

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.07.2012

Judgment pronounced on: 03.09.2012

W.P.(C) No.4322/2012

GOVERNMENT OF NCT OF DELHI & ORS.

..... Petitioners

versus

ANIL KAUSHAL

..... Respondent

Advocates who appears in this case:

For the Petitioners : Ms Avnish Ahlawat.

For the Respondent : Mr Ajesh Luthra.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition challenges the order dated 23.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') whereby the Tribunal while allowing O.A. No.4529/2011 filed by the respondent herein issued directions to the petitioner (Government of NCT of Delhi) to hold a review Departmental Promotion Committee (DPC) in order to consider the respondent for

promotion to the ex-cadre post of DANICS on *ad hoc* and emergent basis from the date his juniors were so promoted.

2. The facts as are necessary for the adjudication of the present petition are adumbrated below:-

- (i) The respondent, Anil Kaushal, is a Grade-I (DASS) Officer, which is a feeder cadre for promotion to the ex-cadre post of DANICS. The promotion to the post of DANICS is made under the aegis of Ministry of Home Affairs, Government of India as per the seniority in the feeder cadre.
- (ii) On 06.04.2011, the Services Department of the petitioner initiated the process for making appointments against the ex-cadre posts of DANICS on *ad hoc* and emergent basis, and for this purpose the heads of various Government departments were asked to provide ACRs of eligible Grade-I (DASS) Officers.
- (iii) The Services Department of the petitioner once again circulated a list vide its communication dated 25.07.2011, through which the relevant ACRs of eligible Grade-I (DASS) Officers were requisitioned at the earliest.

- (iv) It is an admitted position that the said list dated 25.07.2011 contained the name of the respondent at Serial No.79, thereby indicating that the respondent fell in the zone of consideration.
- (v) However, on 19.10.2011, the petitioner vide order bearing No.467 made 106 appointments to the ex-cadre posts of DANICS on *ad hoc* and emergent basis. In the said order the name of the respondent was left out, although his immediate juniors were promoted.

3. The respondent on not being promoted approached the Tribunal assailing the said order dated 19.10.2011.

4. The respondent in his said O.A. before the Tribunal averred that promotions made by virtue of the order dated 19.10.2011 were based on the recommendations of the DPC which had been convened on or before 19.10.2011 and that till that date no disciplinary or criminal proceedings were commenced against him and, therefore, the petitioner's action of denying the respondent his promotion was bad in law and liable to be set aside.

5. In reply, the petitioner submitted before the Tribunal that the reason behind denying promotion to the respondent was essentially the letter of the Vigilance Department dated 15.09.2011. It was stated that the contents of the said letter dated 15.09.2011 indicate that the Revenue Department had recommended the respondent for major penalty proceedings, although no charge-sheet had been issued against the respondent till the time the said DPC was held.

6. It is an admitted position that the DPC meeting based on which the promotions were made was convened on or before 19.10.2011 and that the petitioner had instituted disciplinary proceedings against the respondent only on 27.10.2011, i.e., when charge-sheet was issued to him. Thus, it is axiomatic that the charge-sheet was issued much later in point of time in relation to the holding of the DPC, which made the promotions.

7. The learned counsel for the petitioner urged before us that the stand of the Government in not promoting the respondent is unassailable, inasmuch as, prior to the recommendation of the DPC dated 19.10.2011, the Revenue Department had made up its mind to start major penalty proceedings against the respondent, as is evident from the letter dated 25.09.2011 issued by the Vigilance Department.

8. The petitioner justified its action by relying upon the following decisions:-

- (i) **Delhi Development Authority vs. H.C.Khurana**, (1993) 3 SCC 196.
- (ii) **Union of India vs. Kewal Kumar**, (1993) 3 SCC 204.
- (iii) **Food Corporation of India and Another vs. Abhay Ram**, (2002) 10 SCC 455.

9. Predicated on the above decisions it was argued that once the department had made up its mind to institute disciplinary proceedings against a delinquent officer, the latter could not be considered by the DPC for promotion, even if the charge-sheet came to be issued subsequent to the meeting of the DPC. Therefore, the denial by the petitioner in considering the respondent for promotion was valid, legal and justified in view of the communication dated 15.09.2011.

10. Per contra, the learned counsel for the respondent invited our attention to DoPT's OM No.22011/2/86-Est.(A) dated 12.01.1988 and OM No.22011/4/91-Estt.(A) dated 14.09.1992. The learned counsel also relied upon the judgement in **Union of India and Ors. vs. K.V.Jankiraman and Ors.**, (1991) 4 SCC 109.

11. It would be necessary to extract the relevant portion of the DoPT's OM's dated 12.01.1988 and 14.09.1992 in order to appreciate the submissions made on behalf of the respondent. The relevant paragraph 2 of the OM dated 12.01.1988 and the substituted Clause (ii) of paragraph 2 in OM dated 14.09.1992 are as under:-

“2. Cases of Government servant to whom Sealed Cover Procedure will be 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 Department Promotion Committee:

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom ***disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;***
- iii) Government servant in respect of whom prosecution for a criminal charges 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 other agency, departmental or otherwise.”

The substituted Clause (ii) in paragraph 2 of OM dated 14.09.1992 reads as under:-

- “(ii) Government servants in respect of whom ***a charge-sheet has been issued and the disciplinary proceedings are pending;*** and”

12. From a plain reading of the above, it is evident that the words “**a decision has been taken to initiate disciplinary proceedings**” in OM dated 12.01.1988 has been substituted with the words “**a charge-sheet has been issued**” in OM dated 14.09.1992. The above substitution clearly indicates that pursuant to the coming into force of the OM dated 14.09.1992 the sealed cover procedure will be applicable only in the case of those delinquent officers against whom a charge-sheet has been issued. After the coming into force of the said OM dated 14.09.1992, the fact that the concerned authority had resolved to initiate enquiry against a Government officer would be of no consequence.

13. In *K.V.Jankiraman’s case (supra)*, the Supreme Court dealing with the question of when a disciplinary proceeding is initiated observed as follows:-

“16. 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.....”

14. In subsequent decisions, namely, **Union of India vs. Sangram Keshari Nayak**, (2007) 6 SCC 704 and **UCO Bank and Anr. vs. Rajinder Lal Capoor**, (2007) 6 SCC 694, the Supreme Court has held that “*the departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. A department proceeding is ordinarily said to be initiated only when a charge-sheet is issued.*”

15. Now coming to the decisions relied upon by counsel for the petitioner, it is observed that, the decision in ***H.C.Khurana’s case (supra)*** only considered the OM dated 12.01.1988. In that decision the question before the Supreme Court was with regard to the meaning of the word ‘issued’. The Supreme Court had observed that the word ‘issued’ indicates dispatch of the

charge-sheet to the Government servant irrespective of its actual service on him. The said decision does not come to the aid of the petitioner.

16. Similarly, in ***Kewal Kumar's case (supra)***, the Supreme Court considered the OM dated 12.01.1988, and held that when the competent authority takes the decision to initiate the disciplinary proceedings or steps are taken for launching the criminal proceedings against the Government servant, the latter cannot be given the promotion, unless exonerated. This decision too deals with the earlier OM of 1988 and, therefore, does not apply to the facts of the present case.

17. ***Abhay Ram's case (supra)***, on which reliance has been placed by the petitioner, again does not further the case of the petitioner. In that case although the Supreme Court considered the OM dated 14.09.1992, the charge-sheet had been issued to the delinquent Government officer on the same day as the convening of the DPC, but before the DPC took place. In that case it is relevant to note that the Government servant had been placed under suspension immediately after the direction of the competent authority to initiate disciplinary proceedings and the said action occurred prior to the consideration of the delinquent Government officer by the DPC.

18. In the present case it is observed that neither charge-sheet had been issued to the respondent nor was he placed under suspension prior to the meeting of the DPC on or before 19.10.2011. The charge-sheet was only issued to the respondent later on 27.10.2011. Therefore, it is obvious that the respondent was not under the cloud of any order of suspension or orders initiating disciplinary proceedings or criminal proceedings on the date on which the DPC held its meeting and submitted its recommendations, i.e., 19.10.2011.

19. In view of the above the present petition is devoid of merit and is hereby dismissed. There shall be no order as to costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 03, 2012

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