

(2008) 01 PAT CK 0076
In the Patna High Court
Case No : CWJC No. 12615 of 2007

Samrendra Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Citation : (2008) 01 PAT CK 0076

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad and Jayanandan Singh, JJ.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 8th January, 2007 passed by the Patna Bench of Central Administrative Tribunal in O.A. No. 447 of 2004, whereby application filed by the petitioner has been dismissed.

2. Petitioner happens to be an Inspector in the Central Excise and Customs Department. A criminal case was registered against him and a report to that effect was forwarded to the Magistrate by the Central Bureau of Investigation on 15.3.1996. Allegation against him is of acquisition of property disproportionate to the known source of income. The competent Government granted sanction for his prosecution by order dated 3.11.1999. Petitioner's matter for grant of promotion under Assured Career Progression Scheme was considered by the Departmental Promotion Committee in its meeting held on 10.11.1999 and it decided to keep his matter of promotion in sealed cover. Thereafter, the Central Bureau of Investigation submitted chargesheet against the petitioner on 4.12.1999 and it is common ground that the case is pending for trial. He filed representation questioning his non-promotion. Said representation was rejected by order dated 28.2.2000. Petitioner approached the Tribunal by filing O.A. No. 310 of 2000. The Tribunal directed the respondents to consider the petitioner's case in the light of its order passed in O.A. No. 641 of 1997. In the light of the aforesaid order the case of the petitioner was considered in the review meeting of the Departmental Promotion Committee. It found that earlier on 10.11.1999,

the Departmental Promotion Committee had decided to keep the petitioner's case in sealed cover since the competent authority had granted sanction for prosecution earlier on 3.11.1999. Accordingly by order dated 9.12.2003 petitioner's representation was rejected.

3. Aggrieved by the aforesaid order petitioner approached the Tribunal. It dismissed the application by order dated 8th January, 2007, which has been impugned in the present application.

4. Mr. Gautam Bose, Senior Advocate appearing on behalf of the petitioner, contends that in the Assured Career Progression Scheme there is no provision for keeping the matter of promotion under sealed cover on the ground of pendency of criminal proceeding. He points out that the ordinary rule of keeping the result in sealed cover in case of regular promotion due to pendency of criminal case does not apply in the case of promotion under the Assured Career Progression Scheme.

Mr. Rakesh Kumar Singh, learned Counsel appearing on behalf of the Union of India, however, submits that as the criminal case was pending against the petitioner, respondents rightly resorted to the sealed cover procedure.

5. Having appreciated the rival submissions, we do not find any substance in the submission of Mr. Bose. The Government of India in the Ministry of Personnel, Public Grievances & Pensions by its office memorandum dated 9th August, 1999 (Annexure-3) had provided for a scheme known as the Assured Career Progression Scheme for the Central Government civilian employees. Annexure-I thereof had provided the conditions for grant of benefits under the said Scheme. Clause 6 thereof, which is relevant for the purpose, reads as follows:

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group "D" employee, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme.

From a plain reading of the aforesaid clause it is evident that the formal promotion norms are to be ensured for grant of benefits under the Assured Career Progression Scheme. In view of the aforesaid, the other norms for grant of promotion have to be applied in the case of the Assured Career Progression Scheme also. It is not in dispute that sealed cover procedure is normal promotion norms in certain conditions. In that view of the matter, we are of the opinion that the respondents did not err in keeping the case of promotion of the petitioner in sealed cover.

6. Mr. Bose, then contends that in the present case charge sheet was submitted on 4.12.1999 whereas meeting of the Departmental Promotion Committee was held on 10.11.1999 and hence petitioner's matter of grant of promotion under the Assured Career Progression Scheme ought not to have been kept in sealed cover. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , and our pointed attention has been drawn to the following passage from paragraph 6 of the judgment, which reads as follows:

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 suspension by itself permits a resort to the sealed cover procedure....

7. We do not find any substance in the submission of Mr. Bose and the authority relied on is clearly distinguishable.

8. The office Memorandum of the Government of India in the Department of Personnel and Training, as contained in memo dated 12.1.1988, governing the field reads as follows:

Cases where "Sealed Cover Procedure" applicable: At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration of 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 disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any agency, departmental or otherwise.

9. The office memorandum aforesaid provides for keeping the cases of promotion of the Government servants in sealed cover in various contingencies and one of the contingencies envisaged in paragraph (ii) is that when the disciplinary proceeding is pending or decision has been taken to initiate disciplinary proceeding. However, there are other contingencies also in which case can be kept in sealed cover. From Clause (iii) of the aforesaid office memorandum it is evident that the case of a Government servant for promotion can be kept in sealed cover in respect of whom prosecution for criminal charges is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution. The other contingency provided in Clause (iv) of the said office memorandum is pendency of investigation on serious allegations of corruption, bribery or similar grave misconduct which is being investigated either by the CBI or any other agency or department. The aforesaid contingencies are distinct and exclusive and not dependent upon each other. Undisputedly on the date i.e. 10.11.1999 Departmental Promotion Committee held its meeting, investigation was going on in respect of serious allegation of acquiring property disproportionate to the known source of income and further the sanction for prosecution was granted on 3.11.1999. Therefore, the case of the petitioner falls not only under Clause (iii) of the office memorandum but also under Clause (iv) thereof. In the case of K.V. Janakiraman (Supra) on which Mr. Bose has placed reliance had considered case under Clause (ii) of the office memorandum. Therefore, the case of the petitioner is not covered by the ratio of the decision of the Supreme Court in the case of K.V. Janakiraman (Supra).

10. Here, we would like to point out that the judgment of the Supreme Court in the case of Janakiraman was considered later on in the case of Union of India and Another Vs. R.S. Sharma, , in which it has been clearly held that in the Janakiraman's case the second paragraph of the office memorandum was under consideration and the said decision has to be read in the facts of that case. Paragraph 16 of the judgment, which is relevant for our purpose, reads as follows:

Learned Counsel for the respondent made an endeavour to contend that in the light of the decision of this Court in Union of India Vs. K.V. Jankiraman, etc. etc., the Sealed Cover Procedure can be resorted to only after Charge Memo is

received or a charge-sheet is filed and that unless such an event had happened at the relevant time the Government employee cannot be denied of his promotion, if he is otherwise entitled to it. Learned Counsel also submitted that Janakiraman was since followed in Union of India and Others Vs. Dr. (Smt) Sudha Salhan, ; Bank of India and Another Vs. Degala Suryanarayana, . The clauses of second paragraph of the Sealed Cover Procedure considered in Janakiraman were not those involved in the present case and hence that decision is of no avail to the respondent. In the other two decisions the facts warranted application of the ratio contained in Janakiraman. The added factor in these two cases was that the public servant concerned had been exonerated of the charges framed by the criminal Courts. In the present case the respondent is still facing the trial for serious offences and hence the situation is different.

11. From the discussions aforesaid, it is evident that the Tribunal did not err in dismissing the application.

We do not find any merit in the writ petition. It is dismissed accordingly.