

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.11.2012

W.P.(C) 4684/2011

UNION OF INDIA

..... Petitioner

versus

B.S.BOLA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr D.S.Mehandru.

For the Respondent : Mr A.K.Behera.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 22.12.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1595/2010.

2. The question which came up for consideration before the Tribunal was— whether the respondent's case for grant of Junior Administrative Grade-I, which was available to the officers of DANIPS (Delhi, Andaman & Nicobar Islands Police Service) w.e.f. 01.01.1996, could be placed in a

sealed cover by the Departmental Promotion Committee (DPC) convened on 15.10.2009, when the officers junior to him were granted the same grade from that date (01.01.1996), in spite of the fact that there was no disciplinary proceeding or criminal case pending against him as on 01.01.1996 and the sanction for prosecution under the Prevention of Corruption Act, 1988 was given in July, 2005 and the disciplinary proceeding had been instituted on 12.06.2006? The Tribunal has answered this question in favour of the respondent and has directed that the sealed cover be opened and to act on the recommendations of the DPC convened on 15.10.2009. It was also directed that if the DPC had found the respondent to be fit for promotion, he would be promoted to the Junior Administrative Grade-I w.e.f. 01.01.1996, that is, from the date the persons junior to him were promoted. The Tribunal has also directed that the respondent would then be eligible for all consequential benefits, which would accrue to him under the rules as a result of such promotion.

3. The learned counsel for the petitioner submitted before us that the conclusions arrived at by the Tribunal are contrary to the DoPT's O.M. dated 14.09.1992 and in particular to paragraph 2(ii) and paragraph 7 thereof. On the other hand the learned counsel for the respondent supported the decision

of the Tribunal and also placed reliance on the Supreme Court's decisions in the case of **Union of India vs. K.V.Jankiraman**, JT 1991 (3) SC 527 and **Delhi Jal Board vs. Mahinder Singh**, JT 2000 (10) SC 158. The learned counsel for the respondent submitted that the O.M. dated 14.09.1992 would apply only to cases where the DPC convened and the recommendations were made for promotions which were to take effect from the dates subsequent to the recommendations of the DPC. The said O.M., according to him, would not apply to a case where a DPC was convened for considering promotion with effect from a retrospective date. He, therefore, submitted that the sanction for the criminal case given in 2005 and the initiation of the departmental proceedings on 12.06.2006 could not be looked into by the DPC while making its recommendations for promotions w.e.f. 01.01.1996, as they were subsequent events.

4. Before we examine these rival contentions it would be necessary to set out some facts.

5. The respondent was initially appointed as Assistant Commissioner of Police in DANIPS cadre in 1978 and was promoted to the Indian Police Service (IPS) in the year 2000. In July 2001 a case was registered against the

respondent under the Prevention of Corruption Act, 1988 by the CBI by virtue of RC No.44/2001. In 2002 the respondent was granted Junior Administrative Grade in the scale of Rs.12,000-16,500/- w.e.f. 01.01.2002 by an order dated 28.05.2002. Subsequently, w.e.f. 01.01.2006, the respondent was also granted selection grade along with his batch mates in IPS.

6. In the meanwhile a new grade had been introduced in DANIPS called Junior Administrative Grade-I in the year 2000 with retrospective effect from 01.01.1996. Officers of DANIPS who had completed 14 years of service as on 01.01.1996 were eligible for grant of the said grade. The DPC, however, was delayed and was finally held on 15.10.2009. On the basis of the recommendations of the DPC held on 15.10.2009 the petitioner issued the order dated 23.11.2009 granting Junior Administrative Grade-I to eligible officers of DANIPS w.e.f. 01.01.1996. At Serial No.2 of that list was one Mr D.K.Bhatt, who was the next immediate junior to the respondent. However, the name of the respondent did not find place in the said order dated 23.11.2009 inasmuch as the sealed cover procedure was adopted insofar as the respondent was concerned because of the sanction granted in 2005 and the initiation of departmental proceedings on 12.06.2006.

7. Since the respondent had been overlooked, he made a representation to the competent authority on 11.12.2009 which was rejected by the order dated 22.02.2010. The reasons for rejection as communicated to the respondent were as under:-

- “i. By order dated 29th July, 2005, the Central Government had accorded sanction for prosecution under Section 19(1)(a) of the Prevention of Corruption Act, 1988 against you; and
- ii. By order dated 12th June, 2006, the Central Government had issued a chargesheet to you under Rule 8 of All India Services (Discipline & Appeal) Rules, 1969.”

8. The contentions of the parties are to be seen in this factual backdrop. First of all, let us examine the contents of the O.M. dated 14.09.1992. The subject of the said O.M. is:-*“Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation-Procedure and guidelines to be followed.”* The relevant paragraphs of the said O.M. being paragraphs 2 and 7 read as under:-

“2. 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 Department Promotion Committee:-

- 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.”

“7. 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 it provision contained in this OM will be applicable in his case also.”

9. Since the respondent as also the Tribunal has relied upon the decisions of the Supreme Court in *K.V.Jankiraman* (*supra*) and *Delhi Jal Board* (*supra*), it would be appropriate if we set out the relevant observations in those decisions. The Supreme Court in *K.V.Jankiraman* (*supra*) observed as under:-

“8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against

him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

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16. 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 should 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 employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1

and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) * * *

(3) * * *

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;”

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.”

(underlining added)

10. In *Delhi Jal Board (supra)*, the Supreme Court, *inter alia*, observed as under:-

“The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.....”

11. It was contended by the learned counsel for the respondent that in ***K.V.Jankiraman*** (*supra*) it has been pointed out in paragraph 8 and 17 thereof (which have been extracted above) that the disciplinary/criminal proceedings must be pending at the “relevant time” for the sealed cover procedure to be adopted. According to the learned counsel for the respondent the relevant time had reference not to the date on which the DPC was convened but to the period of time prior to the date from which promotion was to be effected. This is also the sense in which the Tribunal has understood the said decision in ***K.V.Jankiraman*** (*supra*). A similar analogy has been sought to be drawn from the observations of the decision of the Supreme Court in ***Delhi Jal Board*** (*supra*) which indicates that a subsequent departmental proceedings would not come in the way of the recommendations made in a prior DPC. The analogy sought to be drawn by the learned counsel for the respondent is that only events prior to the effective date of promotion can be looked into by the DPC whenever it is convened for the purposes of considering persons for promotions.

12. The learned counsel for the petitioner, as pointed out above, has placed reliance on O.M. dated 14.09.1992. He submitted that paragraph 7 of the said O.M., which we have extracted above, makes it clear that at any

time before the person is actually promoted if a situation as mentioned in paragraph 2 of the said O.M. arises, then the sealed cover procedure has to be adopted by the DPC. He submitted that when the DPC convened on 15.10.2009, the DPC was made aware of the pendency of the sanction granted in the criminal case in 2005 as also of the initiation of the departmental proceedings on 12.06.2006 and as such the DPC had no alternative but to adopt the sealed cover procedure, which it did. Therefore, the fact that the respondent's name did not figure in the order dated 23.11.2009 cannot be questioned. If and when the respondent is exonerated in both the cases, the sealed cover would be opened and he would be given benefits thereof but, till then, no interference with the order dated 23.11.2009 is called for. He submitted that the Tribunal has erred in law in holding that the sealed cover procedure was not be followed in the case of the respondent.

13. After considering the submissions and on going through the decisions of the Supreme Court as also the relevant paragraphs of the O.M. dated 14.09.1992 we are of the view that when the DPC convened on 15.10.2009 it could have taken into account the criminal cases or departmental proceedings pending prior to 01.01.1996 which was the date on which promotions to the Junior Administrative Grade-I were to take effect. In fact

that is the date on which persons junior to respondent were promoted. While considering paragraph 7 of O.M. dated 14.09.1992 it may be noticed that it relates to a situation where a government servant is recommended by the DPC but subsequent to the recommendations and prior to the actual promotion an event or situation or circumstance mentioned in paragraph 2 of the said O.M. takes place. The circumstances mentioned in paragraph 2, as already pointed out above, are where the government servant is placed under suspension, or the government servant has been served with a charge sheet and disciplinary proceedings are pending or where the government servant is facing a criminal charge and the same is pending. Therefore, strictly speaking, it would apply to situation where, after the DPC was convened and the recommendations have been made, any of the above three circumstances arise. In the present case this is not so. The sanction for the criminal case had already been granted in 2005 and the departmental proceedings had already been initiated on 12.06.2006. However, it must be noted that as the promotion was to take effect from 01.01.1996 and paragraph 7 would not strictly apply because the said paragraph applies to a situation where the promotion would take effect prospectively, that is, after the convening of the DPC. Here the promotion was to take effect retrospectively from 01.01.1996.

Since, on 01.01.1996 there was no pending criminal case or departmental proceedings against the respondent, the sealed cover procedure could not have been adopted by the DPC.

14. As a result, we are in agreement with the conclusion arrived at by the Tribunal. The writ petition is dismissed with no order as to costs.

NOVEMBER 07, 2012
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BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J