

Sr.No.201

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12942-2016(O&M)
Reserved: 23.11.2022
Date of Decision: 09.12.2022

Union of India and othersPetitioners

versus

Central Administrative Tribunal and others
.....Respondents

CORAM: Hon'ble Mr. Justice Gurmeet Singh Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Ashish Rawal, Advocate for the petitioners-UOI.
Mr. Rohit Seth, Advocate
Mr.Sanjay Kaul, Advocate for respondent No.2.
Ms.Alka Chatrath, Advocate for respondent No.3-
UPSC.

Harpreet Kaur Jeewan, J.

1. Present writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari quashing the impugned order dated 18.08.2015 (Annexure P-4) passed by the Central Administrative Tribunal, Chandigarh Bench (herein after referred to as the CAT) whereby OA filed by respondent No.2 Kishore Kumar Srivastava has been allowed by quashing the decision of the petitioners made vide order dated 16.01.2015 by remitting the matter back to the concerned quarter for considering the case of respondent No.2. The prayer for

staying the operation of the order dated 23.05.2016 (Annexure P-7) passed by the CAT in contempt petition was also made.

2. Brief facts required for the decision of the present petition are that respondent No.2/applicant was working as Manager Grade-I w.e.f. 26.01.1983 (Central Civil Services Group A Post). His work and conduct was outstanding through out and he earned various appreciations. He was promoted as Assistant General Manager (AGM) w.e.f. 01.01.2003 and consequent upon his transfer to Ambala, he took over the charge of AGM at Ambala on 13.04.2012. A raid was carried out by CBI at the offices and residence of certain officers including respondent No.2 which lead to the registration of an FIR on 03.12.2012 under the Prevention of Corruption Act, 1988 (herein after referred to as the PC Act). The name of respondent No.2 was at serial No.5 in the seniority list of Assistant General Managers as on 01.01.2013. He was due for promotion to DGM. However, the applicant was placed under suspension vide order dated 15.03.2013, he filed a representation against the said order which was not decided and he approached the Tribunal by way of filing OA No.338 of 2013 in which at the first instance the suspension order was stayed on 18.03.2013. Thereafter, the said OA was allowed on 27.05.2014 and a direction was issued to the appellants to decide the pending representation which was decided by the appellants by way of passing an order dated 06.08.2014 whereby they had decided to keep the applicant under suspension.

Again another OA No.06 of 2014 was filed, challenging the said

order. In the meantime, DPC was held on 08.11.2013 against the vacancies for the year 2013-2014. Second OA was allowed vide order dated 25.11.2014 (Annexure A-13) and the suspension order of respondent No.2 dated 06.08.2014 was quashed and set aside. The challan was subsequently presented under Section 11 of the PC Act in the month of July, 2014 before Special Court, CBI. However, respondent No.2 was not promoted in the DPC held on 08.11.2013. Respondent No.2 gave a representation to issue revised vigilance clearance before the next review DPC which ultimately was held on 11.12.2014. In the said DPC, the case of respondent No.2 alongwith others was considered for promotion for the vacancies for the year 2013-2014 as well as for the vacancies of the year 2014-2015. However, the recommendations of the DPC were kept in a sealed cover vide order dated 16.01.2015, which was assailed by way of filing an OA before the CAT.

3. Petitioner UOI as well as U.P.S.C filed separate written statements and contested the said OA.

4. CAT observed that adoption of seal cover procedure in promotion case is a well established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc; but disciplinary/criminal proceedings are pending against him. In this regard OM dated 14.09.1992 and OM dated 2.11.2012 (Annexure A-15) were considered and it was observed that there are two situations where the petitioners can withhold promotion/upgradation on the ground i.e. firstly, they have decided

to initiate the departmental proceedings against an employee and secondly, a criminal prosecution is pending. It was further observed by the CAT that sealed cover procedure as envisaged under Clause 8 of OM dated 02.11.2012 can be adopted only when cognizance has taken by the Magistrate in terms of Rule 9 (6)(b)(i) CCS (Pension) Rules, 1972 on the date when DPC considered the case of the applicant in this regard. The decision in ***Union of India vs. Sukhmohinder Singh; 2005(4) SCT 2019*** was also relied upon. It was further observed that the DPC was held on 11.12.2014 and on that day neither the applicant was under suspension nor he was charge-sheeted in departmental proceedings. Even the Magistrate had not taken cognizance of the FIR filed by CBI in the Special Court and this fact has been admitted by the petitioners in the letter dated 20.07.2015 written by Superintendent of Police, CBI, ACB, Mumbai. Consequently, OA was accepted and the order dated 16.01.2015 passed by the petitioner keeping the case of the applicant in sealed cover was set aside. The matter was remitted back to the concerned quarter to reconsider the case of respondent No.2. A direction was further issued to consider the case of the applicant for promotion from the date when his juniors were considered in the review DPC dated 11.12.2014 and further it was directed that respondent No.2 be given all the benefits if he is found fit for promotion.

5. Consequent to the said directions the department passed the order dated 07.04.2016 wherein it was held that charge-sheet has been filed against respondent No.2 in CBI Court, Mumbai. The

Competent authority approved the denial of vigilance clearance to respondent No.2 at that stage. Hence promotion was declined to him.

6. Consequently, respondent No.3 filed contempt petition before the CAT and vide order dated 23.05.2016 the said petition was decided and it was held that the order passed by the department dated 07.11.2014 he is in violation of the finding of the CAT in the order dated 18.08.2015. Consequently, Mr. R.P.S.Negi, Under Secretary (Mov) who signed the said order and respondent No.2 was directed to appear in person before the CAT.

7. By way of filing the present writ petition, UOI and others have challenged the initial order of CAT dated 18.08.2015 and also prayed for staying the operation of the order dated 23.05.2016 passed in the contempt petition. Initially UPSC was impleaded as one of the petitioner but later on as per the order dated 14.11.2018 UPSC was impleaded as respondent No.5 and amended Memo of Parties was filed.

8. Learned counsel for the petitioners submitted that CAT did not consider that respondent No.2 was under suspension vide order dated 15.03.2013 and an FIR was lodged against him. It was submitted that DPC was held by UPSC on 8.11.2013 but for the vacancy of the year 2013-2014 the DPC was postponed on account of the fact that suspension order was issued in respect of respondent No.2. Perusal of the proceedings of the DPC held on 08.11.2013 (Annexure A-19) indicate that this fact finds mentioned in the

proceedings itself though the suspension order was issued in respect of respondent No.2 on the basis of the registration of FIR but the same had been stayed by CAT till the next date of hearing i.e.07.12.2013. This means on the day when the DPC was held on 8.11.2013 and when the name of respondent No.2 was considered for promotion, at that point of time, the suspension order was already stayed. Apart from this, the cognizance was not taken in respect to the FIR which was registered against respondent No.2. In the said background the observation made by the CAT that at that time there was no bar on the basis of OM dated 14.09.1992 and OM dated 02.12.2012 for consideration of the name of respondent No.2 for promotion are in resonance with the procedure laid down on the instructions issued vide OM dated 02.12.2012 (Annexure A-15). The same provides circumstances in which the vigilance clearance for promotion can be denied but further provides that these instructions were issued on the basis of the law laid down by the Hon'ble Supreme Court in ***Union of India vs. K.V.Jankiraman etc.;*(AIR 1991 SC 2010)**. Consequently, the CAT has rightly observed that there was no circumstance in existence for keeping the case of the applicant in a sealed cover on 08.11.2013 as any of the conditions contained in the said OA's for putting the proceedings of the DPC in a sealed cover were not there.

9. Learned counsel for the petitioners failed to point out any other reason for which the observation made by the CAT were not in consonance with law applicable to the facts of the present case.

10. We have also considered the observations made by CAT vide order dated 23.05.2016. Firstly, this order has not been challenged in the present writ petition only the stay of the operation has been sought. Secondly, the reasons recorded by the Tribunal in the said order do not warrant any interference. The Tribunal has observed that there was a clear cut observation in the order dated 18.08.2015 that Magistrate had not taken cognizance of the FIR on the day when review DPC dated 11.12.2014 was held. The applicant was not under suspension on that day because the suspension was quashed and set aside prior to the said DPC. Despite that it was held by the authorities that in view of the chargesheet filed against the applicant in the CBI Court, the vigilance clearance was denied. Order dated 18.08.2015 (Annexure P-4) passed by the CAT is also well reasoned and based on facts.

11. Resultantly, we are of the considered opinion that no case is made out to accept the prayer made in the writ petition and therefore, we dismiss the same.

(Gurmeet Singh Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

9th December, 2022

Shivani Kaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No