2024 INSC 729

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 8387 OF 2013

UNION OF INDIA AND ORS. ....APPELLANT(S)

VERSUS

DOLY LOYI ...RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. The instant appeal by special leave takes exception to the judgment dated 26th April, 2013 passed by the High Court of Delhi in Writ Petition(C) No. 7960 of 2012 whereby the writ petition preferred by the appellant herein i.e., the Union of India was dismissed and the order passed by Central Administrative Tribunal, Principal Bench, New Delhi(hereinafter being referred to as 'Tribunal') was upheld, whereby the Tribunal allowed Original

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Application No. 3716 of 2011 filed by the respondent herein challenging the denial of promotional benefits to him.

2. The brief facts in a nutshell relevant and essential for the disposal of the instant appeal are noted hereinbelow.

3. The respondent was appointed as Assistant Commissioner of Income Tax on 16th December, 1987. He was granted due promotions to the post of Deputy Commissioner of Income Tax, Joint Commissioner of Income Tax, and Additional Commissioner of Income Tax in December 1991, July 2001, and November 2001, respectively. On 31st December, 2001, an FIR was registered against the respondent for the offences punishable under Section 120B of the Indian Penal Code, 1860, and Sections 13(1) and 13(1)(d) of the Prevention of Corruption Act, 1988, alleging *inter alia* that the respondent, while working as the Special Secretary(Finance), Government of Arunachal Pradesh acted in conspiracy with other officers and committed criminal misconduct by abusing his position as a public servant. A sanction dated 2nd June, 2006, was accorded by the CBDT (Department of Revenue, Ministry of Finance, Government of India) for the prosecution of the respondent in respect of the aforesaid allegations before the concerned Court.

4. Thereafter, on 22nd February, 2007, the Departmental Promotion Committee (hereinafter being referred to as 'DPC') was convened to consider the promotion of Additional Commissioner of Income Tax to the post of Commissioner of Income Tax. Since the respondent had attained eligibility for promotion to the post of Commissioner of Income Tax, his case was also considered for promotion by the DPC. However, the vigilance certificate of the respondent was withheld and the recommendations of the DPC with regard to the promotion of the respondent were kept in a sealed cover on the basis that the 'Prosecution for criminal charge' was pending against him, and thus, he was deprived from being considered for promotion along with his batchmates.

5. Being aggrieved by the withholding of the vigilance clearance and adoption of the sealed cover procedure, the respondent filed Original Application No. 8 of 2011 before the Central Administrative Tribunal, Guwahati Bench. Original Application No. 8 of 2011 was allowed *vide* order dated 28th June, 2011 and the appellants were directed to consider the case of the respondent and pass a reasoned order within two months. In compliance of the said direction, the appellants considered the case of the respondent for

promotion and *vide* communication dated 15th September, 2011, rejected the same holding that there was no justification for the opening of 'Sealed Cover' and considering the case of the respondent herein for promotion along with his batchmates.

6. The order dated 15th September, 2011 was challenged by the respondent before the Central Administrative Tribunal, Principal Bench, New Delhi by preferring Original Application No. 3716 of 2011. The Tribunal *vide* order dated 7th March, 2012 allowed the aforesaid Original Application, quashed the communication dated 15th September, 2011, and directed the appellants herein to open the sealed cover adopted in the case of promotion of the respondent and give effect to the same, and if he was found fit for promotion, then to promote him and also award back wages with costs quantified at Rs. 10,000/-.

7. Challenging the order dated 7th March, 2012, the appellants herein filed Writ Petition(C) No. 7960 of 2012 before the learned Division Bench of High Court of Delhi, which stands rejected *vide* order 26th April, 2013. The said order is subjected to challenge in this appeal by special leave.

8. Leave was granted by this Court on 16th November, 2013. Learned senior counsel appearing for the appellants was directed

to produce the 'Sealed Cover' containing the recommendation of DPC in relation to the respondent *vide* order dated 13th June, 2024 and the same was submitted by the learned counsel for the perusal of this Court.

Submissions on behalf of the appellants: -

9. Shri Wasim Qadri, learned senior counsel appearing on behalf of the appellants drew the Court's attention towards the Office Memorandum (in short 'OM') dated 14th September, 1992 dealing with the 'Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation-Procedure and guidelines to be followed'. The extract of the OM dated 14th September, 1992 relied upon by the learned counsel for the appellants is reproduced below:-

> **"2. At the time of consideration of the cases of Government servant for promotion, details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee: -**
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> **i) Government servants under suspension;**
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> **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.**
>
> **2.1 The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The**

> **assessment of the DPC including 'unfit for promotion' and the grading awarded by it will be kept in a sealed cover.** The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of of Shri.. ...in respect (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.....'. The proceeding of the DPC need only contain the note. The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.**"**
>
> (emphasis supplied)

10. Learned counsel, while placing emphasis on clause(iii) of Para No. 2 i.e. **'Government servants in respect of whom prosecution for a criminal charge is pending'** submitted that this expression has to be read in light of the object sought to be achieved i.e. a tainted officer should not be allowed to be promoted till the cloud is clear and during this period, the sealed cover procedure is to be adopted.

11. He submitted that the said OM does not specifically indicate as to before which forum or at what stage, the prosecution for criminal charge is required to be pending in order to attract the sealed cover procedure and thus, this expression should be interpreted in a wider sense to even cover a case in which investigation for a criminal charge is pending with the Investigating Agency.

12. He further submitted that the said OM does not specify the stage when the prosecution for a criminal charge can be stated to be pending and hence the definition of pendency of judicial proceedings provided in Rule 9(6)(b)(i) of the CCS(Pension) Rules, 1972, should be adopted, which provides that the judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or report of Police officer, of which Magistrate takes cognizance is made. The relevant portion of the extant rules as relied upon by the learned counsel is as below:

> **"(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.**"**

13. He further submitted that in a criminal prosecution, the sanction for prosecution whether under Section 197 of Code of Criminal Procedure, 1973 or Section 19 of the Prevention of Corruption Act, 1988 is an event of utmost importance relating to the criminal charge as the sanction is accorded by the concerned authority on the basis of contents of FIR and the entire material collected during the course of investigation. He thus urged that

once the sanction is granted, the prosecution for criminal charge can be said to be pending.

14. He concluded his submissions by urging that the department was justified in invoking the sealed cover procedure while considering the case of the respondent for promotion, since, the FIR was lodged on 31st December, 2001 and sanction was granted on 2nd June, 2006, whereas, the DPC was convened in the month of February 2007, which is well after the lodging of FIR and grant of sanction, thus, the case of respondent falls under clause(iii) of Para No.2 i.e. 'Government servants in respect of whom prosecution for the criminal charge was pending'.

On these grounds, the learned counsel for the appellants implored this Court to set aside the impugned judgment and allow the appeal.

Submissions on behalf of the Respondent: -

15. *Per contra*, learned counsel for the respondent, vehemently and fervently opposed the submissions advanced by learned counsel for the appellants and urged that the denial of promotion to the respondent by resorting to 'the sealed cover procedure' is *ex-facie* illegal and bad in eyes of law.

16. He submitted that on the relevant date of DPC being convened as well as on the date of issuance of the promotion orders whereby the batchmates of the respondent were promoted, there was no impediment in the promotion of the respondent in terms of Para No. 2 of OM dated 14th September, 1992(reproduced *supra*), as the respondent's case does not fall under any of the three clauses enumerated in the said Para. The respondent was not placed under suspension; no departmental proceedings were ever initiated against the respondent and no criminal charge was pending against him and thus the restrictive clauses would not *ex-facie* operate against the respondent's right to be considered for promotion.

17. He further drew the Court's attention to clause(iii) of Para No. 2 of OM dated 12th January, 1988, as per which the sealed cover procedure could be adopted with regard to a Government servant in respect of whom the prosecution for a criminal charge was pending or sanction for prosecution had been issued or a decision had been taken to accord sanction for prosecution. The relevant para of OM dated 12th January, 1988 is reproduced hereinbelow:

"Cases of Government Servants to whom Sealed Cover Procedure will be applicable.

2. 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.

(iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise.**"**

(emphasis supplied)

He thus urged that the Central Government, while framing the OM dated 14th September, 1992, specifically and consciously deleted the requirement of a sealed cover procedure in respect of Government servants against whom the sanction for prosecution is granted as was mentioned in the second part of clause(iii) of Para 2 of the earlier OM of 1988. He contended that by mere grant of sanction, the prosecution for a criminal charge could not be said to be pending against a government servant.

18. On these grounds, he urged that the impugned judgment doesn't suffer from any infirmity and implored the court to dismiss the appeal.

19. We have given our thoughtful consideration to the submissions advanced at bar and have perused the impugned judgments. With the assistance of learned counsel for the parties, we have thoroughly examined the material available on record.

Discussion and Conclusion: -

20. The core issue for consideration before this Court is: "Whether by the mere grant of prosecution sanction, it could be said that the prosecution for a criminal charge is pending against the respondent Government Servant and whether grant of sanction for prosecution could be a valid ground for putting the DPC recommendations in a sealed cover"?

21. On a bare perusal of OM dated 14th September, 1992, which covers the issue, it is clear that it prescribes the conditions under which the assessment done by the DPC is to be kept in the sealed cover. According to this OM, the sealed cover procedure can be resorted to in respect of three categories of Government servants

i.e. Government servants under suspension, Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending, and Government servants in respect of whom prosecution for criminal charge is pending.

22. Learned counsel for appellant made a pertinent submission that the case of the respondent falls under the third clause of the above OM, i.e. Government servants in respect of whom prosecution for criminal charges is pending. Thus, the question requiring consideration is as to whether a mere grant of prosecution sanction would be sufficient to infer that the prosecution for a criminal charge was pending against the respondent. Similar issue came up for consideration before this Court in the case of ***Union of India v. K.V. Jankiraman***[1], wherein it was held that sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The relevant extract is reproduced hereinbelow:

> **"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet**

[1] (1991) 4 SCC 109

> **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. The authorities thus are not without a remedy.**"**
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> (emphasis supplied)

23. At this stage, it is pertinent to note that the Ministry of Personnel, Government of India *vide* OM dated 2nd November, 2012 issued certain clarifications regarding the stage when a prosecution for criminal charge can be said to be pending, keeping in view the *dicta* laid down in ***K.V. Jankiraman****(supra)*. Para Nos. 6 and 8 of OM dated 2nd November, 2012 states as under:

> "**6.** When a government servant comes under a cloud, he may pass through three stages, namely, investigation for a criminal charge in departmental proceedings and or prosecution of criminal charges followed by either penal/conviction or exoneration/acquittal. During the stage of investigation prior to issue of charge-sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officer should not be promoted, it is open to the Government to suspend the officer which will lead to DPC recommendation to

> be kept in sealed cover. **The sealed cover procedure is to be resorted to only after the charge memo/charge-sheet is issued or the officer is placed under suspension. The pendency of preliminary investigation prior to that stage is not adopt the sealed cover procedure.**"
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> (emphasis supplied)

24. Considering the above position, the disciplinary/criminal proceedings can be said to be initiated against the employee only when a charge memo is issued to the employee in a disciplinary proceeding or a charge-sheet for a criminal prosecution is filed in the competent Court. The sealed cover procedure is to be resorted to only after issuance of the charge-memo/charge-sheet is issued. The pendency of investigation and grant of prosecution sanction will not be sufficient to enable the authorities to adopt the sealed cover procedure.

25. In view of the aforesaid legal position, the crucial aspect requiring examination is as to whether the prosecution for criminal charge was pending against the respondent when the DPC meeting was held.

26. It is not in dispute that the sanction to prosecute the respondent was granted on 2nd June, 2006 and the charge sheet was filed by CBI, after completion of investigation on 25th October, 2008, whereas the DPC to consider the promotion of Additional Commissioners of Income Tax was convened on 22nd February,

2007, wherein the sealed cover procedure was adopted *qua* the respondent. It is thus clear that the charge sheet against the respondent was filed well after the meeting of the DPC was convened. Hence, it could not be said that the prosecution for a criminal charge was pending against the respondent when the DPC was convened. Therefore, the move on the part of DPC to resort to the sealed cover procedure was unjustified and unsustainable on facts and in law.

27. Resultantly, we have no hesitation in holding that the impugned judgment of the High Court dated 26th April, 2013 is based on apropos consideration of facts and law and hence the same does not warrant interference.

28. The 'Sealed Cover' wherein the assessment of the respondent was considered by the DPC was presented to the Court by learned counsel for the appellant and was opened. The letter shows that the DPC assessed the respondent to be 'FIT' for promotion. Consequential steps in light of the above recommendations shall follow.

29. This appeal lacks merit and is dismissed in the aforesaid terms. No order as to costs.

30. Pending application(s), if any, shall stand disposed of.

.....J.
(SANDEEP MEHTA)

.....J.
(R. MAHADEVAN)

New Delhi;
September 24, 2024.