

PETITIONER:
STATE OF M.P.

Vs.

RESPONDENT:
J.S. BANSAL & ANR.

DATE OF JUDGMENT: 09/02/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF FEBRUARY, 1998

Present:

Hon'ble Mr. Justice S. Saghir Ahmad
Hon'ble Mr. Justice G.B. Pattanaik
Dr. A.M. Singhvi, Sr. adv., Mrs. Madhur Dadlani,
Satish K. Agnihotri, Advs. with him for the appellant
G.L. Sanghi, Sr. Adv., S.K. Gambhir, Vivek Gambhir, Advs.
with him for the Respondent
Sakesh Kumar, K.L.Hathi, Advs. for M/s. Hathi & Co., Advs.
for the Respondent No.2

J U D G M E N T

The following Judgment of the Court was delivered:
S. SAGHIR AHMAD, J.

Respondent No.1 while working as superintending Engineer (E&M) in the public Health Engineering Department was issued a charge-sheet on 16.11.94 which was challenged by him in O.A.No. 1219/94 in the Gwalior Bench of the Madhya Pradesh Administrative Tribunal (for short, 'the Tribunal') on the ground that besides containing stale charges it was issued with the male fide intention to forestall the consideration of his name for inclusion in the panel of candidates for promotion to the post of chief Engineer (E&M). The claim petition was allowed by the Tribunal by its order dated 17.5.95 and the S.L.P. filed by the state of Madhya Pradesh, in this Court, was dismissed on 16.10.95 with the following order:-

"Delay condoned.

While we agree that some of the observations made by the Tribunal are sweeping and not entirely correct in law, we are satisfied that the conclusion arrived at by the Tribunal is correct. We are not inclined to interfere in the matter, particularly in view of the fact that though the Lokayukta report was received in 1986, the charges were served only in 1994, i.e. after about eight years. In the meantime, the respondent had

also been promoted in 1987. It is in view of these facts and circumstances that we are not inclined to interfere in the matter. The special Leave Petition is dismissed."

2. Respondent No. 1, thereafter, filed another case (O.A.No. 876/95) before the Tribunal for the relief that the State Government may be directed to convene the meeting of the Departmental Promotion Committee for considering his name for promotion to the post of Chief Engineer and that the State Government may be restrained from starting any fresh departmental proceeding. This O.A. was disposed of finally by the Tribunal by its order dated 8.12.95 and the direction was issued to the appellant to hold the meeting of the Departmental Promotion Committee within six weeks. The further relief that no fresh departmental proceedings be initiated against him was refused by the Tribunal. On 31st of January, 1996 state Government filed an application before the Tribunal for extension of time for convening the meeting of Departmental Promotion Committee but the Tribunal instead of granting extension, directed, by its order dated 2.2.96, to produce the original records before it so that it may be found out as to why the convening of the Departmental Promotion committee was being delayed. While the matter was pending before the Tribunal, a fresh charge-sheet was issued to respondent No. 1 and 2 others were kept in the "Sealed Cover". This Procedure was adopted by the Departmental Promotion Committee because of the pendency of the departmental proceedings against Respondent No.1 on the basis of the charge-sheet issued to him on 5.2.96.

3. The Tribunal which already had before it the application of the State Government for extension of the time (M.A.32/96), for convening the meeting of the Departmental Promotion Committee, passed an order on 14.2.96 restraining the State Government from promoting any person junior to respondent No.1 to the post of chief Engineer. A further order for status quo was passed by the Tribunal on 27.2.96

4. Respondent No.1 in the meantime, filed another O.A. No. 237/96 before the Tribunal on 11.3.96 with the prayer that the State Government may be directed to open the "Sealed Cover" containing the recommendations of the Departmental Promotion committee. This O.A. was clubbed with M.A. 32/96. The orders of the Tribunal, passed on 14.2.96 and 27.2.96 were challenged by the State Government in a Writ Petition No. 1420 of 1996 before the High Court of Madhya Pradesh which by its order dated 15.4.96 stayed the operation of the aforesaid order as also further proceedings in M.A.32/96.

5. O.A. No. 237/96 was taken up by the Tribunal and it disposed of the application of Respondent No.1 for interim relief by its order dated 21/4/96 and directed the State Government to open the "Sealed Cover" and to implement the recommendations contained therein.

6. In the meantime, contempt proceedings were drawn up against the officers of the State Government for the implementing the order of the Tribunal that the "Sealed Cover" be opened and the recommendations of the Departmental Promotion Committee, held on 12.2.96, may be implemented. Consequently, the "Sealed Cover" was opened which contained the recommendation of departmental Promotion Committee as under:-

"Committee has found Shri J.S Bansal, superintending Engineer (E&M) fit for promotion to the post

of Chief Engineer (E&M) as he fulfills the prescribed criterion. Promotion to be done only on being exonerated from Departmental Enquiry/Disciplinary Proceedings."

7. Before us, it is the Tribunal's order, dated 21.4.96 which is under challenge. As pointed out earlier, the Tribunal, by its order, had directed that the "Sealed Cover" be opened and the case of the respondent No. 1 for promotion to the post of Chief Engineer may be further processed.

8. In passing this order, the Tribunal has relied upon the decision of this Court in B.C. Chaturvedi Vs. Union of India, AIR 1996 SC 484 = (1995) 6 SCC 749, in which it has been, *inter alia*, observed as number:

"8. It is true that pending disciplinary proceeding, the appellant was promoted as Assistant Commissioner of Income Tax. Two courses in this behalf are open to the competent authority, viz., sealed cover procedure which is usually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the latter course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision and to pass an order consistent with the finding of proved misconduct."

9. It may be pointed out at the outset that the Tribunal was not justified in placing reliance upon this decision for passing the impugned order of interim relief as the delinquent officer (B.C. Chaturvedi), against whom a C.B.I. enquiry was held on the allegation that he was in possession of assets disproportionate to his known income, was not prosecuted under Prevention of Corruption Act as the C.B.I. was of the opinion that if was not in possession of strong proof which would ultimately result in his conviction and, therefore, recommended that Mr. B.C. Chaturvedi may be departmentally tried. A charge-sheet was, thereafter, issued to Mr. B.C. Chaturvedi and regular departmental enquiry was held in which misconduct on his part was found proved and he was dismissed from service. The Tribunal, before whom the order of dismissal was challenged, reappreciated the evidence and upheld the findings recorded in the departmental proceedings but converted the order of dismissal into one of compulsory retirement. During the pendency of the departmental proceedings, Mr. Chaturvedi was promoted as Assistant Commissioner of Income Tax. Thus, in that case, it was not the mere question of granting interim relief of "promotion subject to the result of the departmental proceedings" but the order of dismissal and its subsequent conversion into the order of compulsory retirement which was under the consideration of the Court. The grant of interim relief, during the pendency of the departmental enquiry, was not directly in issue in that case and the observations were in the nature of mere obiter dicta.

10. The question whether recourse to "Sealed Cover" procedure can be adopted in a case where departmental proceedings are pending on the date on which the delinquent officer is considered for promotion and whether the Tribunal could pass an interim order that the employee may be considered and promoted to the next higher post irrespective of the departmental proceedings, contemplated or pending, was considered by this court in Union of India Vs. Tejinder Singh, (1991) 4 SCC 129, in which it was observed as under:-

"4. The appeal is accordingly allowed and the impugned order passed by the central Administrative Tribunal directing the Union of India, Ministry of Finance of consider the respondent for promotion to the post of commissioner of Income tax, level II, is set aside, while setting aside the impugned order of the Tribunal we would like to record that the Tribunal had no jurisdiction whatever while dealing with a petition to quash the contemplated departmental enquiry against the respondent, to make an interim order of this nature. We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceeding cannot be a ground for withholding consideration for promotion or the promotion itself. We are not aware of any rule or principle to warrant such a view. As at present advised, we do not subscribe to the view expressed by the Tribunal."

11. After this decision, the office Memorandum No.22011/1/79 Estt. (A) dated January 30, 1982 issued by the Government of India (Department of Personnel and Training) was reconsidered and in its place office Memorandum No.22011/2/86 Estt.(A) dated January 12, 1988 was issued.

12. Both these memoranda were considered by this Court in Union of India & Ors. Vs. K.V. Jankiraman & Ors. (1991) 4 SCC 109 in which it was laid down that consideration of and employee for promotion, selection grade, crossing of efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of any preliminary enquiry on the ground of pendency of any preliminary enquiry of criminal investigation but the "Sealed Cover Procedure" can be resorted to if a charge-sheet has been issued or the departmental proceedings are pending or the employee has been placed under suspension. It was also laid down that if on a consideration of the name of the delinquent employee, the recommendations of the Departmental Promotion Committee were kept in a "Sealed Cover" on account of the pendency of departmental proceedings, the "Sealed Cover" could be opened only in the case of complete exoneration of the employee from all charges and notional promotion could be given to him from the date on which his juniors were promoted. But if any penalty is imposed on the employee in disciplinary proceedings, the "Sealed Cover" is not required to be acted upon and his case for promotion is to be considered in the

usual manner by the next Departmental Promotion Committee. 13. Undoubtedly, an employee has a right of being considered for promotion but he cannot claim promotion as of right. Right to be considered for promotion is obviously different and distinct from right of promotion. Even if disciplinary proceedings are initiated against an employee and those proceedings are pending on the date on which names of other employees are considered for promotion to the next higher post along with other employees. His name cannot be omitted from consideration merely because of the pendency of the departmental proceedings. An employee cannot be denied this right at the interlocutory stage of the departmental proceedings as he is still to be found guilty on the basis of the evidence which might be produced against him during those proceedings. Till the charges are established, his right to be considered cannot be defeated as he is not under the cloud of having been found guilty but is only suspected to be guilty. Mere suspicion is not a substitute for proof. Consideration for promotion along with other eligible candidates is done so as to give effect to the Fundamental Right available even to a delinquent employee under Article 14 and 16 of the constitution. Once the name is considered for promotion, the recommendations of the Departmental Promotion Committee are required to be kept in a "Sealed Cover" obviously for the reason that if the employee is ultimately found to be not guilty and the charges set out against him are found as "not established", he may be promoted immediately to the next higher post.

14. In view of the law laid down by this Court in Tejinder Singh's case and Jankiraman's case (supra) and in view of the service Rule/Executive instruction relating to "Sealed Cover Procedure", Departmental Promotion Committee, in such a situation, would be well within its right to place its recommendations in the "Sealed Cover" so that the "Sealed Cover" may be opened on the conclusion of the Departmental proceedings and recommendations contained therein may be given effect to without delay. An interim order, therefore, that the "Sealed Cover" be opened and the recommendations of the Departmental Promotion Committee for the promotion of the delinquent officer may be given effect to even during the pendency of the departmental proceedings, subject to its final result, is not usually or always or as a matter of course, granted. This rule can be departed from only in exceptional cases depending upon the circumstances of a particular case having regard to the fact that integrity, honesty and sincerity are the hall-mark of public services under the Union of the State and that efficiency of administration depend upon the effort made by persons holding public offices to serve the country and the Nation with devotion and an attitude of sacrifice without any iota inkling of "self service".

15. Learned counsel for the respondent has contended that when the charge-sheet was first issued to the respondent, it was quashed by the Tribunal on the ground of delay in initiating the departmental proceedings for charges which were very old and stale. The decision of the Tribunal was upheld by this Court as the S.L.P. filed by the State of Madhya Pradesh was dismissed. The second charge-sheet on the basis of which the present departmental proceedings have been initiated also contains stale charges and, therefore, the said charge-sheet would also be ultimately quashed by the Tribunal particularly when the departmental proceedings have been initiated with the mala fide intention of forestalling the promotion of the respondent to the post of Chief Engineer. It is contended that the charge-sheet was

issued just one day before the meeting of the Departmental Promotion Committee which makes it obvious that it was deliberately issued so that at the time of the consideration of respondent's name for promotion, the recommendations may be placed in the "Sealed Cover" and his juniors may be promoted.

16. It is true that the charge-sheet was issued on 5.2.96, i.e., a day before the Departmental Promotion Committee was to meet. The Departmental Promotion committee met on 6.2.96 but actually considered the name of the respondent in its meeting held on 12.2.96. Whether the charge-sheet was deliberately issued to prompt the Departmental Promotion Committee to take recourse to the "Sealed Cover Procedure" is a question of fact which has yet to be decided by the Tribunal on merits on the basis of the evidence which might be led by the parties. That being so, it can hardly be made a basis for interim relief.

17. As to the contention of the learned counsel for the respondent that the charges in the present charge-sheet are also stale and this charge-sheet is also likely to be ultimately quashed by the Tribunal, it would suffice to point out that the Tribunal itself has, in its order, indicated that out of 10 charges, the first 8 charges, relate to the period 1979 to 1987 but charges No. 10 and 11 relate to 1991 and 1992. These charges, namely, charge No. 10 and 11 which relate to the year 1991 and 1992 cannot be said to be stale.

18. Learned counsel, then, placed reliance upon the decision of this Court in *State of Punjab & Ors. Vs. Chamanlal Goyal*, (1995) 2 SCC 570, and contended that in view of the fact that the "Sealed Cover" has already been opened and it has been found that the respondent has been recommended to be promoted to the post of Chief Engineer, and interim order can be legitimately passed that he shall be promoted to the post of Chief Engineer, an interim order can be legitimately passed that he shall be promoted to the post of Chief Engineer subject to the result of enquiry proceedings pending against him. This decision does not notice the Three judge decision in *Jankiraman's case*. Moreover, it was held that the order of the High Court by which the charge-sheet as also the order appointing an Enquiry Officer were quashed, was not warranted by the circumstances of the case and that it was in the interest of justice as also in the interest of administration that the departmental enquiry, which had already proceeded to a large extent, be allowed to be completed. This court also directed that the delinquent employee may be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he was found fit for promotion, he should be promoted immediately. The Court hastened to add:-

"This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different."

19. This order was passed on the conscious consideration of the fact that the charge-sheet and departmental proceedings had been quashed by the High Court and, therefore, the Court merely balanced the equities by directing that the petitioner, in that case, may be considered and promoted, if found fit.

20. It was further observed that the promotion so made during the pendency of the enquiry shall be, subject to

review after the conclusion of the enquiry in the large of the findings recorded in the departmental proceedings. This decision, therefore, cannot be pressed in aid in this case.

21. Dr. A.M. Singhvi, learned Senior Counsel appearing on behalf of the State of Madhya Pradesh has contended that in view of the law laid down by this Court in Jankiraman's case, the judgment passed by Tribunal cannot be sustained particularly as the charges against the respondent relate to financial irregularities, two of which are recent in time and cannot be said to be stale. It is also contended that the allegation of malice made against the State Government is still at the initial stage of mere assertion which is unsubstantiated and cannot be treated even as laying down a foundation for any interim relief. Dr. Singhvi also contended that part of the evidence on behalf of the State has already been recorded by the enquiry officer and the enquiry proceedings would be completed within the time frame fixed by this Court provided the respondent cooperates in those proceedings.

22. Having regard to the facts and circumstances of the instant case, we are firmly of the view that the Tribunal was not justified in passing the impugned order that the "Sealed Cover" be opened and the recommendations of the Departmental Promotion committee be given effect to. The "Sealed Cover Procedure" was rightly adopted by the Departmental Promotion Committee and there was no reason to interfere with that procedure.

23. It is pointed out that the post of Chief Engineer (E&M) has already been filled up and respondent No. 2 has already been promoted. It is, however, stated on behalf of respondent No. 1 that a post of chief Engineer(E&M), on which Mr. K.K. Murab was promoted, has fallen vacant as Mr. Murab has retired from service on attaining the age of superannuation in November, 1997 and this post is still lying vacant. It is contended that on this vacant post, respondent No.1 can be promoted subject to the result of the departmental enquiry.

24. Having given our anxious consideration to the respective contentions, we think that the interest of justice would be best served by directing that if the post of Chief Engineer (E&M), held by Mr. K.K.Murab has since fallen vacant, as pointed out by the counsel for the respondent, and if the said post is still lying vacant, and no promotion has so far been made on that post, it shall not be filled up by the State Government and shall be kept vacant so that if and when respondent No.1 is ultimately found to be not guilty in departmental proceedings, he may be promoted on that post without delay particularly as he has already been found by the Departmental Promotion Committee to be fit for promotion. We also direct that the departmental proceedings, pending against respondent No 1, shall be completed, provided respondent No, 1 cooperates. within a period of four months. the post of chief Engineer, referred to above which has fallen vacant on the retirement of Mr. K.K.Murab, shall not be filled up for four months, if the same has not already been filled up in the meantime.

25. The appeal is disposed of in the manner indicated above without any order as to costs.