

UNION OF INDIA AND ANR.

v.

R.S. SHARMA

APRIL 18, 2000

[K.T. THOMAS, D.P. MOHAPATRA AND S.N. VARIAVA, JJ.]

Service Law :

Promotion : Sealed Cover Procedure—Applicability of—The procedure—Employee—Investigation going on against him on serious allegations of financial misdemeanors—His case fell within the purview of para 2(iv) of the office memo—Sealed cover procedure adopted for promotion—Para 2(iv) was deleted but was clarified that cases covered under para 2(iv) would be opened—Before the case of the respondent could be opened and he could be promoted formal sanction was accorded to prosecute him by Central Bureau of Investigation—Held, in view of para 7 sealed cover should not be opened till exoneration of charges—Government of India, Department of Per & Trag. O.M. No. 22011/2/86—Estt. (A) dated 12.1.1988, OM. No. 22011/1/91 Estt. (A) dated 31.7.1991.

Respondent was a Divisional Engineer in the Telecom Department. His promotion was temporarily sealed due to the investigations going on against him on serious allegations of financial misdemeanors. The Central Bureau of Investigation completed the investigation and applied to the Government of India for sanction to prosecute the respondent. The Departmental Promotion Committee considered cases of other persons in the department for promotion but deferred the case of the respondent. Pursuant to the order of the Tribunal, DPC considered the case of the respondent. In accordance with para 2(iv) which relates to government servants against whom investigation on allegations of corruption etc., are in progress, of Government of India, Deptt. of Per. & Trag., Office Memo No. 22011/2/86-Estt. (A) dated 12.1.1988 sealed cover procedure was adopted in respondents case. By Office Memo No. 22011/1/91 Estt (A) dated 31.7.1991 para 2(iv) was deleted but it was clarified that the cases contained in sealed cover in para 2(iv) would be opened while cases falling under other clauses of para 2 would continue to be in the sealed cover. Thereafter, before the respondent could be promoted formal sanction was accorded to prosecute him. The Tribunal then directed the DPC to open the sealed cover and implement the recommendations of DPC. Hence this appeal by Union of India.

A The appellants contended that the Minister concerned accorded approval for granting sanction to prosecute the respondent much before the deletion of para 2(iv), thus the recommendations of the DPC must remain under sealed cover by virtue of clause 2(iii) of the Sealed Cover Procedure which relates to government servants against whom formal sanction is accorded to prosecute them. More so para 7 of the Sealed Cover Procedure applicable to officers coming under cloud before promotion, which states, that officers cannot be promoted until completely exonerated of the charges against them, would apply to the respondent.

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C The respondent contended that the appellants had deliberately denied promotion to the respondent immediately after the deletion of para 2(iv) of the Sealed Cover Procedure, and therefore should not be allowed to invoke para 7 of the procedure.

Allowing the appeal, this Court

D HELD : 1.1. When formal sanction is accorded to prosecute an officer against whom charges of financial misdemeanors are levelled, the sealed cover under para 7 of the Sealed Cover Procedure for promotion of government servant should not be opened for promotion until charges levelled against the officer are completely exonerated.[157-B]

E 1.2. Paragraph 7 of the Sealed Cover Procedure states that it cannot apply to a government servant who is not actually promoted by that time. In the instant case the respondent was not actually promoted when the formal sanction had been accorded to prosecute him. Therefore, para 7 of the sealed cover procedure would apply. [157-D; A]

F 1.3. In spite of deletion of clause 2(iv) of the sealed cover procedure the recommendation of the DPC must remain in the sealed cover on account of clause 2(iii) of the procedure by virtue of the operation of para 7 of the Sealed Cover Procedure. [157-F]

G *Union of India v. K.V. Jankiraman*, [1991] 4 SCC 109; *Union of India v. Dr. Sudha Salhan*, [1998] 3 SCC and *Bank of India v. Degala Suryanarayana*, [1999] 5 SCC 762, distinguished.

H *Delhi Development Authority v. H.C. Khurana*, JT (1993) 2 695 and *Union of India v. Kewal Kumar*, JT (1993) 2 705, held applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6995-6996 of 1994. A

From the Judgment and Order dated 2.2.94 of the Central Administrative Tribunal, New Delhi in O.A. No. 2051/90 and 2026 of 1992.

Mukul Rohtagi, Additional Solicitor General, Raju Ramachandran, Ms. Madhu Sikri, V.K. Rao, Ms. Geetanjali Goel, Piyush Sharma, Anil Kumar Sharma, Ravi Shankar Kumar, Navin Prakash, N.C. Sikri, A.K. Sikri and A.K. Singh for the appearing parties. B

The Judgment of the Court was delivered by

THOMAS, J. The grievance of the respondent - a Divisional Engineer in the Telecom Department - is that his promotion to the next tier in the cadre (senior time scale in the Indian Telecommunication Service Group "A") has been temporarily sealed on account of erroneously adhering to the "Sealed Cover Procedure". The Central Administrative Tribunal (for short 'the Tribunal') before which he approached for redressal of his grievance has upheld his contentions and directed the appellants to open the sealed cover and give effect to the recommendations made by the Departmental Promotion Committee (DPC). Union of India and the Chief General Manager of Mahanagar Telephone Nigam Ltd. have filed these appeals by special leave challenging the aforesaid direction issued by the Tribunal. C
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The background of passing the said order is the following:

Respondent was appointed in the Telecom Department during 1986. Hardly two years passed he got himself delved in the vortex of serious allegations of financial misdemeanors. One of the allegations is that he purchased very substandard materials for the Department at very high prices. An FIR was registered and the Central Bureau of Investigation (for short 'CBI') took up the investigation. On 10.3.1988, he was suspended but within six months the suspension order was revoked. Nonetheless the CBI continued with investigation and on completion thereof they applied to the Government of India for according sanction to prosecute the respondent. F
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In the meanwhile the DPC considered the cases of other persons in the Department for promotion, but deferred the case of the respondent on account of the pendency of investigation of the said allegations against him. The respondent then moved the Tribunal and on 30.11.1990, the Tribunal passed H

A an interim direction that the DPC should consider the case of the respondent for promotion in the event of considering the claims of any of his juniors attached to the same Department.

B Pursuant thereto the DPC considered the case of the respondent on 3.4.1991 and adopted a decision. However, the DPC did not communicate the decision to any one and instead it put the recommendations in sealed cover as enjoined by the conditions specified in the "Sealed Cover Procedure" adopted by the Government of India. (vide Government of India, Deptt. of Per. & Trg., Office Memo No. 22011/2/86-Estt.(A) dated the 12th January, 1988).

C At this stage, it is relevant to extract paragraph 2 of the said Office Memorandum. It reads thus:

D "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 zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- E (i) Government servants under suspension;
- F (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings.
- G (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."

H It is not disputed before us that on 3.4.1991 when DPC decided to put the recommendations concerning respondent in the sealed cover, investigation into the case involved in the aforesaid FIR was pending. Hence the Sealed Cover Procedure was adopted as his case fell within the purview of clause (iv)

of the aforesaid second paragraph. But on 31.7.1991 a new development took place. As per Office Memo No. 22011/1/91-Estt.(A) the restriction imposed as per clause (iv) was deleted from the second paragraph of the "Sealed Cover Procedure". However, three counts of clarifications have been made by the Government of India through the same O.M. They are extracted below:

"It is further clarified that: (i) All cases kept in sealed cover on date of this O.M. on account of conditions obtainable in para 2(iv) of the O.M. dated 12.1.1988 will be opened. If the official had been found fit and recommended by DPC, he will be notionally promoted, from the date his immediate junior had been promoted. The pay of the higher post would of course, be admissible only on assumption of actual charge in view of provisions of FR 17(1). (Since only officiating arrangements could be made against the vacancies available because of cases of senior officials being in sealed cover, there may not be any difficulty in terminating some officiating arrangements if necessary and giving promotion in such cases).

(ii) If any case is in a sealed cover on account of any of the other conditions mentioned in para 2(i) to 2(iii) of the O.M. dated 12.1.88, the case will continue to be in the sealed cover.

(iii) On opening of the sealed cover because of deletion of para 2(iv) if an officer is found to have been recommended as 'unfit by the DPC, no further action would be necessary."

Some further developments which took place in the meanwhile are also relevant. CBI completed and submitted a report to the Government on 7.5.1991 and sought for sanction to be accorded to launch prosecution proceedings against the respondent. On 9.7.1991 the Minister of State concerned gave his approval to the respondent and referred the matter for the advice of the Central Vigilance Commission (CVC). When the advice was given by the CVC the Minister for State gave further approval on 10.9.91 for adopting follow up actions on the report. However, formal order granting sanction to prosecute the respondent was made by the President only on 30.9.1991.

Normally the case of respondent should have succeeded if the situation which happened on 31.7.1991 was confined to deletion of clause (iv) from second paragraph of the "Sealed Cover Procedure". But when the same O.M.

A made specific mention of a clarification that the “case will continue to be in the sealed cover on account of existence of any one of the remaining three conditions specified in clauses (i) to (iii) of the first O.M.” the matter has to be considered from those angles also.

B Shri Mukul Rohtagi, learned Additional Solicitor General contended that as the Minister concerned accorded approval for granting sanction to prosecute the respondent as early as 9.7.1991, the recommendations of the DPC must remain under sealed cover by virtue of the conditions specified in clause (iii) of the second paragraph of the *Sealed Cover Procedure* (supra), because in such an event deletion of clause (iv) on 31.7.1991 by itself had no consequence.

C Shri Anil Kumar Sharma, learned counsel for the respondent contended that appellants are debarred from adopting such a contention as the Department stated in the affidavit filed in this Court that the Minister had given approval only on 10.9.1991 and by then clause (iv) in the aforesaid second paragraph of the “Sealed Cover Procedure” was already deleted.

D Without conceding to the above position, Shri Mukul Rohtagi, Additional Solicitor General, adopted an alternative contention based on Paragraph 7 of the Sealed Cover Procedure which reads thus:

E “Sealed cover applicable to officer coming under cloud before promotion:- A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.”

F The conditions necessary to invoke the said clause are:

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- (1) Recommendations of the DPC should have been made for promoting the Government servant.
 - (2) After such recommendations and before he is actually promoted any one of the circumstances in clause (ii) of the second paragraph (supra) should have arisen.
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Two factual aspects are admitted. One is that respondent was not actually promoted even now. The other is that formal sanction has been accorded to prosecute him in the meanwhile. If that be so, paragraph 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by the DPC in respect of the respondent have to remain in the sealed cover “until he is completely exonerated of the charges against him.”

Shri Anil Kumar Sharma, learned counsel, adopted the contention that the situation would not have arisen as envisaged in paragraph 7 of the Sealed Cover Procedure if the appellants had complied with the conditions stipulated in the Office Memorandum dated 31.7.1991 either on that day itself or at least soon thereafter by promoting the respondent. Learned counsel contended that the Department had willfully and deliberately avoided to comply with the said Office Memo dated 31.7.1979, and hence appellants should not be permitted to take advantage of their own wrong.

We are not impressed by the said arguments for two reasons. One is that, what the Department did not do is not the yardstick indicated in paragraph 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the Government servant who is not “actually promoted” by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the second paragraph, the recommendations of the DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of paragraph 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the Department for not opening the sealed cover immediately after 31.7.1991.

Learned counsel for the respondent made an endeavour to contend that in the light of the decision of this Court in *Union of India v. K.V. Janakiraman*, [1991] 4 SCC 109 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 v. Dr. Sudha Salhan*, [1998] 3 SCC; *Bank of India v. Degala Suryanarayana*, [1999] 5 SCC 762. 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

A 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.

B We may also point out, in this context, that in *Delhi Development Authority v. H.C. Khurana*, JT (1993) 2 695 and *Union of India v. Kewal Kumar*, JT (1993) 2 705 this Court found that the ratio in *Janakiraman* is applicable only to the situations similar to the cases discussed therein, and hence the Sealed Cover Procedure resorted to by the DPC in those two cases was upheld by this Court.

C In our opinion the Tribunal has erred in overlooking paragraph 7 of the "*Sealed Cover Procedure*" (supra) and hence the direction issued by it as per the impugned judgment cannot be sustained. We, therefore, allow these appeals and set aside the said direction.

D N.J.

Appeals allowed.