

(2009) 01 MAD CK 0224

In the Madras High Court

Case No : Writ Petition No. 25081 of 2008 and M.P. No. 1 of 2008

The Chief Commissioner of Central Excise Chennai Zone, The
Commissioner of Central Excise and The Additional
Commissioner of Central Excise (P and V)

APPELLANT

Vs

S. Palanichamy and The Registrar Central Administrative
Tribunal

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Citation : (2009) 5 MLJ 856

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : R. Priya Kumar, Addl. Counsel for Central Govt, for the Appellant; R. Malaichamy, for R1, for the Respondent

Judgement

1. The issue relates to a question of promotion and more particularly from which year, the promotion will be given effect to.

2. The Departmental Promotion Committee (hereinafter referred to as the "DPC") for the year 1998, while considering the promotion of the first

respondent, because of the pendency of the disciplinary proceedings, kept the proceedings in a sealed cover, which had earlier recommended that

the first respondent should be promoted. Subsequently, a punishment of stoppage of increment for two years was imposed on the first respondent.

However, in appeal, such punishment was reduced to one of censure. On the completion of the stoppage of increment for two years, the first

respondent was given promotion i.e. on 29.6.1999. However, the first respondent subsequently claimed that since the punishment had been

modified to one of censure, which should not be considered as a punishment at all, the first respondent should have been given promotion from the

date on which his juniors were promoted by virtue of the DPC, as in the sealed cover procedure, which was prepared for the year 1998,

recommending for his promotion. Since such request was rejected by the department, the first respondent approached the Central Administrative

Tribunal by filing Original Application No. 570 of 2007. The Tribunal by observing that censure is not a punishment, allowed the Original

Application of the first respondent and directed that the promotion should be given effect to from the date on which his juniors had been promoted.

A Review Application was filed, which was also dismissed. Thereafter, the present writ petition had been filed by the Department challenging the

order of the Tribunal.

3. Learned Standing Counsel for the Department has placed reliance upon the Office Memorandum dated 14.09.1992, more particularly

paragraphs 3 and 3.1, which relate to the procedures to be followed, when a sealed cover procedure was adopted for considering promotion. The

learned Counsel for the petitioner has also placed reliance upon the decision of the Supreme Court in Civil Appeal No. 2020 of 2007, arising out

of SLP (C) No. 26408 of 2004, disposed of on 18.04.2007.

4. Learned Counsel appearing for the first respondent on the other hand submitted that the subsequent unreported decision of the Supreme Court

dated 18.04.2007 has placed reliance upon its own earlier decision in AIR 1991 SC 2010 Union of India v. K.V. Jankiraman and in such earlier

decision, only the Office Memorandum of 1982 had been referred to and the subsequent instruction issued by the C & AG Circular dated

30.8.1990 had not been considered.

5. We have heard Mr. Priya Kumar, learned Additional Counsel for Central Government for the petitioners and Mr. R. Malaichamy, learned

Counsel appearing for the first respondent at length and perused the materials on record.

6. It is apparent that the sealed cover procedure was adopted because of the pendency of the disciplinary proceedings. Though ultimately a

punishment of stoppage of increment for two years was imposed on the first respondent, subsequently, it was modified to one of censure. The

procedure, which is required to be followed, when a sealed cover procedure is adopted, is highlighted in paragraph 3.1. Paragraph 3.1, which is to

the following effect:

If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution

against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the

normal course and having regard to the penalty imposed on him.

7. A perusal of the above procedure clearly indicates that if on the completion of the disciplinary proceedings, a punishment is imposed, the

findings of the sealed cover procedure shall not be acted upon and his case for promotion is to be considered by the next DPC in the normal

course and having regard to the punishment imposed on him. This aspect has also been clarified in the unreported decision of the Supreme Court

dated 18.04.2007. The contention of the first respondent that the Memorandum issued by C & AG in the year 1990 was not considered by the

Supreme Court in the decision of Union of India Vs. K.V. Jankiraman, etc. etc., is of no consequence, as the subsequent decision has considered

all the relevant aspects and come to a conclusion that the procedure adopted in Rule 3.1 is to be followed. It has been highlighted in the same

decision that even Censure is also a punishment and therefore, Rule 3.1 is to be followed.

8. In such view of the matter, we are unable to accept the conclusion of the Tribunal. The writ petition is accordingly allowed and the order of the

Tribunal is quashed. No costs. Consequently, M.P. No. 1 of 2008 is closed.