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UNION OF INDIA AND ORS.

v.

SANGRAM KESHARI NAYAK

APRIL 27, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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*Service Law—Promotion—Name of employee recommended for promotion—Due to pendency of vigilance case, promotion not given adopting Sealed Cover Procedure as per a Government Circular—Promotion given to junior of the employee—Initiation of departmental proceedings after the meeting of DPC and also after promotion of the junior—Central Administrative Tribunal and High Court allowing promotion to the employee—On appeal, held: As per the Circular, Sealed Cover Procedure could have been adopted only when disciplinary proceeding was pending—Since on the date when meeting of DPC was convened, no disciplinary proceeding was pending against the employee, the employee could have been promoted—Promotion though not a fundamental right, the same cannot be curtailed unless provided so by valid rules—Constitution of India, 1950—Article 309.*

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Name of respondent (employee of appellant-State) was recommended for promotion by Departmental Promotion Committee (DPC). As a vigilance case was pending against him, DPC adopted Sealed Cover Procedure in terms of a Government Circular dated 21.10.1993. Departmental proceedings had not been initiated against him, after his name was recommended for promotion and also after his junior was promoted to the promotional post.

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Respondent filed original application before Central Administrative Tribunal praying for direction to the appellant-State to promote him to the post from the date when his junior was appointed. Application was allowed. In Writ Petition, Order of the Tribunal was upheld. Hence the present appeal.

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Dismissing the appeal, the Court

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**HELD:** 1. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability

or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefore. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him. [Para 11] [900-D]

2. Terms and conditions of an employee working under the Central Government and governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.

[Para 12] [900-E-F]

3. Whereas paragraph 6 of the Circular Letter dated 21.10.1993 provides for a Sealed Cover Procedure to be adopted by the DPC, the same has to be taken recourse to only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. The recommendations of the DPC, therefore, can be refused to be given effect to only inter alia when one or the other conditions mentioned in paragraph 2 of the said Circular stand satisfied which in the instant case would mean that as against the respondent a chargesheet had been issued or, in other words, a disciplinary proceeding was pending. Admittedly, a chargesheet was issued as against him only after the meeting of DPC was convened. Thus, there was no bar in promoting the respondent. No material was placed before the DPC to take recourse to the Sealed Cover Procedure. In fact, none existed at the material time. Paragraph 2 of the said Circular specifically refers to submission of chargesheet as the cut-off date when a Departmental Proceeding can be said to have been initiated. [Paras 13 and 14] [900-G-H; 901-A-B]

*Union of India and Ors. v. K.V. Janakiram and Ors.*, [1991] 4 SCC 109 and *Coal India Ltd. and Ors. v. Saroj Kumar Mishra*, (2007) 5 SCALE 724, relied on.

*Union of India and Anr. v. R. S. Sharma*, [2000] 4 SCC 394; *Delhi Development Authority v. H.C. Khurana*, [1993] 3 SCC 1996 and *Union of India v. Kewal Kumar*, [1993] 3 SCC 204, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3691 of 2005.

A From the Final Judgment and Order dated 31.01.2005 of the High Court of Orissa at Cuttack in W.P. (C) No. 50 of 2004.

R. Mohan, ASG., R. Nedumaran, R.C. Kathia and B. Krishna Prasad for the Appellants.

B S.K. Dholakia, Manoj Kumar Das and Sibro Sankar Mishra for the Respondent.

The Judgment of the Court was delivered by

C **S.B. SINHA, J.** 1. Interpretation of a purported circular letter dated 21.01.1993 falls for our consideration in this appeal which arises out of a judgment and order dated 31.01.2005 passed by the High Court of Orissa in Writ Petition No. 50 of 2004.

2. Before embarking upon the said question, we may, however, notice the admitted fact of the matter.

D 3. Respondent was recruited to Indian Railway Traffic Services on or about 1.02.1982. He was promoted to the post of Junior Administrative Grade. He was also placed in the selection grade on 1.07.1994. The post of Senior Administrative Grade fell vacant. Respondent was eligible to be considered therefor. A Departmental Promotion Committee (DPC) was convened for preparation of a panel for promotion to the said post. Respondent's name was also included therein. *Inter alia* on the premise that a vigilance case was pending against him, sealed cover procedure was adopted by the DPC purported to be in terms of the circular in question providing for the procedure and guidelines to be followed in respect of the officers who are to be promoted from Grade B to Grade A and of Railway officers against whom disciplinary court proceedings were pending.

F 4. Paragraph 6 of the said Circular, which is relevant for our purpose reads, thus:

G "6. 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 Departmental promotion Committee. He shall not be promoted until the conclusion of disciplinary case/criminal

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proceedings and the provisions contained in this letter will be applicable in his case also.” A

5. On or about 27.08.1999, one Shri G.P. Srivastava who was immediate junior to the respondent was promoted to the post of Senior Administrative Grade but only on 24.09.1999, a departmental proceeding was initiated against the respondent by issuance of a chargesheet. B

6. An original application filed by the respondent before the Calcutta Bench of the Central Administrative Tribunal, which was eventually transferred to the Cuttack Bench, praying for a direction to the appellants to promote him to the said post from the date when his junior was appointed, was allowed by a judgment and order dated 19.08.2003. A writ petition filed by the appellants thereagainst has been dismissed by the High Court, by reason of the impugned judgment. C

7. The Tribunal as also the High Court proceeded to determine the issue on the basis that the term “Government Servant under cloud” would be the employees against whom a chargesheet has been issued, relying on or on the basis of paragraph 2 of the said circular, the relevant portion whereof reads as under: D

“2. At the time of consideration of the case of Government Servants for empanelment, 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: E

(i) Government Servants under suspension;

(ii) Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; F

(iii) Government Servants in respect of whom prosecution for a criminal charge is pending”

8. In arriving at its conclusion the High Court furthermore placed strong reliance upon a judgment of this Court in *Union of India and Ors. v. K.V. Janakiraman and Ors.*, [1991] 4 SCC 109. G

9. Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of the appellants would contend that the circular letter received wrong H

A interpretation at the hands of the Tribunal and/or the High Court inasmuch as upon a proper reading thereof it would appear that a complete procedure has been laid down therein providing for the mode and manner in which the cases of those officers against whom a charge is pending should be considered for promotion. Strong reliance in this behalf has been placed on *Union of India and Anr. v. R.S. Sharma*, [2000] 4 SCC 394, *Delhi Development Authority v. H.C. Khurana*, [1993] 3 SCC 196, and *Union of India v. Kewal Kumar*, [1993] 3 SCC 204].

C 10. Mr. S.K. Dholakia, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that paragraph 6 of the said circular must be read in the context of paragraph 2 thereof.

D 11. Promotion is not a fundamental right. Right to be considered for promotion, however, is a fundamental right. Such a right brings within its purview an effective, purposeful and meaningful consideration. Suitability or otherwise of the candidate concerned, however, must be left at the hands of the DPC, but the same has to be determined in terms of the rules applicable therefor. Indisputably, the DPC recommended the case of the respondent for promotion. On the day on which, it is accepted at the bar, the DPC held its meeting, no vigilance enquiry was pending. No decision was also taken by the employer that a departmental proceeding should be initiated against him.

E 12. Terms and conditions of an employee working under the Central Government are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or under a statute. The right to be promoted to a next higher post can, thus, be curtailed only by reason of valid rules. Such a rule again, however, cannot be construed in a manner so as to curtail the right of promotion more than what was contemplated by law.

G 13. Whereas paragraph 6 of the said circular letter provides for a sealed cover procedure to be adopted by the DPC, the same has to be taken recourse to only in the event circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. The recommendations of the DPC, therefore, can be refused to be given effect to only *inter alia* when one or the other conditions mentioned in paragraph 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a chargesheet had been issued or, in other words, a disciplinary proceeding was pending. Admittedly, a chargesheet was issued as against him only on 24.09.1999.

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14. Thus, there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999. No material was placed before the DPC to take recourse to the sealed cover procedure. In fact, none existed at the material time. Paragraph 2 of the said circular specifically refers to submission of chargesheet as the cut-off date when a departmental proceeding can be said to have been initiated. Even otherwise such a meaning had been given thereto by this Court in *K.V. Janakiraman* (supra) holding:

“16...The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure...”

15. Reliance placed by *Mr. Mohan on R.S. Sharma* (supra), in our opinion, does not advance the appellant's case. In that case, cases where sealed cover procedure were applicable were contained in paragraph 2 of the office memorandum dated 12.01.1988 which reads as under:

“Cases where ‘Sealed Cover Procedure’ applicable.—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:

- A (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*;
- B (iii) government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise.”
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(Emphasis supplied)

16. Serious allegations of financial misdemeanours were made against the respondent therein. Central Bureau of Investigation took up investigation. He was suspended on 10.03.1988. Although the said order of suspension was revoked, investigation continued. The DPC considered his case for promotion on 3.04.1991 and resorted to sealed cover procedure. Only in the aforementioned situation, *K.V. Janakiraman* (supra) and other decisions following the same stood distinguished opining that paragraph 7 of the said office memorandum would be attracted, which is in the following terms:

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E “Sealed cover applicable to an officer coming under cloud before promotion.—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 DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by 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.”

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G It was held:

H “...One is that, what the Department did not do is not the yardstick indicated in para 7 of the Sealed Cover Procedure, what is mentioned therein is that it cannot apply to the government servant who is not “actually promoted” by that time. Second is that, the stand taken up by the Department is that in spite of deletion of clause (iv) of the

second para, the recommendations of DPC must remain in the sealed cover on account of the conditions specified in clause (iii) of the said paragraph by virtue of the operation of para 7 thereof. We cannot say that the said stand was incorrect and, therefore, we are unable to blame the Department for not opening the sealed cover immediately after 31-7-1991." A

17. Therein *H.C. Khurana* (supra) and *Kewal Kumar* (supra) were noticed. B

18. In *H.C. Khurana* (supra), the question was as to what would be the meaning of the word 'issued' when a disciplinary proceeding had been initiated by framing the chargesheet and the same had been despatched. Paragraph 2 of the circular letter in question was similar to the case of *R.S. Sharma* (supra). 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. C D

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

20. This aspect of the matter has recently been considered in *Coal India Ltd. & Ors. v. Saroj Kumar Mishra*, (2007) 5 SCALE 724. E

21. We, therefore, are of the opinion that there is no infirmity in the impugned judgments. Accordingly, the appeal is dismissed with costs. Counsel's fee assessed at Rs. 25,000/-. F

K.K.T.

Appeal dismissed.