

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

+ **W.P.(C) No.6391/2016**

% **22nd March, 2017**

HIMANSHU GUPTA Petitioner
Through: Ms. Chandrani Prasad and Ms.
Srishti, Advocates.

versus

ENGINEERS INDIA LIMITED Respondent
Through: Mr. Gulshan Chawla and Mr.
Yuvan Gandhi, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of declaring of the result of the petitioner as regards the DPC held for promotion to the post of Deputy Manager, Level-14. Though the date of DPC is not mentioned in the writ petition, it is not disputed however that the results of the DPC as regards promotion to the post of Deputy Manager resulted in the results being declared on 30.6.2014 wherein the name of the petitioner was not found as having been granted promotion.

2. The only defence urged by the respondent/employer is that against the petitioner, his wife had filed a criminal case under Sections 488A/323/504/506/327/420/467/468/471 of the Indian Penal Code, 1860, with Sections 3 and 4 of the Dowry Prohibition Act, 1961, and therefore, the respondent/employer in accordance with the directions contained in the government Circular dated 14.9.1992 has not granted promotion to the petitioner.

3. In my opinion, the contention of the respondent/employer that petitioner has not been granted promotion and his results have been kept in a sealed cover on account of the OM dated 14.9.1992 is a misconceived stand because the OM dated 14.9.1992 only talks of a criminal case which would be as a result and related to the service of the employee with an employer. The OM dated 14.9.1992 does not deal with stoppage of a promotion of an employee when the employee is involved in a criminal case which has nothing to do with performance of service with the employer.

4. The relevant portions of the OM dated 14.9.1992 are paras 1 to 3.1, 4 and 5.4 and these paras read as under:-

“1. The undersigned is directed to refer to Department of Personnel & Training O.M. No. 22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been

reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. Vs. K.V.Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.

2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental 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 criminal charge is pending.

2.1 The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of in respect of Shri.....(name of the Government servant). Not to be opened till the terminator of the disciplinary case/criminal prosecution against Shri....'. The proceeding of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Department Promotion Committee convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in a sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears to pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reason for doing so. It is not possible to anticipate and enunciate exhaustively all the circumstances under which such

denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified.

3.1. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

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4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalize expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite the completion.

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5.4. If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.”

5. It is seen that these aforesaid paras of OM dated 14.9.1992 are with reference to the judgment of the Supreme Court in the case of *Union of India and Others vs. K.V. Jankiraman and Others, (1991) 4SCC 109*. The judgment of the Supreme Court in *Jankiraman's* case (*supra*) dealt with the issue of criminal proceedings against an employee pertaining to service rendered with the employer inasmuch

as, the expression ‘criminal proceedings’ is used simultaneously with the departmental proceedings against the employee. The judgment of the Supreme Court in ***Jankiraman’s*** case (*supra*) does not deal with an issue or that it laid down a ratio that even if a criminal case is pending against an employee which does not pertain to services rendered by the employee with the employer, even then the employee has to be denied promotion for the time being till the decision of the criminal case, and by putting the results of the DPC for promotion in a sealed cover.

6. That ***Jankiraman’s*** case (*supra*) deals only a criminal case pertaining to departmental enquiry i.e a criminal case with respect to services rendered by an employee with the employer becomes clear from the subsequent judgment of the Supreme Court in the case of ***Union of India and Others vs. Dr. Sudha Salhan (Smt)*** (1998) 3 SCC 394 wherein the Supreme Court with reference to ***Jankiraman’s*** case (*supra*) has clarified that the sealed cover procedure is to be adopted only if departmental proceedings were initiated or were pending or on conclusion of the departmental proceedings final orders had not been passed by the appropriate authorities. Para 6 of the judgment in ***Dr. Sudha Salhan (Smt)*** (*supra*) reads as under:-

“6. The question, however, stands concluded by a Three Judge decision of this Court in *Union of India v. K.V. Jankiraman*, in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the

higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or own its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened and the recommendation would be given effect to."

7. In view of the above discussion, it is held that respondent/employer cannot rely upon the OM dated 14.9.1992 to deny promotion to the petitioner by not declaring the result by resorting to the sealed cover procedure pursuant to the decision of the DPC, and for which results were declared on 30.6.2014, inasmuch as, the OM dated 14.9.1992 would only deal with a criminal case which arises on account of misdemeanor or misconduct or violation of the service rules by an employee while performing his services with the employer.

8. In view of the aforesaid discussion, this writ petition is allowed and the respondent's procedure of putting the promotion of the petitioner in a sealed cover of the DPC with respect to promotion of the petitioner to the post of Deputy Manager is quashed. The result of the petitioner's promotion in terms of the DPC for which results were to be declared on 30.6.2014 will now be declared within a period of two weeks and such results will be taken as having been declared as

regards the petitioner on 30.6.2014. Petitioner will be entitled to appropriate consequential reliefs.

9. The writ petition is allowed and disposed of, leaving the parties to bear their own costs.

MARCH 22, 2017/ib

VALMIKI J. MEHTA, J

