

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

% **Date of decision: 6th April, 2021**

+ **W.P.(C) 4152/2021**

UNION OF INDIA

..... Petitioner

Through: Mr. Sanjay Jain, ASG with Mr.
Ruchir Mishra & Mr. Mukesh Kumar
Tiwari, Advs.

Versus

RAJIV RANJAN

..... Respondent

Through: Mr. Shankar Raju, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 27th November, 2020 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, allowing OA No.708/2020 preferred by the respondent and directing the petitioner to constitute a review Departmental Promotion Committee (DPC) for consideration of the respondent for promotion to the level of Inspector General (IG), with effect from 1st January, 2020, and to take further steps in accordance with law, preferably before the regular DPC for next batch of officers of IG takes place.

2. This petition came up first before us, yesterday, when the counsel for the respondent appeared on caveat. Though we heard the counsels finally on the petition, yesterday itself but adjourned the matter to today to give

opportunity to counsels to answer a legal query made pursuant to the hearing.

3. The Additional Solicitor General (ASG), appearing for the petitioner, on enquiry stated that since the impugned order, the review DPC had not taken place but had no instructions whether the regular DPC for next batch of officers of IG had taken place. However the counsel for the respondent stated that regular DPC for next batch of officers for the post of IG had taken place on 28th December, 2020. On yet further enquiry, it was informed that the superannuation of the respondent is due in the year 2022.

4. The respondent, an Indian Police Service (IPS) officer, of 2002 batch, of Arunachal Pradesh-Goa-Mizoram and Union Territory (AGMUT) cadre and holding the rank of Deputy Inspector General of Police, preferred the OA aforesaid impugning the deferment of consideration of the respondent, by the DPC held on 26th December, 2019 for consideration of the batch of officers to which the respondent belonged, for promotion to the grade of IG, with effect from 1st January, 2020, giving the following reasons:

“(i) **Sh. Rajiv Ranjan, IPS (AGMUT: 2002):** CBI furnished a self contained Note in the Case RC RC\$(S)/2012/CBI/SC-I/New Delhi pointing out several lapses on the part of Sh. Rajiv Ranjan, the then ACP and other police officials of Delhi Police in handling riot cases in the area of PS Nareala, Delhi, which took place following assassination of Smt. Indira Gandhi. The matter was examined by UT Division in consultation with Delhi Police and Chairman (SIT), Anti Sikh Riot cases and with the approval of Hon'ble Home Minister, it was decided to close the case against Sh. Rajiv Ranjan. Thereafter, the matter was referred to CVC for advice in the matter. CVC vide its OM dated 01.02.2019 observed that there is clear misconduct on

the part of Shri Rajiv Ranjan and advised major penalty proceedings against him under AIS Rules. Since then, the matter is under examination for exploring further course of action.

- (ii) Para 11.1 of the guidelines issued by IPS-II vide letter dated 15.01.1999 for promotion of IPS officers to the various grades, stipulates that “the integrity certificate would be withheld only in cases where one or other contingencies as indicated in Para 11.1 supra has arisen”, i.e.*
 - (a) Officers under suspension.*
 - (b) Officers in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending.*
 - (c) Officers in respect of whom prosecution for the criminal charge is pending.*
- (iii) Further DoP&T OM No.22034/4/2012-Estt(D) dated 02.11.2012 provides that where it becomes essential in respect of officers in whose case disciplinary proceedings are contemplated or pending and are included in consideration zone for promotion, necessary action be taken for placing the proposal before the DPC so that vigilance clearance is not allowed as per conditions mentioned in para (ii) above.*
- (iv) As per extent provision, the integrity of all the officers mentioned at Para 3 above is certified (Except Shri Rajiv Ranjan, (AGMUT:2002)).*
- (v) No disciplinary proceedings / criminal / Under Suspension case are pending / contemplated against any of the officers mentioned at Para 3 above (Except Shri Rajiv Ranjan, (AGMUT:2002)).*
- (vi) No penalty has been imposed / contemplated on any of the officers mentioned at Para 3 above (Except Shri Rajiv Ranjan, (AGMUT:2002)).*
- (vii) No adverse remarks in the ACRs / PARs of the officers mentioned at Para 3 above are pending communication / expunction.*
- (viii) There is no direction from the Court of law having any bearing on the promotion to IGP grade.*

- (ix) *The officers mentioned at Sl. No.01,02,03,04,06 namely Shri Sanjay Kumar Jain, Shri Chukhu Apa, Shri Tusar Taba, Shri Apur Bitin, Shri OM Prakash Mishra of Para-3 above have completed MCTP Phase-IV Training.*
- (x) *The officers mentioned at Sl. No.(5), (7), (8) & (9) above [namely Sh. Rupinder Kumar, Sh. Suvashis Choudhary, Brijesh Kumar Singh & Rajiv Ranjan respectively], are retiring from service within three years. As per IPS (Pay) Rules 2007, a member of the Service, who has less than 03 years of service, after the year in which he has been slotted to undergo MCTP Phase-IV Training, would not be sent for Mandatory Mid-career training. Therefore, these officers are exempt from MCTP-IV training.*
- (xi) *The IPS officers of 2001 batch was granted IGP Grade w.e.f. 01.01.2019.”*

5. According to the respondent, no disciplinary proceedings or criminal proceedings were pending against him and he had also not been placed under suspension and the observations made by the High Court of Delhi in a criminal appeal pertaining to the violence that took place in the year 1984 in the wake of death of former Prime Minister Mrs. Indira Gandhi and the remarks of the Central Vigilance Commission (CVC) in this behalf did not entitle the DPC to defer consideration of his fitness for promotion to the IG cadre. It was further his contention that even where an officer is facing disciplinary proceedings or is under suspension, sealed cover procedure is followed and deferment of consideration, is unknown to law.

6. The aforesaid contentions of the respondent found favour with CAT, which has allowed the OA, reasoning that (i) it was not in dispute that the respondent otherwise was eligible to be considered for promotion to IG level, with effect from 1st January, 2020; (ii) the name of the respondent

figured in the list of officers forwarded to DPC for consideration; (iii) eight officers who are all seniors to the respondent, were declared fit for promotion by the DPC; (iv) the law as regard the consideration of cases of officers for promotion by following the sealed cover procedure is fairly well settled; Supreme Court, in *Union of India Vs. K.V. Jankiraman* (1991) 4 SCC 109 held that mere pendency of disciplinary or criminal proceedings or the fact that an officer is under suspension, did not constitute a basis for not considering his case for promotion if he is otherwise eligible; in such cases, the result of the DPC has to be kept in a sealed cover; (v) the Department of Personnel and Training (DoPT) has also issued OM's dated 14th September, 1992 and 2nd November, 2012, indicating the manner in which the cases of officers facing any proceedings are to be dealt with by the DPC; and, (vi) admittedly, the respondent was not placed under suspension nor any disciplinary proceedings were pending against him; the fact that the CVC had indicated some action or that the government was contemplating action against the respondent, could not relegate the respondent to a position worse than the one who is under suspension or is facing departmental or criminal proceedings; the DPC was therefore not justified in deferring the case of the respondent for consideration.

7. The ASG, in his arguments yesterday, drew our attention to page 306 of the file, being the OM dated 1st February, 2019 of CVC referred to by the DPC in its reasons aforesaid, and which is as under:

“OFFICE MEMORANDUM

***Sub: Case against Shri Rajiv Ranjan, the then ACP, IPS
(AGMUT: 2004), Anti Sikh Riot Cell, Delhi Police – Reg.***

MHA may refer to their letter No.14046/33/2012-UTS-I dated 13/11/2017 on the above subject.

2. The case has been examined in the Commission. It has been observed that there is a clear misconduct on the part of Shri Rajiv Ranjan, IPS, then ACP, Delhi Police in clubbing the two FIRs; delaying the filing of charge sheets in the case of Shri Sajjan Kumar, Ex-MP and also finally giving him (Shri Sajjan Kumar) a clean chit. Therefore, the Commission in disagreement with MHA would advise initiation of major penalty proceedings against Shri Rajiv Ranjan, IPS (AGMUT: 2004) for violation of of AIS (Conduct) Rules relating to lack of integrity, lack of devotion to duty, conduct unbecoming of a Govt. servant and other applicable Rules.

3. MHA's file No.14046/33/2012-UTS-I alongwith its enclosures as received in the commission is returned herewith. Kindly acknowledge the receipt and action taken may be intimated to the Commission."

The ASG next drew our attention to page 66, being annexure to letter dated 15th January, 1999 of Ministry of Home to all Chief Secretaries of States, enclosing Guidelines regarding promotions in IPS, to Senior Scale, Junior Administrative Grade, Selection Grade, Super-time Scale and above Super-time Scale, and which Guidelines in turn contain "General Principles Regarding Mode of Selection Etc. for Promotion and Functions of Screening Committees Etc." and particularly to Clause 4.3 thereunder which provides that Integrity Certificate on the lines indicated thereunder should be furnished to the DPC constituted to consider the cases for promotion. Attention was also drawn to Clause 6 and it was contended that the same empowers the DPC to decide its own method and procedure and to Clause 11.2, to contend that since CAT has followed the spirit of **K.V.**

Jankiraman supra, it could not have ignored Clause 11.2, providing for the sealed cover procedure.

8. On enquiry, it was stated that the Integrity Certificate is to be issued by the department concerned and on further enquiry, whether Integrity Certificate was issued qua the respondent, it was stated that the Integrity Certificate could not be issued because of the OM aforesaid of CVC.

9. The Guidelines aforesaid being of a date after *K.V. Jankiraman* supra, we enquired from the ASG, whether it is the stand of the government that *K.V. Jankiraman* supra is no longer good law in view of the aforesaid Guidelines.

10. The ASG stated that it is not the stand of the government, that *K.V. Jankiraman* supra is no longer good law because of the aforesaid Guidelines or because of the OM's referred to above by CAT, issued after *K.V. Jankiraman* supra.

11. Once there is no doubt as to the aforesaid position, we enquired from the ASG, what is the perversity in the reasoning of CAT, that the respondent, against whom disciplinary proceedings were only contemplated, cannot be worse off than a person against whom the disciplinary proceedings were pending and qua whom, DPC, instead of deferring consideration, is required to follow sealed cover procedure.

12. We were yesterday, during the hearing, unable to find any perversity in aforesaid reasoning and none was pointed out to us.

13. As far as the contention of the ASG qua Clause 11.2 prescribing sealed cover procedure to be followed in the case of officers against whom disciplinary proceedings or prosecution are pending or who are under suspension, is concerned, we enquired from the ASG, whether the petitioners were conceding to the sealed cover procedure to be followed qua the DPC directed by CAT, since now the disciplinary proceedings are pending against the respondent.

14. The ASG stated that the aforesaid contention was without prejudice to the other contentions and he did not have instructions to concede as aforesaid.

15. Once it was so, we, yesterday, did not find any error in the reasoning of CAT, requiring interference in jurisdiction under Article 226 of the Constitution of India.

16. However we enquired from the ASG as well as the counsel for the respondent, whether the sealed cover procedure is now required to be followed qua the DPC as directed by CAT, since now disciplinary proceedings are pending against the petitioner.

17. Ordinarily in law, the relief ultimately granted in a lis, relates back to the date of initiation of the lis and admittedly on the date of initiation of the lis i.e. the OA before CAT, no disciplinary proceedings were pending against the respondent and the consideration of the respondent for promotion to the grade of IG was wrongfully deferred. However Courts, in ***Rameshwar Vs. Jot Ram*** (1976) 1 SCC 194, ***B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh*** (1981) 3

SCC 528, *Kedar Nath Agrawal Vs. Dhanraji Devi* (2004) 8 SCC 76, *Dinshaw Rusi Mehta Vs. State of Maharashtra* (2017) 5 SCC 157 and recently in *Ram Chandra Prasad Singh Vs. Sharad Yadav* 2020 SCC OnLine SC 821 have held that in certain cases, subsequent events should be taken into consideration while granting the ultimate relief.

18. The hearing yesterday, was adjourned to today, to enable the counsels to consider.

19. The ASG, today has referred us to *Union of India Vs. V. Appalla Raju* 2017 SCC OnLine Del 6914 and again to the General Principles aforesaid forming part of Guidelines enclosed to the letter dated 15th January, 1999.

20. Per contra, the counsel for the respondent has forwarded to us a copy of the OM dated 21st November, 2002 of the DoPT and which is as under:

“New Delhi, dated the 21st November, 2002

OFFICE MEMORANDUM

Sub. : Instructions on sealed cover procedure– Applicability to review DPC – clarification regarding.

The undersigned is directed to refer to the instructions on sealed cover procedure as contained in this Department's OM No.22011/4/91 Estt. (A) dated 14.09.1992 and to say that a question whether the sealed cover procedure is to be followed by a Review DPC has been under consideration of this Department in the light of the decision of the Central Administrative Tribunal in certain cases. The matter has been considered in consultation with the Ministry of Law and it has been decided that the sealed cover procedure as contained in the OM dated 14.09.1992 cannot be resorted to by the Review DPC if no departmental proceedings or criminal prosecution

was pending against the Government servant concerned or he / she was not under suspension at the time of meeting of the original DPC or before promotion of his junior on the basis of the recommendations of the original DPC.

2. *In so far as the persons serving in the Indian Audit and Accounts Department are concerned these instructions are issued after consultation with the Comptroller and Auditor General of India.*

Sd/-
(Smt. Pratibha Mohan)
Director (E-II) ”

The counsel for the respondent has also controverted the arguments of the ASG made today and has drawn our attention to ***Union of India Vs. Anil Kumar Sarkar*** (2013) 4 SCC 161.

21. We have considered the rival contentions.

22. We are unable to find ***V. Appalla Raju*** supra relied upon by the ASG to be of any help to the case of the petitioner. In that matter before the Division Bench of this Court, there were multiple rounds of litigation and the sealed cover procedure followed before the first round of litigation though decided in favour of the employee, on opening of the sealed cover, showed the recommendation of the DPC to be of, ‘unfit’ for promotion. By the time, the employee succeeded in a subsequent round of litigation there was already a departmental proceeding initiated against the employee, since prior to the commencement of the said round of litigation and it was in these facts that the sealed cover procedure was directed to be followed by the Review DPC. As distinct therefrom, in the present case there were admittedly no disciplinary proceedings against the respondent when the DPC wrongfully deferred consideration of the employee for promotion or

even on the date when the respondent filed the OA from which this petition arises. In our opinion, once the outcome of the OA, not interfered by this Court is, that the DPC wrongly deferred consideration and should have considered the respondent for the promotion to the grade of IG, we see no reason why the consideration by the DPC now, of the respondent for promotion, should not be as would have been on 26th December, 2019 i.e. without following the sealed cover procedure. The OM dated 21st November, 2002, to which the counsel for the respondent has today drawn attention, also directs so.

23. What disturbs us however is the fact that now disciplinary proceedings are indeed pending against the respondent. We have wondered, that if DPC finds the respondent fit for promotion, whether the consequence thereof would be the promotion of the petitioner to the post of IG, notwithstanding disciplinary proceedings against him.

24. However we find *V. Appalla Raju* supra to be containing a reference to Clause 7 of the OM dated 14th September, 1992, in continuation whereof the OM dated 21st November, 2002 referred to by the counsel for the respondent today, was issued and which OM dated 14th September, 1992 is on record of this file also but to which no attention was drawn by either counsel during the hearing yesterday. The said OM dated 14th September, 1992 was issued pursuant to *K.V. Jankiraman* supra and with the subject “Promotion of Governments servants against whom disciplinary proceedings are pending and whose conduct is under investigation: procedure and guidelines to be followed.” Clause 7 thereof is as under:

“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 the provisions contained in this OM will be applicable in his case also.”

25. We also find Clauses 21 and 21.1 of the General Principles forming part of the Guidelines enclosed to the letter dated 15th January, 1999 to be echoing the same intent. The same are as under:

**“21. SEALED COVER
PROCEDURE
APPLICABLE TO
OFFICERS COMING
UNDER CLOUD
BEFORE PROMOTION**

21.1 In the case of an officer recommended for promotion by the Screening Committee where any of the circumstances mentioned in Para 11 above arise before actual promotion, sealed cover procedure would have to be followed. The subsequent Committee shall assess the suitability of such officers along with other eligible candidates and place their assessment in sealed cover. The sealed cover / covers will be opened on conclusion of the disciplinary case / criminal prosecution, in case the officer is completely exonerated, he would be promoted as per the procedure outlined in Para 18 above and the question of grant of arrears would also be decided accordingly. If any penalty is imposed upon him 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 shall

*not be acted upon, as outlined in
Para 18.2. above.”*

26. The aforesaid takes care of what was disturbing us.

27. However the contention of the counsel for the respondent, relying on **Anil Kumar Sarkar** supra is that since even promotions to the grade of IG, of eight others who along with the respondent were considered for promotion by the DPC and who were recommended for promotion (while the consideration of the respondent was wrongfully deferred) were effected prior to the date when disciplinary proceedings against the respondent herein were commenced, the respondent herein, if found fit for promotion by the DPC ordered by CAT to be convened, would also be required to be promoted and Clause 7 of the OM dated 14th September, 1992 and / or Clauses 21 and 21.1 supra would not apply.

28. We are unable to agree. The purport and intent of Clause 7 of OM dated 14th September, 1992 and of Clauses 21 and 21.1 of the General Principles forming part of the Guidelines enclosed to the letter dated 15th January, 1999 is that the government servant against whom disciplinary proceedings have been initiated after he has been recommended for promotion but before he is actually promoted, should not be promoted. The same, in our view is also in consonance with public policy. It will send a wrong message to the members of the public and to the employees and officers of the government, if the employee / officer against whom disciplinary proceedings are pending is promoted during the pendency thereof, owing to the technicality of having been wrongfully denied promotion prior to commencement of proceedings. The respondent is a

member of highly disciplined force like police and which is always in the public eye and to promote the respondent while disciplinary proceedings are pending against him, would be injurious to the discipline in the force and be perceived as morally wrong. Of course if the respondent is exonerated, his promotion will date back to the date when due.

29. We thus dispose of this petition, while not interfering with the impugned order of CAT, but clarifying that the DPC directed to be held, though will not follow the sealed cover procedure but if the respondent is found fit for promotion, his promotion shall be in terms of Clause 7 of the OM dated 14th September, 1992 and in accordance with the Clauses 21 and 21.1 of the General Principles forming part of Guidelines enclosed to the letter dated 15th January, 1999.

30. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

APRIL 06, 2021

‘gsr’..