

\$~7

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

Date of decision: 26th March, 2019

+ W.P.(C) 6303/2004

K.K.KHARBANDA

..... Petitioner

Through: Ms. Meenu Mainee, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby quashing the order of the respondents in terms of which the case of the petitioner has been placed in a sealed cover and further giving directions to the respondents to open the sealed cover and release promotion of the petitioner, if selected from the date from which his juniors had been promoted with all consequential benefits.

2. The brief facts of this case are that the petitioner was appointed as an L.D.C. under the respondents on 14.12.1967 and thereafter, he got regular promotions and finally he was promoted as a Section Officer on 12.12.1979. The petitioner was eligible for the next post of Assistant Director

(Non-Technical) in grade ₹. 8,000-13,500/- which post is filled up in order of merit-cum-seniority. The D.P.C. for promotion to the post of Assistant Director was conducted in December 2000 and eligible Section Officers were considered and respondents issued order dated 04.01.2001 whereby Shri. J. Chanda, Smt. Neena Sadhana and T. B. Choudhary were promoted to the post of Assistant Directors in the pay scale mentioned above. Out of these three, Shri T.B. Choudhary was junior to the petitioner as per seniority list dated 01.09.2000, wherein T.B. Choudhary was at SL. No. 5, while the petitioner was at SL. No. 4.

3. Learned counsel appearing on behalf of the petitioner submits that the respondents vide letter dated 28.03.2001 informed the petitioner that sealed cover procedure has been adopted due to vigilance case against him. Accordingly, the petitioner made a representation stating that according to his information, there is no vigilance case against him nor any charge sheet has been served upon him and therefore, his name should not have been ignored by the D.P.C., as per the law.

4. Learned counsel appearing on behalf of the petitioner further submits that the charge-sheet issued to the petitioner on 18/20.07.2001, whereas promotion were effected on 04.01.2001, thus, on the said date, there was no

charge-sheet against the petitioner. Learned counsel submits that if there is no charge-sheet on the date of convening of D.P.C. for promotion, the promotion cannot be ignored to that candidate but the same is happened in the case of the petitioner.

5. To strengthen her arguments, counsel for the petitioner has relied upon the case of *Union of India vs. K. B. Jankiraman 1991-4 SCC 109* whereby full Bench of the Supreme Court 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 in that case it can be said that the department proceedings/ criminal prosecution is initiated against the employee.

6. Learned counsel submits that since the DPC was convened on 04.01.2001 and charge-sheet was issued on 18/20.07.2001, therefore there was no question to put the case of the petitioner in a sealed cover, hence the impugned order deserves to be set aside.

7. On the other hand, learned counsel appearing on behalf of the respondent submits that it is not in dispute that Mr. T. B. Choudhary was junior to the petitioner, but CBI had registered a case RC-17 (A)/94-DLI dated 09.03.1994 under Sections 120-B r/w 420, 467, 468, 471 IPC and Sec.

13 (2) r/w 13(1)(d) of PC Act, 1988 against the petitioner, amongst others. Moreover, the Central Vigilance Commission also advised initiation of major penalty proceedings against the petitioner, amongst others. Therefore, after having considered the CBI case and the CVC's advice, a decision was taken by the competent authority on 15.04.1999 to initiate disciplinary proceedings against the petitioner. Thus, there is no merit in the instant petition.

8. I have heard the counsel for the parties.

9. It is not in dispute that the one junior named above has been promoted vide promotion order dated 04.01.2001 and the petitioner has been placed in sealed cover. It is also not in dispute that the charge sheet by the department issued on 18/20.07.2001 and the promotion was affected on 04.01.2001, thus on the said date, the charge sheet was not in the existence. But the fact remains that on 09.03.1994, CBI had registered the case against the petitioner for the offences punishable under Section 120-B r/w 420, 467, 468, 471 IPC and Sec. 13 (2) r/w 13(1)(d) of PC Act, 1988 against the petitioner, amongst others.

10. In such a situation, even if the department has not issued the charge sheet, the criminal case registered by the CBI will certainly come in the way

of the petitioner for promotion.

11. The case of **Jankiraman** was considered in **State of Madhya Pradesh and Another vs. Syed Naseem Zahir and Others 1993 Supp (2) SCC 225**, whereby it is observed that it is no doubt correct that in view of **Jankiraman case**, 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 case** while dealing with Civil Appeal Nos. 51-55 of 1990, it is observed as under:

“In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in restoring 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.”

12. Admittedly, against the petitioner, C.B.I. case was registered on 09.03.1994 on serious charges and on advice of Vigilance Department, the Competent Authority had initiated disciplinary proceeding on 15.04.1999, much before the DPC was conducted in December, 2000. In such a situation, the respondents have rightly adopted the ‘sealed cover’ procedure.

13. Moreover, pursuant to the charge-sheet issued, the petitioner has been

punished and punishment has attained the finality.

14. In view of above, I find no merit in the petition and the same is, accordingly, dismissed with no order as to costs.

SURESH KUMAR KAIT, J

MARCH 26, 2019
rd

