

**(2012) 01 DEL CK 0193**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 166 of 2012 and C.M. 350 of 2012

Union of India

APPELLANT

Vs

R.P. Singh

RESPONDENT

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**Date of Decision :** 16-01-2012

**Acts Referred:**

**Citation :** (2012) 01 DEL CK 0193

**Hon'ble Judges :** V.K. Jain, J;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Ankur Chhibber, for the Appellant; Neeraj Kishan Kaul with Mr. A.K. Behara and Mr. Raman Gandhi, for the Respondent

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## **Judgement**

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 08.12.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 4009/2011 as also against the order dated 03.01.2012 passed in MA 4/2012 in the said Original Application.

2. By virtue of the impugned order dated 08.12.2011, the respondent's Original Application was allowed and a direction was issued to the petitioners herein to issue a promotion order in respect of the respondent to the post of Higher Administrative Grade as expeditiously as possible and preferably within a period of two weeks from the date of the order. It was also directed that the respondent would be entitled to all consequential benefits including seniority vis-a-vis his colleagues.

3. Subsequently, the petitioners herein moved an application being MA 4/2012, in which they asked for extension of time for processing and examining the matter. They had sought a period of three months for doing the same. However, the Central Administrative Tribunal, Principal Bench, New Delhi, while disposing of the said MA 4/2012, observed that there was hardly any reason to extend the time, but, showing some indulgence in the matter, the Tribunal adjourned the case to 09.01.2012, by which date, the petitioners herein were directed to issue

the order of promotion of the respondent, failing which, it would be open for the respondent to take appropriate steps. As mentioned in paragraph 14 of the writ petition, the petitioners have stated that on 04.01.2012, the competent authority decided to initiate disciplinary proceedings against the respondent and it is shortly thereafter that, on 07.01.2012, the present writ petition was filed impugning the said orders dated 08.12.2011 and 03.01.2012 passed by the said Tribunal.

4. The learned counsel for the petitioners had placed reliance on the decision of a Division Bench of this Court in the case of *R.R. Sahay v. Union of India and Others*: WP (C) 6536/2010 decided on 07.02.2011. In particular, the learned counsel for the petitioners placed reliance on paragraphs 16, 17 and paragraph 27 of the said decision, which read as under:

16. However, relevant would it be to note that applying the aforesaid Statement of Law, to the facts before it, and noting that the DPC had met in July 1986 and a charge-sheet was issued in August 1987 to initiate departmental proceedings, the Government Servant concerned was held not entitled to be promoted and recommendations of the DPC were directed to be kept in abeyance. In para 17 of the decision, the Supreme Court held that law cannot be applied mechanically.

17. This is the ratio which can be culled out from a subsequent decision of the Supreme Court reported as *State of M.P. vs. Sayeed Nazeem Zahir* AIR 1993 SC 116. The DPC had met on 20.10.1987. The charge-sheet was issued on 15.4.1988. The misdemeanor was under consideration i.e. preliminary inquiry was being held and matter was being considered whether the charge-sheet should be issued by which time the DPC had met and since a charge-sheet was finally issued, the Supreme Court held that recommendations pertaining to the Government Servant i.e. Sayeed Nazeem Zahir had to be kept in a Sealed Cover. The mechanical decision of the High Court which had held that since no charge-sheet was issued when DPC met required Sealed Cover Procedure not to be followed was overruled by the Supreme Court which specifically noted para 17 of the decision in *K.V. Janakiraman's* case (supra).

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27. Turning to the facts of *R.R. Sahay*, it may be noted that the CISF Authorities have taken a serious view of the petitioner evading responsibilities and the period in question precedes the date when a vacancy became eligible to promote him and on a reference made to the Cadre Controlling Ministry a conscious decision has been taken to withhold his promotion and initiate disciplinary proceedings against him. Thus, we hold that he would not be entitled to be promoted as claimed by him. But considering that not much preliminary investigation is required, would direct that a decision pertaining to a charge-sheet being issued to him be taken within 4 weeks of date of receipt of this order. Further action be chartered as per Law.

In particular, the learned counsel for the petitioners submitted that Clause 7 of

the OM dated 14.09.1992 would be applicable in this case and as such, the promotion ought not to have been allowed insofar as the respondent is concerned.

5. Before we go on with the discussion and note the arguments of the learned counsel for the respondent, it would be appropriate to set out some facts. On 12.08.2010, the Departmental Promotion Committee (DPC) recommended the promotion of the respondent and four others to Higher Administrative Grade from Senior Administrative Grade. On 07.10.2010, the Appointments Committee of the Cabinet (ACC) approved the same and placed the respondent at serial No. 5. It is an admitted position that on the dates on which the recommendation was made by the Departmental Promotion Committee (DPC) and the approval was granted by the Appointments Committee of the Cabinet (ACC), there existed five vacancies and the respondent had been placed at serial No. 5. Subsequently, on 30.10.2010, a news report appeared in the Sunday Times (New Delhi Edition), wherein a special report on Adarsh Housing Society etc., was carried in which there was an allegation that some of the officers of Indian Defence Estate Services (IDES), who had been cleared for promotion to the rank of Additional Secretary, were facing serious allegations of financial misdeeds. Thereafter, on 13.11.2010, Mr Rajagopal, who was shown at serial No.1, was promoted pursuant to the aforesaid approval. On 26.11.2010, the Defence Minister in his note stated that the matter be examined. Thereafter, there is a note of the Ministry dated 16.12.2010 which indicates that the Minister's directions had been carried out and the matter had been examined in consultation with the Director General of Defence Estates and the vigilance section of the Ministry and that both of them certified that there was no vigilance case pending against, inter alia, the respondent herein. The note also mentioned that DOPT's subsequent OM dated 25.10.2004 reiterated the circumstances mentioned in Clause 2 of the OM dated 14.09.1992 and indicates that it clarifies that no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issuance of charge sheet etc. A similar note was also prepared on 24.12.2010. When the matter came up before the Tribunal, it is an admitted position that there was no decision taken by the petitioners that any disciplinary proceedings were to be initiated against the respondent. It is in these circumstances that the impugned order dated 08.12.2011 and the subsequent order dated 03.01.2012 came to be passed. It is on the very next day, that is, on 04.01.2012 that, according to the petitioners, the competent authority decided to initiate disciplinary proceedings against the respondent.

6. Mr Neeraj Kishan Kaul, the learned senior counsel appearing on behalf of the respondent, submitted, first of all, that the decision in the case of R. R. Sahay (supra) would not be applicable to the facts of the present case. He submitted that insofar as R. R. Sahay (supra) was concerned, that was a case where the cloud over the person concerned in that decision had arisen prior to the creation of the vacancy, whereas in the present case, the allegations have surfaced only

after the vacancy was available and, in fact, after the DPC's recommendation and approval by the Appointments Committee of the Cabinet (ACC). He further submitted that the decision in *R. R. Sahay (supra)* also did not take note of the difference between the earlier OM's and the OM dated 14.09.1992. He submitted that the earlier OM's were specifically considered in *Union of India v. R.S. Sharma*: 2004 SCC 394. Mr Kaul further submitted that the Division Bench in *R. R. Sahay (supra)* took specific note of the decision in the case of *R. S. Sharma (supra)* with reference to the circulars 27.06.1979 and 08.01.1981, which are akin to OM dated 12.01.1988, but did not consider the difference between the OM of 12.01.1988 and the OM dated 14.09.1992. Specifically, he pointed out that the words "or a decision has been taken to initiate disciplinary proceedings" were absent in the later OM dated 14.09.1992. Furthermore, there was no clause (iv) in Clause 2 in the OM dated 14.09.1992, which was present in the earlier OM dated 12.01.1988, which covered the case of a government servant against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct was in progress either by the CBI or any other agency, departmental or otherwise. Therefore, it was Mr Kaul's contention that the decision in *R. R. Sahay (supra)* is clearly distinguishable and would not have any application to the facts of the present case.

7. Secondly, Mr Kaul also argued that the so-called decision of the competent authority, allegedly taken on 04.01.2012 to initiate disciplinary proceedings, was designed to defeat the order of the Tribunal which had categorically directed that the promotion ought to be given to the respondent and that too within a period of two weeks. He further pointed out that when the application for extension was moved before the Tribunal, there was no indication given in the application that a disciplinary proceeding was in the offing. For these reasons, the learned counsel for the respondent submitted that no interference with the impugned orders is called for and that the respondent should be given the benefit of promotion immediately.

8. After having considered the arguments advanced by the counsel for the parties, we are in agreement with the submissions made by Mr Kaul that the decision in the case of *R. R. Sahay (supra)* is distinguishable for both the reasons mentioned by him. We are also clear that Clause 7 of OM dated 14.09.1992 will not be applicable to the facts of the present case inasmuch as the circumstances specified in Clause 2, are not satisfied. The circumstances are set out in the said Clause 2 of the said OM, which reads as under:

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

We find that the respondent was neither under suspension nor had any charge

sheet been issued against him and nor was any disciplinary proceedings pending on the dates on which the recommendation was made by the Departmental Promotion Committee (DPC) or the approval was granted by the Appointments Committee of the Cabinet (ACC) or the decisions were rendered by the Tribunal on 08.12.2011 and 03.01.2012. It is also not the case that there was any prosecution pending of a criminal charge against the respondent. Therefore, none of the circumstances referred to in Clause 2 of OM dated 14.09.1992 were applicable at the time when the recommendation was made, approval was granted and the impugned orders were passed. Consequently, Clause 7 of OM dated 14.09.1992 would also not be applicable to the facts and circumstances of the present case. We also find it strange that immediately after the passing of the Tribunal's orders, the competent authority has decided to undertake disciplinary proceedings. It had more than a year to do so, inasmuch as the newspaper report appeared on 30.10.2010, which was more than a year ago. Even the Minister's note is of 26.11.2010. There was no reason as to why the petitioners ought to have waited this long. Anyhow, now that the competent authority has decided to initiate disciplinary proceedings, we feel that although there is no reason to withhold the promotion of the respondent any further, it would be appropriate if the promotion is granted with immediate effect but on an ad hoc basis. In the event he is exonerated, he will be regularized as per rules. It is ordered accordingly.

The writ petition stands disposed of.