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

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Date of hearing and Order: 07.05.2015

+ W.P.(C) 9068/2014

ADESH KUMAR

..... Petitioner

Through Mr. Pramod Singh, Adv.

versus

THE UNION OF INDIA & ORS

..... Respondents

Through: Mr. Dev. P. Bhardwaj, CGSC for
Union of India

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

KAILASH GAMBHIR, J (ORAL)

1. By way of the present petition, the petitioner seeks to question the tenability of the order dated 04.09.2014 passed by the learned Central Administrative Tribunal, Principal Bench, whereby the O.A. filed by the petitioner was dismissed.

2. The main grievance raised by the petitioner before the Tribunal and before this Court is that the petitioner was due for promotion to the post of Chief Engineer and his case was duly considered by the DPC held on 31.08.2012 but the findings of the DPC were kept in sealed cover on account of the pendency of a criminal case against the petitioner and in his place an officer junior to him was given promotion to the said post. The main contention raised by the petitioner herein is that in his case sealed cover procedure could not have been resorted to as in the criminal case the charges were not yet framed against him and by the mere fact that a criminal case was registered against the petitioner, which case had not yet reached the stage of framing of charges against the petitioner, the petitioner could not have been denied his legitimate right to get promotion to the post of Chief Engineer by adopting the sealed cover procedure.

3. Counsel further submits that the mere fact that an FIR was registered against the petitioner or he was arrested in the said FIR would not be sufficient for taking recourse to the sealed cover procedure and it is only when charges are framed against an employee by the Court, the sealed cover procedure be resorted to. Counsel has also placed reliance on the two office memorandums dated 28th April, 2014 and 14th September, 1992 issued by

the DOPT in support of his arguments.

4. Per contra, Mr. Dev. P. Bhardwaj, CGSC for the Union of India vehemently refutes the said submissions of the counsel for the petitioner. The counsel submits that an FIR was registered against the petitioner and the petitioner himself has admitted the fact that he was arrested in the said case and therefore the petitioner was facing criminal prosecution and thus in his case the sealed cover procedure was rightly adopted on the recommendations of the DPC held on 31.08.2012. Counsel also supports the reasoning given by the learned Tribunal in dismissing the O.A. filed by the petitioner and there is no illegality or perversity in the well reasoned order passed by the learned Tribunal.

5. We have heard learned counsel for the parties and given our thoughtful consideration to the pleas raised by them.

6. It is a settled legal position that an employee has no vested right of promotion. He has only a right of consideration. It is not the case of the petitioner that he was not considered for promotion to the post of Chief Engineer in the DPC which was held on 31st August, 2012. The grievance raised by the petitioner is that as on that date the criminal court had not yet framed charges against him and before the charges are framed by the

criminal court, the DPC could not have resorted to the sealed cover procedure. The judgment of the Supreme Court in the case of ***Union of India & Ors. V. K.V. Jankiraman & Ors., (1991) 4 SCC 109*** has given an answer to such kind of situations and the view taken was that it is only when a charge memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee then it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. It further held that pendency of preliminary investigation prior to that stage will not sufficient to enable the authorities to adopt the sealed cover procedure. The Apex Court thus clearly held that sealed cover procedure can be resorted to after the charge memo/chargesheet is issued. The relevant paras of the said judgment are reproduced as under:-

“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: (ATC p.196, para 39)

“(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) x x x x

(3) x x x x

(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.”

7. We may also refer to another decision of the Supreme Court in the case of ***Union of India v. Kewal Kumar, (1993) 3 SCC 204*** where also the DPC had followed the sealed cover procedure in the case of an employee in view of the fact that the decision to initiate disciplinary proceedings against him for imposition of major penalty had been taken by the competent authority based on an FIR registered against him by the CBI. The issue raised before the Court was that the decision to initiate disciplinary proceedings were taken on 20.11.1989 but chargesheet against the employee was issued much later i.e. on 01.08.1990 and as on the date of the meeting of DPC no chargesheet was issued against the employee and thus the sealed cover procedure could not have been resorted to. Answering this question, the Supreme Court held that in a case like that where the First Information Report was registered by the CBI and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted.

The Court further held that the formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the CBI which records the allegations against the respondent and provides the basis for disciplinary proceedings and even if the chargesheet was issued to the respondent subsequent to the meeting of the DPC, this fact alone can not benefit the respondent. Relevant paras of the said judgment are referred to 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 prosecution is taken’. The object of following the sealed cover procedure has been indicated recently in the decision in Civil Appeal No. 1240 of 1993 - Delhi Development Authority v. H.C. Khurana pronounced on April 7, 1993, and need not be reiterated.

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 be given the promotion, unless exonerated, even if the government servant is recommended for promotion by the D.P.C., being found suitable otherwise. In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the D.P.C., the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the F.I.R. itself and, therefore, even if the chargesheet was issued by its despatch to the respondent subsequent to the meeting of the D.P.C., this fact alone cannot benefit the respondent.”

8. The judgment in the case of ***Union of India v. Kewal Kumar*** is an exact answer to the grievance raised by the petitioner as in the facts of the present case also when an FIR was registered against the petitioner by the CBI under Sections 7, 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Section 120-B of Indian Penal Code, the petitioner was arrested in the said criminal case. The framing of the charges is not pre-requisite for initiating disciplinary proceedings against such an employee as

the allegations levelled in the FIR which even had lead to the arrest of an employee are sufficient enough for initiation of disciplinary proceedings and also for adopting the sealed cover procedure in a case where promotion of such an officer is due. The two office memorandums on which reliance has been placed by the petitioner also nowhere contemplates any such situation that it is only where charges are framed the sealed cover procedure can be adopted, as these office memorandums also refer to the pendency of disciplinary case/criminal prosecution against the government servant and in the present case the petitioner was facing criminal prosecution as on the date of meeting of DPC.

9. There is no merit in the present case. The same is accordingly dismissed.

**KAILASH GAMBHIR
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

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