that in the investigation conducted by a Vice and Admiral and thereafter by the Ministry of defense who exonerated the petitioner, a roving enquiry was marked to the CBI in totally arbitrary manner with sole purpose to deny the petitioner his promotion legitimately due to him inasmuch as by marking the enquiry to the CBI, his promotion was kept in abeyance.

c. Even when the CBI exonerated the petitioner in January, 2000 at least thereafter there was nothing against the petitioner but still the petitioner was denied promotion. As per the judgment in Jankiraman (supra) it could not be done.

d. Mischievously, during the pendency of the writ petition, a Letter of Displeasure (LoD) dated 10th April, 2000 was issued for alleged irregularities in a procurement case which was totally illegal and it was done to deny him the promotion. In any case, this event which happened in the year 2000 could not be a ground to deny him the promotion due to him in February, 1998. Furthermore, even otherwise, the LoD is in the very lowest form of punishment under the Navy Act and could not be a basis for denying the promotion to the petitioner.

5. Apart from Janakiraman's case (supra) the learned counsel for the petitioner in support of contention relied upon the following judgments:

1. The State of Madhya Pradesh v. Bani Singh and Anr. reported in IR 1990 SC 1308.

2. Amar Chand Butail Vs. Union of India (UOI) and Others, .

3. Union of India (UOI) Vs. Indra Deo Kumar and Others,

4. Narosa Publishing House and Others Vs. Shri Jagbir Singh, .

6. On the other hand, Mr. K.K. Sud, learned Additional Solicitor General appearing for the respondents refuted the various averments made by the petitioner and argued that there was no vested right in the petitioner in getting the promotion to the higher post of Vice Admiral. He submitted that the empanelment for promotion to the rank of Vice Admiral is carried out in the following manner:

i. Promotion Board No. 1 comprising 3 Commanders-in-Chief, Vice Chief of the Naval Staff and Chief of Personnel as Member Secretary is held under the chairmanship of Chief of Naval Staff. This Board considers eligible officers and makes its recommendations to the Government i.e., Ministry of defense.

ii. The recommendation made by the Board is examined in the Ministry with reference to the criteria adopted etc. and put up for the approval of the Raksha Mantri.

iii. On approval, the case is referred to the Appointments Committee of the Cabinet (ACC), which is the competent authority for its decision.

iv. On receipt of the approval of the ACC, the same is communicated to Naval Headquarters for further necessary action.

7. In view of the aforesaid procedure, contended the learned Additional Solicitor General, a final decision in the matter is to be taken by the Appointments Committee of Cabinet (ACC), and Therefore, promotion is not complete till such time a decision of the ACC is received. As far as exercise by the Promotion Board is concerned, the same was only a recommendation subject to the final decision of the ACC. Explaining the position in the present case, it was argued that the Promotion Board No. 1 held in October, 1997 had considered the petitioner's case and made its recommendations. When the recommendations of the Promotion Board were in the Ministry, it was observed that there were certain anonymous complaints with specific allegations against the petitioner. These complaints had necessarily to be examined before arriving at a decision. This was done and the complaints were referred to the CBI as approved by the defense Ministry. A committee was also constituted under the chairmanship of the defense Secretary to enquire into the several allegations. The committee absolved the petitioner of allegations and ruled that allegations relating to payment of commission in Naval procurement and involvement of family

members of the petitioner could not be established from the files. Subsequently, the CBI report to this effect dated 28th July, 1998 was also received and put up to the Cabinet Secretariat. In the meantime, there was an intimation from the Cabinet Secretariat saying that the CBI had carried out a secret verification and communicated to the possibility of the irregularities having been committed by the petitioner. It was further decided that papers for promotion of the petitioner could be put up to the competent authority only on receipt of the findings of the CBI. Explaining the circumstances as per which the case of the petitioner was dealt with, the learned Additional Solicitor General pointed out that when the matter was pending with the CBI, orders were passed that the petitioner's case for promotion would be put up to the competent authority on receipt of findings of the CBI. At about this time, the petitioner suffered a severe heart attack on 25th August, 1998 and it came to light during the medical examination that the petitioner had not undergone the mandatory annual medical examination since October 1975 even though he had certified in the ACR forms in each of the years, to the effect that he was in medical category S1A1. Explanation from the petitioner was called and he was issued a written warning by Chief of the Naval Staff on 11th June, 1999 for this lapse. Immediately, thereafter the CBI submitted its report on 12th August, 1999 as per which the petitioner's action in a case was questionable inasmuch as certain procedural irregularities in naval procurement had been observed. The issue was, Therefore, referred to Naval Headquarters for soliciting their views on the suitability of the petitioner for promotion. Even as this was being examined, M/s. Goenka Engineer made a complaint against certain irregularities in procurement of air compressors. The firm also filed a writ petition on this issue this court. On the basis of the directions given by this court, the matter was investigated by a Committee headed by Chief of Material, Naval Headquarters. The Committee found the petitioner culpable of approving Director of Logistics Support Indent 96/DGC 0033 for 50 HP Air Driving Compressors at an estimated cost of Rs. 1,53,40,000/- without taking the approval of the Competent Financial Authority (CFA). The petitioner was, Therefore, awarded a letter of displeasure by the Chief of Personnel, Naval Headquarters on 10th April, 2000. Continuing the narration of events, it was further submitted that on 6th April, 2000 the Naval Headquarters intimated the Minister of defense that they are of the view that the performance and conduct of the petitioner ought to be reviewed by a Board of Admirals (Promotion Board No. 1) to establish his suitability for promotion to the rank of Vice Admiral and to hold the post of Chief of Logistics (COL). A confidential report in respect of the petitioner was due on 1st August, 2000 and it was accordingly decided by Naval Headquarters that the appropriate time for the review by Promotion Board No. 1 would be by September/October, 2000. The Naval Headquarters Therefore, recommended that the case for promotion of the petitioner may be kept on hold. Even as these investigations were being carried out, a very serious misconduct on the part of the petitioner, i.e. giving several false declarations in the ACRs regarding his medical category from 1975 onwards came to light. For this misconduct the petitioner was warned which was followed

by a report of further irregularities in procurement case involving air compressors. Again for this misconduct the petitioner was issued with a letter of displeasure. In fact according to the respondents, in the light of these irregularities the petitioner's case was referred to the Promotion Board No. 1. The promotion case of the petitioner was reviewed by the Promotion Board No. 1 held on 28th August, 2000 under the chairmanship of the Chief of the Naval Staff. The Board considered the case of the petitioner in its entirety and taking into account the letter of warning issued by the Chief of Naval Staff for not having undergone medical examination for more than 20 years as also the Letter of Displeasure issued by the Chief of Personnel for irregularities in the compressor procurement case, did not find the petitioner fit for promotion to the rank of Vice Admiral. The Board accordingly graded the petitioner "R" (unfit for promotion at present). The recommendation made by the Promotion Board was referred to the Cabinet Secretariat for submission to the ACC. The ACC approved the recommendation made by the Promotion Board held in August, 2000 grading the petitioner "unfit" for promotion at present.

8. In view of the aforesaid background, the learned Additional Solicitor General submitted that the petitioner could not bank upon the recommendations of the Promotion Board No. 1 which were never accepted by the ACC and on the contrary, the matter after it was reviewed by Promotion Board No. 1 on 28th August, 2000 when put before the ACC, the ACC approved the same and result of that is that the petitioner was found unfit for promotion to the post of Vice Admiral. The learned Additional Solicitor General further denied the allegations of delay or malafides. He submitted that the petitioners had submitted ten representations dated 31st March, 1st December, 15th December, 1998, 28th January, 24th May, 16th August, 5th October, 1999, 14th January, 15th February and 16th September, 2000 mainly against the delay in his promotion and appointment as Chief of Logistics. The representations were considered by the competent authority, i.e., the defense Minister and rejected vide order dated 1st February, 2001. He thereafter submitted another representation dated 6th February, 2001 requesting for an audience with the President to enable him to present his case. The request of the petitioner was examined and it was found that as per the existing rules, there is no provision for an audience with the President for redressal of grievances of the Naval personnel. The order rejecting the representation of the petitioner was issued on 23rd March, 2001.

9. We have considered the submissions of both the parties and have also gone through the records. It may be mentioned that original files were also produced by the respondents relating to petitioner's case and we scanned through the relevant pages thereof as well.

10. It may be mentioned at the outset that the post of Vice Admiral in Navy is of very high rank. That is the reason, as per the procedure laid down, the promotion to this post is not made by the authorities in Naval Headquarters or even by the Ministry. The final decision is taken in the matter at the highest

level, i.e., ACC which includes the Prime Minister, concerned Minister, Cabinet Secretary, among others. It is the decision of ACC which is final. Therefore, the exercise done by the Promotion Board would only be recommendatory in nature. It would be for the ACC to accept or not to accept the said recommendations. Therefore, the recommendations of the Promotion Board shall not confer any right on the person who is recommended for such post. That is the legal position in so far as recommendations of the Promotion Board are concerned.

11. In that view of the matter, judgment in the case of K.V. Janakiraman (*supra*) will have no application to the facts and circumstances of this case inasmuch as it is not a case where recommendation of DPC in the case of petitioner was kept in a sealed cover having regard to certain investigations/enquiry pending against him. The case of K.V. Janakiraman (*supra*) was concerned with resorting to sealed cover and the Apex Court was dealing with the OM dated 30th January, 1982 which prescribed under what circumstances and in what cases the Government could resort to sealed cover procedure. In that context the Supreme Court ruled as to which cases and at what stage the sealed cover procedure could be adopted. In Office Memoranda dated 31.1.1982 and 12.1.1988, it was prescribed that sealed cover procedure can be adopted in the following cases:-

"cases of officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings, or, (c) against whom prosecution has been launched in a Court of law or sanction for prosecution has been issued."

12. However, it was held that the sealed cover procedure should be resorted to only when the departmental proceeding against the concerned employee were pending and/or criminal trial against the said employee was pending. It was further held that a departmental proceeding would be treated as "pending" only when charge-sheet was issued against the concerned employee and not when allegations against the said employee were at investigation stage. This is what the court observed (speaking through Sawant, J.)

"6. 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-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 taken 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 investigation 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."

13. Thus the Court was examining the case of promotion and in that context the circumstances when sealed cover procedure is to be resorted to was discussed. What was under consideration was Office Memorandum dated 30th January, 1982 and Memo dated 12th January, 1988 which laid down the cases/situations when such sealed cover procedure could be adopted. In such cases, the person is considered for promotion but the findings of the DPC are kept in sealed cover to be opened after the conclusion of disciplinary/Court proceedings. This is not the situation when a person is to be appointed to the post of Vice Admiral which is to be cleared by the ACC. Neither there is a question of adopting any sealed cover procedure nor there would be a situation when after the conclusion of the departmental/criminal proceeding such sealed cover is to be opened. Therefore, the case of Janaki Raman (Supra) which deal with adoption of sealed cover procedure would obviously have no application in the instant case. The procedure here, as already noticed above, is entirely different.

14. In the present case, the recommendations of the Promotion Board No. 1 were not kept in sealed cover. In fact the matter was put before the defense Minister, who for certain reasons, decided that it be kept in abeyance. Whether this course of action was proper or not would be determined by us at the appropriate stage. Of course, we may hasten to add, normally when such recommendations is made, due importance has to be attached to it and there should be cogent reasons for brushing aside such recommendation. To what extent judicial review, in such circumstances, is permissible, we shall revert to this issue at the later stage.

15. Before embarking on this issue, it would be necessary to say few words about such anonymous and pseudonymous complaints being made when a person is considered for high office. This aspect was examined by one of us (A.K. Sikri, J.) in the case of Y.N.P. Sinha v. Union of India (CWP No. 4957/99) disposed of on 7.3.2000, considered the question in great details (although factual matrix involved therein may be different) and held:

"Once based on such relevant material CVC has considered the case of such a person after scrutinising his antecedents and comes to one or the other conclusion that would be reasonable exercise of power. Of course, one may put a

word of caution here. When CVC considers such a material it should be careful enough to find out as to whether material which is placed before it and which puts question mark about the integrity of a person is genuine material or whether it is a material which is planted against such person by those who are disgruntled or biased against the concerned person/candidate. It is a matter of common knowledge that whenever selection process to such board level post in PSUs is under way people start writing frivolous complaints. For this reason, anonymous/pseudonymous complaints are normally to be ignored. CVC should also ensure that the complaints against the concerned person/candidate are not motivated or fabricated at this stage just to stall his appointment to the post. The function of CVC Therefore is delicate one: on the other hand it has to ensure that people with impeccable integrity and honesty are appointed to board level post and on the other hand it has to ensure that innocent person do not become victim of the dishonest, malicious and frivolous complaints made by people with vested interest."

16. Viewed from this angle, let us examine the position in the present case. It cannot be said that, as has been accepted by the respondents also, the petitioner was recommended by the Promotion Board No. 1 for promotion to the post of Vice Admiral when he was considered to the said post in the first instance. At this stage, some anonymous complaint was received against the petitioner. However, investigation was made by a person of the rank of Vice Admiral. He found nothing in the complaint. The matter was referred to Naval Headquarters and the matter was again investigated by an officer in higher rank in the Naval Headquarters. He also exonerated the petitioner. inspire thereof, the matter was referred to the CBI for further investigation. What prompted the respondents to refer the matter to the CBI after the investigation into a complaint, that too anonymous, is not the answer given by the respondents in the counter affidavit. We would revert to the records for this purpose.

17. Be as it may, even the CBI found no substance in the complaint against the petitioner. Normally, after this exercise, the respondents could have placed the matter before the defense Minister and in turn before the ACC for further action into the matter. However ,during these investigations, certain material surfaces and comes to light. This is in the following form:

i) The petitioner had not undergone the mandatory annual medical examination since October, 1975 even though had certified to this effect in the ACR forms in each of the year to say that he was in medical category S1A1. He was given written warning for this lapse on 11th June, 1999 by the Chief of Naval Staff.

ii) The CBI submitted its report on 12th August, 1999 as per which the petitioner's action in a case was questionable inasmuch as certain procedural irregularities in Naval procurement had been observed.

iii) M/s Goenka Engineering made a complaint against certain irregularities in the procurement of air compressors and filed a writ petition in this court and on the

directions given by this court, a committee was constituted which investigated the matter and found the petitioner culpable of approving Director of Logistics Support Intend 96/DGC 0033 for 50 HP Air Driving Compressors at an estimated cost of Rs. 1,53,40,000/- without taking the approval of the Competent Financial Authority (CFA). For this the petitioner was awarded a LoD by the Chief of Personnel, Naval Headquarters on 10th April, 2002.

18. Keeping in view the aforesaid circumstances, on 6th April, 2000 the Naval Headquarters intimated the Minister of defense that they are of the view that the performance and conduct of the petitioner ought to be reviewed by a Board of Admirals (Promotion Board No. 1) to establish his suitability for promotion to the rank of Vice Admiral and to hold the post of Chief of Logistics (COL). A confidential report in respect of the petitioner was due on 1st August, 2000 and it was accordingly decided by Naval Headquarters that the appropriate time for the review by Promotion Board No. 1 would be by September/October, 2000.

19. This prompts the respondents to order review Promotion Board. The question that is to be determined, in exercise of judicial review, is as to whether it was arbitrary or unreasonable action on the part of the respondents in ordering review Promotion Board after some fresh material was brought on record. Answer to that is found in the judgment given by one of us (A.K. Sikri, J) in the case of YNP Sinha v. Union of India (CWP No. 4957/99) disposed of on 7th March, 2000. We have also dealt with this issue in great detail in the case of Central Vigilance Commission v. Anand Darbari (LPA No. 221/2001) decided on 29th May, 2002.

20. We may notice at this stage that the petitioner had not been promoted pursuant to the recommendations of the Promotion Board No. 1 which did its exercise in the year 1998. As already mentioned above, in the hierarchy of Indian Naval Services, the post to which the petitioner was seeking promotion was of very high rank. Utmost probability to hold the said post is required. The person has to be above suspicion. The petitioner has, although alleged certain malafides and has stated that in view of financial irregularities pointed out, he was punished by the aforesaid non-promotion, fact remains that such allegations are not attributed to any particular officers(s). In fact no person in his personal capacity has been arrayed as respondent and malafides attributed to him. Thus the allegations of malafides, which are strongly refuted by the respondents, Therefore, cannot form basis for accepting the submission of the learned counsel for the petitioner that the petitioner was victimised. Since the petitioner has not made out a case for malice in fact and the petitioner did not argue that it was a case of malice in law, the action of the respondents in conducting fresh review Promotion Board could not be faulted with.

21. The perusal of the record reveals that after the anonymous complaints received, in the first instance a Vice Admiral had carried out investigation and his inquiry established that allegations in the anonymous letter were totally and completely baseless which had been fabricated to malign the high reputation of

the officer. On receipt of communication to this effect, the Naval Headquarters was requested to supply the enquiry report submitted by it along with relevant documents. This reply was received in which it was stated that no cognisance should be taken of anonymous/pseudonymous complaints unless such complaints are received Along with letter from the Members of Parliament. It was further stated by the Naval Headquarters that although no action was required on anonymous complaints but the allegations were enquired into keeping in view the serious nature thereof as well as Flag Officer whose reputation was sought to be tarnished. Note dated 4th December, 1997 of the Director (CG) after recording the aforesaid facts mentions that although anonymous complaint is normally not to be looked into but as per MOD U.O. No. F.1/34/Vig./65-VII dated 4th April, 1973. If it is received Along with letter from Member of Parliament then they have to be enquired into. It was sent from the Prime Ministers Office and Therefore, he recorded that this complaint should have been enquired into and the Ministry of defense apprised of the outcome Along with relevant documents. He also referred to Department of Personnel & Training's OM dated 3rd November, 1997 and revised instructions issued in September, 1992 in support of this. After quoting from the aforesaid guidelines, he submitted that proposal for further directions and further that promotion case of the petitioner could be processed only after taking a final decision on these complaints. The case was thereafter submitted to the defense Minister who decided to refer the matter to the CBI for investigation in view of the fact that the Naval Headquarters was not furnishing the copy of the inquiry reports/relevant documents. It was also decided that promotion case of the officer be held in abeyance.

22. In the meantime, the petitioner submitted a statutory complaint on 31st March, 1998 and on that basis it was recorded in the file that the competent authority for approving the recommendation of the Promotion Board was the defense Minister and after his approval the case was required to be referred to the ACC for approval. The matter was thereafter placed before the defense Minister. It appears that the defense Minister, thereafter, stated that the case be referred to the ACC. We do not have the exact orders of the defense Minister as it was recorded in File No. 4869/Dir(N)/97 which file was not placed before us for our perusal. However, it also appears that the defense Minister had directed the matter to be investigated by the CBI. The case was thereafter sent to the Cabinet Secretary for obtaining approval of the ACC on 30th June, 1998. In the meantime, when it was still at ACC legal, the CBI cleared the petitioner and it was decided to send this by placing fresh note for ACC. However, as it transpires, some enquiry into the matter relating to procurement of Walkie-Talkie, Steel AK 25, SSK Submarine Spares etc. in which the petitioner was allegedly involved was sent to the Director, CBI by the Naval Headquarters vide its note dated 7th October, 1998. It was felt desirable by the respondents to give this information also to the Cabinet Secretariat. However, the Cabinet Secretary vide his note dated 28th October, 1998 intimated that his Secretariat had requested the Director, CBI vide letter dated 21st July, 1998 to make a preliminary report in the

matter of alleged involvement of the petitioner or any of his family members in the irregularities in the Naval purchase. The CBI, thereafter, submitted a note stating that there was a possibility of involvement of the petitioner in irregularities. On this basis the defense Minister made the following recording in the file:

"I do not know why the self contained which has been obtained now from Cabinet Secretariat was not made available to the MOD by the CBI in the first instance. If the contents of the note had been made known to us earlier, we would have not recommended promotion of RAdm SV Purohit. Having seen the note, I feel that

- (a) We should not pursue the case for promotion of RAdm SV Purohit.
- (b) We should ask NHQ as to whether they had indeed received any report regarding the activities of this officer from NA in Moscow and if so, what action was taken on that report.
- (c) Similarly, we should ask for the report of RAdm JS Bedi mentioned in the note and the action taken, if any, thereon.
- (d) The issue of not providing cooperation to the CBI should also be taken up and it should be made clear to the NHQ that any reluctance in extending requisite cooperation henceforth, will be adversely viewed.
- (e) We should ask the CBI to conduct a full-fledged enquiry into this entire affair expeditiously."

23. The position up to this stage would reveal that it is not a deliberate attempt made to delay the case of the petitioner for promotion. In fact the office of the respondents had taken the approval of the defense Minister for forwarding the case to the ACC and forwarded the case of the petitioner for promotion to the Cabinet Secretariat for seeking approval of the ACC. However, the Cabinet Secretary wanted the report of the CBI. When the CBI reported that there may be involvement of the petitioner in the irregularities, the defense Minister directed that the case of promotion of the petitioner be not pursued. It cannot be said that this decision taken on or about 24th November, 1998 was, in any case, arbitrary. When the matter was still pending investigation at the hands of the CBI that the petitioner filed the present writ petition. The petitioner's claim for promotion on the said date, Therefore, was without any substance. In our view when the defense Minister took the decision not to pursue the case for promotion of the petitioner on the basis of note of the CBI, the same could not be treated as illegal or arbitrary. In view of this position, the cases cited by the petitioner will have no application.

24. What happened thereafter, during the proceedings, has already been recorded above. Such fresh material coming to the notice of the respondents was placed before the defense Minister for his perusal. It was ultimately decided, having regard to the subsequent happenings, that the review Promotion Board

be held which should consider the case afresh after taking into consideration the entire material. The review Promotion Board did not recommend the case of the petitioner but recommended some other person and the ACC approved the said recommendation of the review Promotion Board.

25. In view of the factual metric, derived from the records, the submission of the petitioner to the effect that there was any deliberate delay or the respondents acted in a malafide manner, has to be countenanced. There are certain material facts which emerge from the aforesaid discussion and which need to be emphasized ;first, the petitioner has not challenged the action of the respondents in holding review Promotion Board; secondly, he has not challenged the proceedings of the review Promotion Board; thirdly as already pointed out above, no malafides are alleged against a particular person nor any such person is arrayed as respondent; fourthly, the entire case is based upon the recommendation of the Promotion Board held in end 1997 which did not fructify as the ACC never approved it; fifthly, no amendment made in the writ petition to bring subsequent events on record and modifying the relief; and lastly the petitioner has already retired from service on 30th April, 2001.

26. We, Therefore, do not find any merit in this writ petition which is dismissed accordingly.

27. However, there shall be no order as to costs.