

Union Of India & Ors vs Anil Kumar Sarkar on 15 March, 2013

Equivalent citations: AIR 2013 SUPREME COURT 1661, 2013 (4) SCC 161, 2013 AIR SCW 2232, 2013 LAB. I. C. 2395, 2013 (2) SERVLJ 468 SC, 2013 (3) SCALE 542, (2013) 2 ALLMR 954 (SC), (2013) 2 SERVLJ 468, (2013) 4 CAL HN 10, (2013) 2 JCR 189 (SC), AIR 2013 SC (CIVIL) 2293, 2013 (2) KER LT 29 SN, (2013) 137 FACLR 641, (2013) 3 MAD LJ 828, (2013) 2 SCT 753, (2013) 3 SERVLR 357, (2013) 3 SCALE 542

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Bench: P. Sathasivam, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

1

2 CIVIL APPEAL NO. 2537 OF 2013

(Arising out of S.L.P. (C) No.1933 of 2011)

The Union of India & Ors.

.... Appellant(s)

Versus

Anil Kumar Sarkar

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Delay condoned.
- 2) Leave granted.
- 3) This appeal is directed against the judgment and order dated

27.04.2010 passed by the Gauhati High Court at Gauhati in Writ Petition (C) No. 744 of 2010 whereby the Division Bench of the High Court allowed the writ petition filed by the respondent

herein and set aside the order dated 21.08.2009 passed by the Central Administrative Tribunal, Gauhati Bench, Gauhati in O.A. No. 251 of 2007.

4) Brief facts

a) Anil Kumar Sarkar, the respondent herein, joined the Northern

Railways as a Junior Clerk on 04.11.1977. He was promoted to various posts and while he was working as senior AFA/T-1 in the office of the Financial Adviser and Chief Accounts Officer of Northeast Frontier (N.F.) Railway at Maligaon, a Departmental Promotion Committee (DPC) was convened by the Union Public Service Commission (UPSC) on 26.02.2002 and 27.02.2002 to consider eligible Group 'B' officers of the Accounts Department for their substantive promotion to Group 'A' (Jr. Scale) of Indian Railways Accounts Service (IRAS) against the vacancies for various Zonal Railways/Production Units. In the said DPC, the respondent's name was also considered against the vacancies in N.F. Railway for the year 2001-2002 and accordingly, his name was placed in the extended select panel.

b) It was alleged by the appellants herein that during the year 1994-95, while the respondent was working as Assistant Accounts Officer in the Central Stores Accounts (Bills) in the office of the Financial Adviser and Chief Accounts Officer (Open Line), N.F. Railway, Maligaon, he committed gross misconduct in the matter of checking and passing the bills of various firms involved in manufacturing and supplying of cast iron sleeper plates to N.F. Railways. For the said acts, four memorandum of charges were issued to the respondent, out of which two were issued on 13.08.2003 and others on 01.09.2003 and 05.11.2003. On the basis of the said memorandums, four departmental proceedings were initiated against the respondent at three different places, i.e., Delhi, Kolkata and Gauhati, enquiries were completed and show cause notices were served.

c) Based on the similar charges, in the year 2004, the CBI lodged 11 FIRs against the respondent herein on different dates under Section 120B/420 of the Indian Penal Code, 1860 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 and accordingly, cases were registered against him. Subsequently, 11 cases were amalgamated into 3 cases being numbered as Special Case Nos. 59/04, 60/04 and 62/04. According to the appellants, on the basis of these charges, the respondent was not promoted to Group 'A' (Jr. Scale).

d) By office order dated 21.04.2003, the batch mates of the respondent were promoted. Being aggrieved, the respondent herein filed several representations to the Department for consideration of his case for promotion which were duly rejected. Challenging the non-consideration of his case for promotion, the respondent filed O.A. No. 251 of 2007 before the Central Administrative Tribunal, Gauhati Bench for a direction to the appellants herein to promote him to Group 'A' (Jr. Scale) of IRAS w.e.f. 05.03.2002 in terms of the recommendations of the DPC held on 26.02.2002 and 27.02.2002 wherein his name was figured in the extended panel list. Vide order dated 21.08.2009, the Tribunal dismissed his application.

e) Challenging the order of the Tribunal, the respondent herein filed a petition being W.P.(C) No. 744 of 2010 before the Gauhati High Court. The High Court, by impugned order dated 27.04.2010, allowed the petition and set aside the order passed by the Tribunal and directed the appellants

herein to issue appropriate order in favour of the respondent herein for promotion with all consequential benefits.

f) Challenging the said order, the Union of India has filed this appeal by way of special leave.

5) Heard Mr. Mohan Jain, learned Additional Solicitor General for the Union of India and Mr. Rakesh Kumar Singh, learned counsel for the respondent.

Contentions:

6) Mr. Mohan Jain, learned ASG, after taking us through the Office Memorandum dated 14.09.1992 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, submitted that paragraph 2 of the said memorandum has to be considered along with paragraph 7 of the same. According to him, the High Court is not justified in considering paragraph 2 of the memorandum alone. He further submitted that at the relevant time, 4 charge sheets were issued to the respondent and enquiries were completed and notices to show cause had already been served upon the respondent. On the other hand, Mr. Rakesh Kumar Singh, learned counsel for the respondent submitted that as on the date i.e. 21.04.2003, when his juniors were promoted, neither the respondent was under suspension nor any charge sheet was served upon him and he was not facing any criminal prosecution, hence, there was no impediment in promoting him.

7) We have carefully considered the rival submissions and all the relevant materials including the decision of the Tribunal and the impugned order of the High Court.

Discussion:

8) There is no dispute as to the fact that the Office Memorandum No. 22011/4/91-Estt(A), Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi dated 14.09.1992 is applicable to the case on hand. In fact, learned ASG appearing for the appellants and learned counsel for the respondent heavily relied on the said memorandum. The relevant paragraphs for our present purpose are 2 and 7 which are reproduced hereunder:

“No. 22011/4/91-Estt(A) Government of India Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training North Block, New Delhi-110001 Dated: 14.09.1992 OFFICE MEMORANDUM Subject : Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. Procedure and guidelines to be allowed.

|Board's L/No. E(D&A) |In supersession of all instructions | |88RG6-21 dt. 21.9.88 & |contained in Bd's letters referred to in | |2.7.90 |the margin on the above subject, the

|| procedure and guidelines laid down below || shall be followed in the matter of || promotion from Group 'B' to Group 'A' and || within Group 'A' of Railway Officers || against whom disciplinary/Court || proceedings are pending. || Cases of Govt. to whom || 2. At the time of consideration of the || sealed cover procedure || cases of Govt. servants for empanelment || will be applicable. || details of Govt. 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 a charge sheet has been issued and || the disciplinary proceedings are pending; || (iii) Government servants in respect of || whom prosecution for a criminal charge is || pending. ||
 || Sealed cover procedure
 || applicable to officers
 || coming under || 7. A Govt. servant, who is recommended || cloud-holding of DPC but || for promotion by the Departmental || before promotion. || 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 DPC. He shall not be || promoted until the conclusion of || disciplinary case/criminal proceedings || and the provisions contained in this || letter will be applicable in his case || also." ||

9) It is not in dispute that the respondent had joined the Northern Railways as a Junior Clerk on 04.11.1977, and got promoted time and again.

While he was working as a Group 'B' Officer, his case was taken up for promotion to Group 'A' (Junior Scale) of the Indian Railways Accounts Service (IRAS). It is also not in dispute that in the meetings of the DPC conducted on 26.02.2002 and 27.02.2002, the respondent's name was considered and he was placed in the extended select panel. It is further seen that up to 21.04.2003, the date on which the respondent's batch mates were promoted to IRAS, neither any criminal proceedings was initiated against him nor any departmental enquiry was initiated, nor any charge sheet was served upon him and nor he was placed under suspension. Aggrieved by the non-consideration of his representations for promotion, the respondent filed O.A. before the Central Administrative Tribunal. Learned counsel for the Railways, by placing reliance on the Office Memorandum dated 14.09.1992, contended before the Tribunal that a Government servant who is recommended for promotion by the DPC and in whose case the circumstances mentioned in paragraph 2 are in existence, he shall not be promoted. Accepting the above stand of the Railways, the Tribunal rejected the petition filed by the respondent herein.

10) Aggrieved by the said decision of the Tribunal, the respondent herein filed a petition before the High Court, wherein, the said memorandum, particularly paragraph 2, was pressed into service. The High Court, taking note of the conditions prescribed in paragraph 2 and in the absence of any such condition as on the relevant date, i.e., 21.04.2003, set aside the order of the Tribunal and directed the Railways to consider the case of the respondent for promotion.

11) As per paragraph 2 of the said memorandum, at the time of consideration of the Government servants for promotion, the following details of Government servants in the consideration zone for promotion falling in the categories mentioned should be specifically brought to the notice of the DPC, viz., (i) Government servant is under suspension; (ii) Government servant has been served with a charge sheet and the disciplinary proceedings are pending; and (iii) Government servant is facing prosecution for a criminal charge and the said proceedings are pending. As rightly observed by the High Court, if the above conditions are available, even one of them, then the DPC has to apply the 'sealed cover process'. In the case on hand, it is not in dispute that the relevant date is 21.04.2003, when the respondent's batch mates were promoted, admittedly on that date the respondent was not under suspension, no charge sheet was served upon him nor he was facing any criminal prosecution. In such circumstances, in terms of paragraph 2 referred to above, the recommendation of the DPC has to be honored and there is no question of applying 'sealed cover process'.

12) Mr. Mohan Jain, learned ASG submitted that paragraph 2 has to be read along with paragraph 7 of the office memorandum dated 14.09.1992. We have already extracted paragraph 7 of the memorandum which makes it clear that a government servant, who is recommended for promotion by the DPC if any of the circumstances mentioned in para 2 of the said memorandum arises after the recommendations of the DPC are received, but before he is actually promoted will be considered as if his case has been placed in a sealed cover by the DPC. After extracting para 2, we also highlighted the three conditions prescribed therein. Though, learned ASG has mentioned that four charge sheets were issued to the respondent, enquires were completed and show cause notices had already been served on the respondent, on the relevant date, namely, 21.04.2003, when his batch mates were promoted, none of the conditions was in existence in the case of the respondent. Admittedly, the respondent was not placed under suspension, charge sheet had been issued only on 13.08.2003 i.e. nearly after 4 months, no disciplinary proceedings were initiated or pending as on 21.04.2003. In such circumstances, we are of the view that the High Court is fully justified in issuing direction based on para 2 of the memorandum. No doubt, the learned ASG heavily relied on later part of para 7 of the memorandum which reads as under:

“He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.” Inasmuch as none of the circumstances was in existence as on 21.04.2003, reliance placed on the later part of para 7 cannot be accepted or even not applicable.

13) It is not in dispute that an identical issue was considered by this Court in Union of India and Others vs. K.V.Jankiraman and Others, (1991) 4 SCC 109. The common questions involved in all those matters were:

(1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? and (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?. Among the three questions,

we are concerned about question No.1. As per the rules applicable, the “sealed cover procedure” is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over.

Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-

“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 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.

In para 17, this Court further held:

17. ... The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee....” After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that “the Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from

the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits.....We see no reason to interfere with this order.

The appeal, therefore, stands dismissed.” The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant-Union of India is liable to be rejected.

14) In *Coal India Limited & Ors. vs. Saroj Kumar Mishra*, AIR 2007 SC 1706, this Court, in para 22, has held that a departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.

15) In *Chairman-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others*, (2011) 5 SCC 142, this Court held as under:

“27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide *Union of India v. K.V. Jankiraman*, (1991) 4 SCC 109 and *UCO Bank v. Rajinder Lal Capoor*, (2007) 6 SCC 694)” We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued.

16) Learned ASG, by drawing our attention to the decision of this Court in *Union of India and Another vs. R.S. Sharma*, (2000) 4 SCC 394 submitted that in spite of decision of this Court in *Jankiraman’s case* (supra) in view of para 7 of the office memorandum and in the light of the fact that proceedings were initiated both criminal and departmentally, the High Court committed an error by overlooking para 7 of sealed cover process and contended that the direction issued by it cannot be sustained. We have carefully gone through the factual position and the ultimate ratio laid down by this Court in *R.S. Sharma’s case* (surpa). Even though in the said decision, this Court has distinguished the decision in *Jankiraman’s case* (supra) and held that the same is not applicable to its case, in the light of the conditions mentioned in para 2 as well as para 7 of the office memorandum dated 14.09.1992 and of the categorical finding that none of the conditions mentioned therein has been fulfilled, we are of the view that the decision in *R.S. Sharma’s case* (supra) is not helpful to the case of the appellant.

17) In the light of the above discussion and in view of factual position as highlighted in the earlier paras, we hold that the ratio laid down in *Jankiraman’s case* (supra) are fully applicable to the case on hand, hence we are in agreement with the ultimate decision of the High Court.

Consequently, the appeal filed by the Union of India fails and the same is dismissed. However, there will be no order as to costs.

.....J. (P. SATHASIVAM)J. (JAGDISH SINGH
KHEHAR) NEW DELHI;

MARCH 15, 2013.
