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

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Judgement pronounced on: 25.05.2023

+ **W.P.(C) 6856/2021**

A. V. PREM NATH Petitioner

Through: Mr M K Bhardwaj, Advocate

Versus

UOI AND ORS Respondents

Through : Mr Ripudaman Bhardwaj, CGSC for R-1 & 2/UOI.

Mrs Avnish Ahlawat, Standing Counsel
with Mrs Tania Ahlawat, Mr
Nitesh Kumar Singh and Ms Palak
Rohmetra, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioner has filed this petition challenging the order dated 07.01.2021 passed in OA No. 2224/2020 by Principal Bench, Central Administrative Tribunal (CAT), (hereinafter referred to 'the Tribunal'), New Delhi.

1.1 In brief, it is mentioned that the petitioner was inducted to the Entry Grade of Civil Services Examination (DANICS) Examination, 1996 conducted by UPSC. On completion of 8 years of approved service, the petitioner became entitled for Selection Grade but he was granted the same on adhoc basis along with his batchmates. On completion of requisite

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service period, his name was considered for grant of JAG-II along with his batchmates; however, his batchmates were granted JAG-II scale vide notification dated 29.02.2012 but petitioner was not granted the same.

1.2 Feeling aggrieved, he submitted representations to the Cadre Controlling Authority (CCA) and he personally met all the concerned higher officials seeking redressal of his grievances but to no avail.

1.3 It is also mentioned that an FIR was registered way back in the year 2002 on the basis of some anonymous/pseudonymous complaint, which remained at investigation stage. No material was found against the petitioner and closure report was finalised in the year 2014. Consequently, no charge-sheet was filed. The complaint filed anonymously or under pseudonymous names ought not to have been considered; however, the FIR was registered on the complaint in violation of the guidelines of the CVC and the petitioner was falsely implicated in the said case. Inordinate delay of more than 18 years from the date of registration of the FIR has caused grave prejudice and stigma to the petitioner.

1.4 The petitioner's case for promotion was kept pending without any justification under the law and his batchmates were granted JAG-I scale on 13.01.2016 but his case was ignored without any justification. The petitioner again sent representations to the Cadre Controlling Authority. The Under Secretary of Union of India stated that Delhi Government is responsible for delaying the promotion of the petitioner. He sent more than 20 representations; however, vide letter dated 22.11.2019, a strange stand was taken by Delhi Government that petitioner should not have sent a representation directly to respondent no.2 and to his Cadre Controlling Authority. The petitioner filed a detailed representation to Delhi Government on 06.08.2020; the same was not considered and no reasons

have been given till date.

1.5 The sanction to prosecute the petitioner in the criminal case, granted in 2011, remained inconsequential as the same was not acted upon for want of any material against him but surprisingly again in 2019, for the second time, the prosecution sanction was granted in the same case, without any justification. Closure report was prepared long ago, so, there was no justification to issue sanction for the second time in the year 2019.

1.6 The petitioner received a letter dated 17.07.2020 from Govt. of NCT of Delhi and letter dated 26.06.2020 from Govt. of India informing that the petitioner is found eligible for his promotion to the Selection Grade against regular vacancies pertaining to the year 2020 but even the said promotion was not granted to him.

1.7 Under these circumstances, the petitioner filed OA No. 1407/2020 before CAT, which was disposed of by Tribunal vide order dated 29.09.2020, with directions to respondents to pass order on representation dated 06.08.2020 seeking his promotion to JAG-I and JAG-II (DANICS) within a period of six weeks. On 18.11.2020, the Delhi Government was asked to send Integrity Certificate along with vigilance clearance. All of a sudden on 23.11.2020, the respondents rejected the representation of the petitioner by stating that case of the petitioner for promotion was considered and the outcome has been kept in a 'sealed cover' due to pending criminal case, which was registered long ago and no further development has taken place till date.

1.8 As per the petitioner, the said order is in clear violation of DOP&T OM dated 14.09.1992, 25.10.2004 and 02.11.2012 where it was explained that the 'sealed cover' procedure is resorted to only when a government

servant is suspended or he is facing disciplinary proceedings or criminal

prosecution. The criminal prosecution can be said to be pending when the police has filed a report under Section 173 Cr.P.C. before the competent Court of Law and there is application of mind by the said court. The petitioner was not facing any disability when his case was considered for Selection Grade on 01.08.2011 and similarly when the case of the batchmates of the petitioner was considered for grant of JAG-II of the grade. The sanction of criminal prosecution was granted on 31.10.2019 and the challan has been filed after order of the Tribunal. As such, the petitioner was not facing any disability on the date of DPC when promotion order of his junior, were passed. This fact was apprised to the CAT during hearing of OA No. 2224/2020. Certain judgments were also relied upon by the petitioner. The said OA was finally heard on 07.01.2021 and it was dismissed on the said date. The petitioner had referred to many judgments and DOP&T instructions on the subject but the Tribunal has ignored the same while dismissing the OA on 07.01.2021. Six Employees junior to the petitioner were promoted on 05.07.2021.

1.9 The grounds on which the present petition has been filed are as follows:-

- (i) CAT has made incorrect observation regarding pendency of criminal case against the petitioner; case of petitioner before the Tribunal was regarding delay in promotion to the Selection Grade on regular basis and grant of promotion to JAG-II and JAG-I at par with his juniors and batchmates. The plea of the respondents was that since the petitioner was facing the criminal case in case FIR No. 34/2002, so he could not be granted the said promotions. The criminal case was registered on 12.07.2002 on false allegations and closure report was

approved in the year 2014, so the petitioner was not facing any criminal case from 2002 till consideration of his claim for promotion to Selection Grade, JAG-II and JAG-I;

- (ii) the Tribunal failed to consider that the impugned order dated 23.11.2020 was passed without application of mind and by misinterpreting the Govt. of India instructions.
- (iii) The respondents have tried to justify their action by referring to OM dated 14.09.1992 and 25.10.2014 and the ‘sealed cover’ procedure which is to be resorted to only in cases where (i) government servant is under suspension; (ii) the charge-sheet has already been filed and (iii) disciplinary proceedings are pending. The petitioner was not facing any of the above situations; and
- (iv) The Tribunal has acted contrary to the law laid down by Hon’ble the Supreme Court of India in the matter of “*Union of India vs. K.V. Jankiraman*” 1991 AIR 2010;

1.10 There are many other minor grounds, which have been raised by the petitioner in the writ petition.

2. Counter affidavit was filed by respondent no.1 and 2 to the writ petition, denying all the allegations made in the writ petition. The petitioner has filed rejoinder to the same reiterating the contents of the writ petition.

2.1 All the parties have also filed written submissions.

3. We have heard counsel for the parties and our considered view is as under:-

- (i) The petitioner has prepared a date-wise chart indicating the dates on which DPC were held and promotion orders were issued in

respect of batch-mates and the status of the criminal case against him.

The said chart is reproduced hereunder:-

Name of the Post/ Grade	Date of DPC	Date of Promotion order	Status at the material time w.r.t DE/ Suspension/ CrI. Prosc.
Selection Grade	November 2006	13.11.2006	NA
JAG-II	November 2011	23.11.2012	NA
JAG-I	January 2016	13.01.2016	NA

3.1 The genesis of the case is that FIR bearing No. 34/2002 was registered on 12.07.2002 under Section 13 of Prevention of Corruption Act (PoCA) read with Section 214/420/468/471/120B IPC against the present petitioner and others. The allegation was that the petitioner had passed ante-dated orders in the matter of a land dispute between Gram Sabha and an individual and during inquiry, the said allegation was substantiated; the sanction to prosecute the petition was accorded on 19.01.2011 but till then the Anti-Corruption Branch (ACB) had not completed the investigation and more evidence was being collected and a fresh sanction of prosecution was sought vide letter dated 09.05.2019 and the said sanction was again granted on 31.10.2019.

3.2 Presently, the charge-sheet in the said FIR stands filed and is pending before the Competent Court. The respondents admit that the petitioner was eligible for promotion to the Selection Grade against the vacancy years 2003 to 2007 and the DPC was held on 01.08.2011. Since sanction for prosecution had already been accorded vide order dated 19.01.2011, so the

petitioner was never considered clear from the vigilance angle on the date of the said DPC and the order of DPC was kept in 'sealed cover' in compliance of the CAT's order dated 29.09.2020. The respondents have submitted that they have again examined the matter and since criminal proceedings were due against the petitioner, so, it was not possible to grant him promotion to the higher grades and thus his case was kept in a 'sealed cover' and request was rejected by respondent no.1 and 2 vide order dated 23.11.2020.

3.3 As per the respondents, the case of the petitioner clearly falls under DoPT OM's dated 14.09.1992, 25.10.2004 and 02.11.2012, wherein it was held that vigilance clearance for promotion may be denied in the cases where:

- (i) Government servants is under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending

So, he cannot be promoted till criminal prosecution is pending.

3.4 It has been reiterated that the sanction for prosecution was issued by the respondents on 19.01.2011 and DPC for promotion was held on 01.08.2011; so, the petitioner was not clear from vigilance angle. In view of the above DoP& T circulars, the ACB, GNCTD had never filed a closure report in the concerned court.

3.5 As per respondent no.3, the issue before this Court is whether the DPC result could have been kept in a 'sealed cover' in 2011 when DPC met?

3.6 The petitioner and respondents have relied upon certain judgments.

The respondent no.3 has relied upon judgments titled:-

(i) *Delhi Development Authority vs. H.C. Khurana*, 1993 (3) SCC 196 wherein the Supreme Court had held that in a case where the disciplinary proceedings are initiated the sealed cover guidelines are attracted.

(ii) The next authority relied upon by respondent no.3 is *Union of India vs. Kewal Kumar*, 1993 (3) SCC 204, wherein it was held that where the CBI had recorded the FIR and had sent the same to the higher authorities for taking action and the competent authority has taken a decision to initiate disciplinary proceedings, so in that sealed cover procedure is to be followed.

(iii) In *Union of India & Ors. vs. V. Appalla Raju*, (2017) High Court Cases (Del.) 293 the Court has come to the conclusion that sealed cover procedure can be adopted if the prosecution for criminal charge is pending against Government servant.

3.7 On the other hand, the petitioner has relied upon the following judgments:-

(i) *UOI vs. V Janakiraman & Ors.*, (1993) SCC LRS 387;

(ii) *UOI & Ors. Vs. Sangram Keshari Nayak*, (2007) 6 SCC 704;

(iii) *UOI & Ors. Vs. Anil Kumar Sarkar*, judgment dated 15.03.2013 Civil Appeal No. 2537/2013

3.8 As per the counsel for the petitioner, the Hon'ble Supreme Court in the judgment of *Sangram Keshari Nayak* (supra) has referred to its earlier judgments in the matter of *Delhi Development Authority vs. H.C. Khurana* (supra) and *Union of India vs. Kewal Kumar* (supra) and both these judgments were distinguished by holding that one of the three conditions, as mentioned in OM dated 14.09.1992 must be in existence at the relevant time. This Court has also followed the aforesaid settled legal position while

deciding W.P.(C) 4684/2011 titled *UOI vs. B.S. Bhola*, on 07.11.2012 and while passing judgment dated 10.04.2018 in W.P.(C) 3500/2018 titled *Union of India vs. Ashok Kumar*.

4. We have gone through the above judgments. *Sangram Keshari Nayak* (supra), was a case of an officer of Indian Railway Traffic Services, who was recruited on 01.02.1982; he was promoted to the cadre of JAG and later on to the Selection Grade on 01.07.1994. He was eligible to the post of Senior Administrative Grade and DPC was formed and the name of the respondent was included in the same but on the premise that vigilance case was pending against him, sealed cover procedure was adopted. The officer junior to him was promoted on 27.08.1999; Department proceedings against Govt. servant was initiated on 24.09.1999 by issuance of a charge-sheet. He approached the CAT for directions to the Department to promote him from the date when his junior was promoted and the said petition was allowed on 19.08.2003. A writ petition filed by the appellants/Department was dismissed by the High Court and the said decision was challenged before the Hon'ble Supreme Court. The issue which was taken up and the question, when a "Government servant is under cloud", at the time of his consideration was decided, that he can be so called if he is fulfilling any of the three conditions and it was brought to the notice of the Departmental Promotion Committee. The conditions are:-

- (i) Government servants under suspension; or
- (ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; or
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

earlier judgment in *Delhi Development Authority vs. H.C. Khurana* (supra) and *Union of India vs. Kewal Kumar* (supra) and has observed as under:-

“17. Therein *H. C. Khurana* and *Kewal Kumar* were noticed.

18. In *H. C. Khurana* the question was as to what would be the meaning of the word "issued" when a disciplinary proceeding had been initiated by framing the charge-sheet and the same had been dispatched. Para 2 of the circular letter in question was similar to *R.S. Sharma*. It is in that context, what would be the meaning of the word "issued" when the decision has been taken to initiate disciplinary proceeding came up for consideration. As the circular contained a provision of that nature which is absent in the present case, the said decision, in our opinion, also has no application in the instant case.

19. For the self same reasons, the decision of this Court in *Kewal Kumar* is also not attracted”.

4.2 The relevant circulars (OMs) in this regard are dated 10.04.1989, 14.09.1992, 25.10.2004 and 02.11.2012. The circular dated 10.04.1989 was holding the field till the circular dated 14.09.1992 was issued by DoPT. The relevant portion of OM dated 10.04.1989 are as follows:-

“11.1 At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution; and
- (iv) **Government servants against whom an investigation or serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I or any other agency, departmental or otherwise.**

(Emphasis supplied)

4.3 However, while issuing the circular dated 14.09.1992, these

conditions were modified and condition No. (iv) was eliminated. The conditions mentioned in para 2 of OM dated 14.09.1992 and relevant para 7 are reproduced hereunder:-

“2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion failing 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”

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‘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 sealed cover by the DPC. He shall not be promoted he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.’

4.4 A clarification was issued in 2004. The relevant portion of OM dated 25.10.2004 is as follows:-

“3.It is also clarified that there is no requirement of furnishing a separate integrity certificate to the DPC. In terms of the judgment of the Hon'ble Supreme Court in the case of Union of India VS. K. Janakiraman etc. (AIR 1991 SC 2010), no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter still under investigation of CBI or otherwise, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover”.

4.5 Further clarification as to when a criminal charge is stated to be

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pending, has been made on 02.11.2012. The relevant portion of OM dated 02.11.2012 is as follows:-

“8. As regards the stage when prosecution for a criminal charge can be stated to be pending the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under :-

"(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police officer, of which the Magistrate takes cognizance, is made”.

(Emphasis supplied)

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“12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/ criminal/ court case against a Government servant, if the three conditions mentioned in para 2 of this Department’s O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings”.

(Emphasis supplied)

5. It is admitted fact that FIR bearing No. 34/2002 was registered by Anti-Corruption Branch against the present petitioner on 12.07.2002 under Section 13 of Prevention of Corruption Act read with Section 214/420/468/471/120-B IPC. It is also admitted case of both the parties that the initial sanction for prosecution was granted on 19.01.2011 and thereafter a fresh sanction for prosecution was granted by Ministry of Home Affairs on 31.10.2019. It has been informed to the Court that the criminal case in pursuance to registration of FIR No. 34/2002 is still pending at the stage of

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prosecution evidence, after framing of charges.

5.1 It is admitted case that although FIR was registered in the year 2002, initial sanction was granted in the year on 19.01.2011 and again sanction was granted on 31.10.2019 but the police report after investigation, i.e., the charge-sheet, was filed thereafter.

6. In view of the above, it is clear that from the year 2002 when the FIR was registered till 2020, when the charge-sheet was filed, it cannot be said that there were any criminal proceedings pending against the present petitioner as the matter was still pending under investigation. None of the three conditions mentioned in OM dated 14.09.1992, i.e. (i) the Government servant being under suspension; (ii) a charge-sheet has been issued and disciplinary proceedings are pending or (iii) the criminal charge is pending are satisfied in the present case. The OM dated 02.11.2012 is clear that the judicial proceedings shall be considered as being instituted when the police report under Section 173 Cr.P.C. is filed and cognizance is taken by the learned Magistrate under Section 190 Cr.P.C. Section 190 Cr.P.C. is reproduced hereunder:-

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try”.

6.1 The OM dated 02.11.2012 has also made it clear that if in the considered view of the Government, charges against the government servant are serious and the government does not wish to promote him, it is open to the Government to suspend such officer and expedite the disciplinary proceedings. In the present case, it is nowhere pleaded by the parties that the petitioner was under suspension during the period when DPCs were held. Hence, in our considered view, neither of the three conditions mentioned in OM dated 14.09.1992 in para 2 are fulfilled as it has also not brought to our notice that the petitioner was charge-sheeted and disciplinary proceedings were pending against him at any point of time when DPCs were held and it is an admitted fact that a criminal charge -sheet was filed in 2020 only.

7. In view of the above, the respondent had no occasion not to consider the case of the petitioner for promotion for grant of Selection Grade (Regular Basis) JAG-I and JAG-II at par with his batchmates and juniors and the 'sealed cover'/deemed sealed cover procedure adopted in case of petitioner is not legal.

7.1 We hereby direct that the said sealed covers be opened and if found suitable, the petitioner be granted Selection Grade, JAG-II and JAG-I scales on regular basis from the dates when his batchmates and juniors were promoted. Arrears of pay with 9% per annum interest be released to him along with other consequential benefits within 4 weeks from today.

7.2 It is made clear that the respondents are within their legal right regarding resorting to 'sealed cover' procedure after the date, when the charge-sheet was filed in case FIR 34/2002, till the final outcome of the said criminal proceedings.

8. The writ petition is partly allowed and disposed of with these directions.

**TALWANT SINGH
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

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