

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 1259/2008**

Reserved on : 18.05.2009
Date of Decision: 29.05.2009

%

M.B. GOSWAMI

.... Petitioner

Through Mr. Atul Kumar, Advocate

Versus

N.T.P.C.

.... Respondent

Through Mr. S.K. Taneja, Sr. Advocate with
Mr.Puneet Taneja and Mr.T.K. Tiwari,
Advocates.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

- | | |
|--|-----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J.

1. The petitioner in the instant writ has challenged the order dated 6.2.2006 passed by the respondent by virtue of which the promotion granted to the petitioner from E-6 to E-7 level i.e. from Senior Manager to Deputy General Manager vide order dated

25.1.2006 was withdrawn pending conclusion of disciplinary proceedings against him. The petitioner has also prayed that he be granted all consequential benefits also after quashing of the impugned order.

2. Briefly stated the facts of the case are that the petitioner was working as Senior Manager in NTPC, the respondent herein. On 10.10.2005, the respondent contemplated to initiate disciplinary proceedings against him. In December, 2005, the Corporate Promotion Committee (herein after referred as CPC) recommended the name of the petitioner for promotion to the post of Deputy General Manager. As a consequence of this recommendation, the petitioner was promoted as Deputy General Manager w.e.f. 1.10.2005 although the order was passed on 25.1.2006. On 6.2.2006 i.e. just after 13 days of passing of the promotion order, the petitioner was again reverted back to the post of Senior Manager on the ground that the respondent had intended to initiate disciplinary proceedings against the petitioner and he was promoted inadvertently. The charge sheet was admittedly given to the petitioner on 28.9.2006 after obtaining advice of the Vigilance Chief.

3. The grievance of the petitioner in the writ petition is that once the petitioner was promoted to the post of Deputy General Manager, he ought not to have been reverted without issuance of show cause notice and in any case, at the time of issuance of the promotion order, there was no memorandum of charges given to him or pending against him. The memorandum of charges was given to him only on 28.09.2006. Therefore, in terms of **Union of India Vs. K.V. Jankiraman's** case (1991) 4 SCC 109, the promotion of the petitioner to the post of Deputy General Manager could not be denied to him. It was urged that it is only in cases where the charge sheet has been filed in Court against a party or memorandum of charges has been given to the delinquent employee with a view to hold the domestic inquiry that the DPC may follow sealed cover procedure. It is also alleged that para 7.3.1 of the promotion policy was also on the same lines.

4. The petitioner is alleging that he waited for redressal of his grievance departmentally as he was assured that the needful would be done and since this was not done, he chose to file the present writ in the year 2008.

5. The respondent/NTPC has not denied the factual averments made by the petitioner with regard to the fact that at the time when the promotion order was issued, there was no formal memo of charge given to the petitioner but it is stated that as a decision was taken by the respondent in principle to initiate disciplinary proceedings against the petitioner on account of the serious allegations with regard to the award of work to M/s. Consultancy Package for Project Implementation for Expansion of Bhilai Power Project to M/s. Black & Veatch Corporation, USA and M/s. Black & Veatch International, USA at an exorbitant prices respectively in a non-competitive atmosphere thereby the petitioner had violated Rule 4(1) (i) (ii) (iii) of the NTPC Conduct Discipline and Appeal Rules. It was as a consequence of this decision, in principle, which was taken on 10.10.2005 to initiate disciplinary proceedings. It was urged that the Corporate Promotion Committee recommendation qua the petitioner ought to have been kept a sealed cover while as on account of inadvertent mistake, he was promoted. The moment this mistake was detected on 6.2.2006, appropriate order withdrawing that promotion was passed. It was also contended

that **K.V. Jankiraman's** case (supra) cannot be applied in a mechanical manner because there have been subsequent judgments wherein even it has been held that even if a formal charge sheet is not given to the petitioner, yet the recommendation of the DPC qua him have to be kept in a sealed cover. Reliance in this regard was placed on **State of Madhya Pradesh & Anr. Vs. Syed Naseem Zahir & Ors**, AIR 1993 SC 1165 and **UOI Vs. Kewal Kumar** AIR 1993 SC 1585.

6. It was also contended by the learned counsel for the respondent that although the order of withdrawal of promotion was passed on 6.2.2006 but as the same is challenged after expiry of more than two years and, therefore, the writ petition is hit by inordinate delay and latches. This fact is admitted in Para 8 of the rejoinder by the petitioner which reads as under:-

“8. That it is specifically denied that there is delay and latches on the part of the petitioner. It is respectfully submitted that there is no inordinate or deliberate delay on the part of the petitioner in filing the writ petition. It is submitted that there is no law of limitation applicable to writ proceedings. In any case the cause of action is recurring cause of action and still existing. The petition has been filed within 2 years of impugned action. It is submitted that the petitioner was assured by the senior officers that no

damage will be done to him and the matter will be over soon. Therefore the petitioner waited for the conclusion of disciplinary proceedings. But it took long for the conclusion of disciplinary proceedings and his case was not being reviewed after 6 months. At first instance the petitioner hoped that his grievance will be met but it was delayed by the respondents, thereafter the petitioner took legal advice in the case and was advised to challenge the impugned order dated 6.2.2006. It is settled law that the disciplinary proceedings against the public servant shall not be delayed.”

7. It was further urged that the disciplinary proceedings have since been completed and the petitioner has been visited with the punishment of stoppage of one increment with cumulative effect for a period of one year and during the currency of the said punishment, he could not have been promoted.

8. I have considered the rival contention of the parties and perused the record.

9. The respondent has vehemently contended that the writ petition be dismissed on the ground of inordinate delay and laches. There is no doubt that a party must come to the Court invoking the writ jurisdiction as expeditiously as possible and certainly without unreasonable loss of time. What will be the

period which will be considered to be reasonable in a given fact situation cannot be laid down in a straight jacket formula. The learned counsel has placed reliance on case titled **State of Madhya Pradesh & Anr. Vs. Bhailal Bhai** 1964 SC 1007. It has been observed in this case that ordinarily where a writ petition is filed claiming a particular relief and for a similar relief a limitation is prescribed under the Limitation Act that should be considered as the guiding factor as a reasonable time within which the writ must be filed, though in a given fact situation this period can be less also. This judgment does not help the petitioner in any manner.

10. Similarly in **M.P.Ram Mohan Raja Vs. State of T.N. & Ors.** (2007) 9 SCC 78, wherein it was observed that:

“So far as the question of delay is concerned, no hard-and-fast rule can be laid down and it will depend on the facts of each case. In this case, there was no justification for the writ petitioner to have waited for a long time. Once the order was passed on 8.10.1996, then there was no need for the writ petitioner to have waited for such a long time. The writ petitioner sat tight over the matter and did not challenge the same up to 2003. This on the face of it appears to be very serious.

A person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit.”

11. The learned counsel has also cited ***P.L. Shah Vs. UOI*** 1989(1) SCC 546 and ***Ram Chander Shankar Deodhar & Ors. Vs. State of Maharashtra & Ors.*** AIR 1974 SC 259 in support of his submission that there is no delay as there is a continuous cause of action.

12. So far as P.L. Shah’s case (supra) is concerned, that was the case involving non-payment of suspension allowance which was considered to be giving rise to a continuing cause of action but in this there is no such continuing cause of action. In the present case the promotion order passed inadvertently was withdrawn.

13. As regards the second case also, the facts of that case were different. There was allegation of violation of Fundamental Right in the reported case in which it was observed that delay and laches should not defeat the Fundamental Right. But it was particularly observed as under:-

“The rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise

of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.

It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like. AIR 1970 SC 898 and AIR 1970 SC 470, Foll.”

14. In the instant case, the petitioner is challenging the order dated 6.2.2006 by virtue of which he was reverted back from the post of Deputy General Manager to the post of Senior Manager after expiry of two years. The petitioner, if he felt aggrieved from the said order, he ought to have challenged the same immediately after 6.2.2006 or certainly within a reasonable time. The petitioner in his rejoinder states that there is no inordinate delay and laches inasmuch as the petitioner was assured by the

respondent that he would be given the requisite relief. It is stated that the petitioner was waiting for conclusion of disciplinary proceedings and he hoped that his grievance would be attended to after the completion of disciplinary proceedings thereby the petitioner is admitting that there was delay and latches, the only thing which he is doing is that is he was trying to give an explanation which is not acceptable. The conduct of the petitioner shows that he has acquiesced to the order of demotion.

15. I do not feel that the explanation which has been given by the petitioner can be said to be a cogent and a reasonable explanation for not coming to the Court at the earliest and certainly not in the year 2006 itself assailing the impugned order of demotion, the petitioner has by his conduct acquiesced to the order of demotion from the post of Deputy General Manager to the post of Senior Manager by waiting for the conclusion of his disciplinary proceedings and when the disciplinary proceedings itself has been decided against the petitioner, it is not open for him to challenge the order of demotion by urging that this gives him a recurring cause of action.

16. The second ground on which the petition itself ought to be held having become infructuous is the fact that the disciplinary proceedings against the petitioner have already been completed. It has culminated into imposition of punishment of stoppage of increment with cumulative effect. If that be so and the petitioner has already been visited with the punishment it does not lie in the mouth of the petitioner today to urge that the order dated 6.2.2006 is bad in law. This is a perfectly valid order inasmuch as the petitioner could not have been promoted during the currency of the punishment imposed on him.

17. The third submission with regard to the demotion order being on account of in violation of **K.V. Jankiraman's** case (supra). I also do not find any merit in the submissions of the learned counsel for the petitioner. No doubt, in **K.V. Jankiraman's** case (supra) the Supreme Court had observed that the Departmental Promotion Committee while considering the case of promotion of a delinquent employee, who has already been given memorandum of charges or against whom the charge sheet has been filed in a criminal court should be kept in a sealed cover and in case ultimately he is exonerated in the

departmental proceedings or he is acquitted in a criminal case the sealed cover can be opened and the recommendation of the Departmental Promotion Committee can be given effect on similar lines in the para 7.3.1 of the promotion policy of the respondent or the OM of Government of India. No doubt, in the instant case on 6th February, 2006 when the order of demotion was issued the petitioner was not given any memorandum of charges departmentally nor charge sheet was filed against him, therefore, technically speaking on the first impression the petitioner may seem to be right that according to **K.V. Jankiraman's** case (supra) he could not have been denied the promotion. But the fact of the matter is that the decision had been taken by the respondents as early as on 10th October, 2005 to proceed against the petitioner departmentally for having violated the conduct rules and the allegations which were made against the petitioner in the charge sheet though given on 28th September, 2006 were very grave and serious in nature where certain financial irregularities of causing loss to the organization and benefit to certain perspective bidders is alleged. If that be the situation, indicating that the department has already been

contemplating to proceed for the major penalty proceedings against the delinquent employee even in such cases the sealed cover procedure can be followed. This view is fortified by the subsequent judgments of the Supreme Court in case titled **State of Madhya Pradesh & Anr. Vs. Syed Naseem Zahir & Ors.** AIR 1993 SC 1165 and **Union of India Vs. Kewal Kumar** AIR 1993 Sc 1585. In **Kewal Kumar's** case (supra) it was observed that where a decision has been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the basis of FIR registered by the CBI on the government servant who happen to be Deputy Chief Engineer, the departmental promotion Committee was well within its right to follow the sealed cover procedure in order to avoid his promotion unless he is exonerated of the charges. The exact words used in the said judgment are as under:

“2. The question in the present case, is: Whether the decision in Jankiraman was correctly applied in the present situation? In Jankiraman itself, it has been pointed out that the sealed cover procedure is to be followed where a government servant is recommended for promotion by the D.P.C., but before he is actually promoted if he is either placed under suspension or

disciplinary proceedings are taken against him or a decision has been taken to initiate proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken'. **Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings**, or 'decision' to accord sanction for prosecution is taken' or 'criminal prosecution is launched or..... decision to accord sanction for section is taken.'

3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceedings or steps are taken for launching a criminal prosecution against the government servant, he cannot been given the promotion, unless exonerated, even if the government servant is recommended for promotion by the D.P.C., being found suitable otherwise."

18. Similarly in **Syed Naseem Zahir** case (supra) wherein it was observed by the Supreme Court which is as under:

"6. It is no doubt correct that in view of Jankiraman's case (AIR 1991 SC 2010) the DPC was not justified in keeping the recommendation pertaining to Syed in a "sealed cover", but it is difficult to ignore glaring facts in a given case and act mechanically. Even in Jankiraman's case (AIR 1991 SC 2010) while dealing with Civil Appeals Nos. 51-55 of 1990 this Court observed as under (Para 17th AIR):-

“In view of the aforesaid peculiar facts of the present case, the DPC which met in July, 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary.”

19. Keeping in view the aforesaid amplification of the law laid down by the Supreme Court in **K.V. Jankiraman's** case (supra) by two subsequent judgments of the Supreme Court in **Kewal Kumar's** case and **Syed Naseen Zahir's** case (supra) one can safely say that since the respondents had decided to initiate departmental proceeding against the petitioner in the month of October 2005 itself while as the Corporate Promotion Committee met later and issued the promotion order on 25th January, 2006 but with retrospective effect from 1st October, 2005 the said procedure was not correct and the respondents were well within their right to contend it was on account of inadvertent mistake that the promotion order of the petitioner was issued which was withdrawn on 6th February, 2006, accordingly, there was no

illegality or infirmity in withdrawing the order of promotion dated 25th January, 2006 as the same was done which is after 13 days of the passing of the promotion orders once this mistake was detected. In any case, the departmental proceedings have culminated in imposition of punishment on him and, therefore, during the currency of the punishment he could not be promoted.

20. For the foregoing reasons, I am of the considered view that the writ petition is not only barred by inordinate delay and laches but even on merits as the respondent had taken a decision to initiate the departmental proceedings against the petitioner before the meeting of the DPC. Therefore, the proceeding of promotion of the petitioner ought to have been kept in a sealed cover, and accordingly, there is no merit in the petition and the same is dismissed.

V.K.SHALI, J.

MAY 29, 2009
gm/KP