

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 11231-11232 OF 2016**

HARSH KUMAR SHARMA, IFSAPPELLANT(S)

VERSUS

STATE OF PUNJAB & ANR.RESPONDENT(S)

WITH**CONTEMPT PETITION (CIVIL) NOS. 788-789 OF 2016****IN****SLP (CIVIL) NO. 24338-24339 OF 2014****J U D G M E N T****A.K. SIKRI, J.**

In these appeals, challenge is laid by the appellant to the judgment dated 05.05.2014 of the High Court vide which writ petition of the respondent/State of Punjab is allowed and order of the Central Administrative Tribunal (CAT) has been set aside. The appellant herein had filed Original Application under Section 19 of the Administrative Tribunals Act, 1985 before the Chandigarh Bench of the CAT for certain reliefs. The result of the Departmental Promotional Committee (DPC), after considering the case of the appellant for promotion, has been kept in a sealed cover by the DPC. Main relief sought for by the appellant

was for opening of the sealed cover and giving effect thereto, with other consequential reliefs. The Tribunal had allowed the OA of the appellant thereby granting the said prayer. The High Court has, vide impugned judgment, reversed the order of the CAT.

2. It may be stated at this stage that the appellant is facing criminal prosecution under the provisions of Prevention of Corruption Act, 1988 (for short 'PC Act'). The issue, therefore, resolves around these criminal proceedings, namely, whether that could form the basis of keeping the result of the DPC in sealed cover. According to the appellant, having regard to the guidelines for resorting to the sealed cover procedure, stage was not ripe for this purpose as, as on the date on which the DPC was held, there was neither any chargesheet against the appellant nor any charges framed in the criminal case. The respondents claimed otherwise as, according to them, matter had already been entrusted to CBI for carrying out the investigation into the allegations of acts of corruption on the part of the appellant and even the investigation was complete and report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) had been submitted by the CBI to the competent court. Since the report under Section 173 of the Cr.P.C. was filed before the first meeting of the DPC which was held, it was argued that the sealed cover procedure had been rightly adopted.

3. Few facts which are relevant in order to appreciate the rival contentions and decide the issue need a mention at this stage. We, therefore, proceed to take note of those facts.
4. The appellant joined Indian Forest Service in the year 1985 and after undergoing the requisite training, he was allocated to Punjab cadre. He was given senior scale on 01.04.1989 and was promoted to the rank of Conservator of Forests vide order dated 15.03.2001, but from an anterior date. While working in that capacity, the appellant was directed to hold an inquiry into the running of Golf Course in reserved forest area, which was being run by Forest Hill Resort whose owner was one Lt. Col. (Retd.) B.S. Sandhu. The appellant conducted the said inquiry, namely, whether it was a forest land or not and on other issues which were referred to him.
5. In a public interest litigation bearing CWP No. 1134 of 2004 titled '*Court on its own motion v. Col. B.S. Sandhu and others*', the High Court of Punjab and Haryana passed an order for demolition of the said Golf Course after finding that it was constructed in the reserved forest area. At the same time, the matter was also entrusted to the CBI with a direction to fix accountability. The High Court had adversely commented upon the conduct of the appellant as well observing that while inquiring into the matter which was entrusted to him, he had submitted two dramatically opposed reports inasmuch as in the first report, the

wrong-doers were indicted, whereas in the second report, the appellant had exonerated them. In pursuance of these directions, FIR was lodged by the CBI on 07.04.2006 in which the appellant was also arrayed. The CBI conducted the investigation and as per its report, certain Forest Officers and one I.A.S. Officer entered into a criminal conspiracy with Lt. Col. (Retd.) B.S. Sandhu and his associate Rajiv Bajaj thereby causing undue favour to Sandhu who, taking advantage of the same, developed and established Forest Hill Resort in violation of various provisions of Indian Forest Act, 1927, Punjab Land Preservation Act, 1900 and various other Acts. It is significant to mention that the appellant does not figure in the list of those Forest Officers who had allegedly colluded with Sandhu. Against him, the allegation is of submitting two contradictory reports thereby trying to shield the said wrong-doers.

6. The events which are relevant for the purposes of this case from, the stage of filing of the FIR till the filing of the chargesheet in the Court and the holding of DPC, are as under:

- 07.04.2006** : CBI filed the FIR.
- 05.07.2006** : The appellant moves the case for quashing of FIR.
- 10.08.2006** : Government of India delists this land from the category of forests.
- 17.08.2006** : State Government admits that the above said lands were erroneously recorded as forests.
- 27.10.2006** : The appellant moves quashing petition vide number 45437 M of 2006.
- 27.11.2006** : The appellant moves application for the amendment of quashing petition 73577 of 2006, which is allowed.

- 22.02.2007** : The appellant gets non functional grade in the pay scale of Chief Conservator of Forests (CCF) after scrutiny of records in 2011 from the back date.
- 14.07.2008** : The appellant files a case of defamation against Shri R.K. Bajaj in the JMFC Court and case of civil defamation before the Civil Judge. Shri R.K. Bajaj on being summoned on oath gives an affidavit that the appellant never demanded any bribe. He is further charged by the court for the crime.
- 16.04.2009** : Petition of the appellant for quashing of the FIR dismissed by the High Court .
- 12.01.2012** : Challenging the aforesaid order of the High Court, appellant filed SLP (Criminal) No. 7647 of 2009 which is still pending in this Court.

It may be mentioned that during the pendency of this petition, Government of India initially took the view that the sanction to prosecute the appellant be withdrawn and letters were written to the State Government to this effect. Without stating in detail the events in this behalf, suffice is to mention that recently decision is taken in consolidation with the State Government not to withdraw the sanction. In SLP (Criminal) No. 7647 of 2009, directions are given by this Court on 22.11.2006 to the Central Government to produce the relevant records to show the circumstances necessitating the change of opinion.

- 29.03.2011** : Post of Chief Conservator Forest became available on the retirement of one Mr. Swaran Singh. The appellant was eligible to be considered for promotion against the said post, as per his seniority.
- 09.12.2008** : Report under Section 173 of Cr.P.C. submitted by CBI.
- 29.03.2011** : Meeting of DPC held wherein the case of the appellant for the post of Chief Conservator Officer was considered and the result is kept in the sealed cover.

7. Feeling aggrieved by the adoption of sealed cover procedure, the appellant filed OA No.549 of 2013 in CAT, which has been allowed by the CAT on 11.11.2013. Against that judgment, State of Punjab filed writ petition in the High Court, which was allowed by the High Court vide

impugned judgment dated 05.05.2014 thereby setting aside the order of the CAT. The appellant preferred review petition seeking review of the order dated 05.05.2014, which stood dismissed on 10.07.2014, leading to the filing of the special leave petitions by the appellant out of which the present appeals arise for our decision.

8. The appellant, who appeared in-person, drew our attention to some of the subsequent events which may be noticed at this stage.
9. To recapitulate, FIR No. RC CHG 2006 A0013 was registered against the appellant and two IAS Officers and one IFS Officer on the direction of the Punjab and Haryana High Court in Public Interest Litigation bearing CWP No. 1134 of 2004. The main issue was that Lt. Col. (Retd.) Sandhu had constructed a golf course in the reserved forest area. However, the said order of the High Court was set aside by this Court and the Court remanded the case back to the High Court. The High Court has now given the findings that 40 per cent of the lands owned by Col. Sandhu, who had made the golf course, was agricultural land. The demarcation was going on. Meanwhile, the Government of India and the State Government have delisted the area from the category of forests. It is, therefore, no longer the forest area.
10. On the basis of the aforesaid development, the appellant submitted that the CBI case registered against two IAS and two IFS Officers for golf

course in the so-called forest area could not proceed. The Court of Special Judge, CBI refused to take cognizance against the appellant because of the stay of the trial by the High Court as the appellant had approached the High Court for quashing of the proceedings against him. However, this Court has passed the order that the High Court had to first determine whether the area in question is forest or not. Since it is no more considered a forest area, nothing survives. On merits, it is submitted that the State has accepted the fact that the vacancy for promotion arose on 30.09.2008 and prosecution sanction was given on 16.12.2008 by Government of India in the present case. So, on the date of the availability of the vacancy, no prosecution sanction/prosecution was pending against the appellant. It is further argued that the DPC ignored the Government of India's instructions that without issuing chargesheet, no promotion can be stopped. It further promoted two IFS Officers, viz. Mr. Dhirender Singh and Mr. H.S. Gujral, who are/were facing prosecution in the court of law. Rather, two IAS Officers involved in the present case, viz. Mr. S.C. Aggarwal and Mr. K.B.S. Sidhu, were promoted. Example of one Mandip Singh, IAS of Punjab cadre is also given stating that he was promoted in spite of the fact he was under departmental chargesheet and his prosecution in the court was in progress wherein charges were framed against him.

11. The appellant has placed strong reliance on ***Union of India and others***

v. ***K.V. Jankiraman and others***¹ wherein it is held that till the time chargesheet is issued by the Department or the Court framed charges in the criminal case, promotion cannot be stopped. Many other cases, where ratio of ***K.V. Jankiraman's*** case is reiterated, are also referred to by the appellant.

12. It is also argued by the appellant that as per Government of India's instructions issued in the years 1992, 2000, 2001, 2003, 2004, 2012 and 2014, no case can be kept in a sealed cover without chargesheeting the employee or court framing the charges. Moreover, every sealed cover has to be reviewed in three months and no sealed cover can be operative after two years, as per appended Government of India's instructions. It is, thus, argued that in any case sealed cover had to be opened in the absence of any such review undertaken by the respondents.

13. Learned counsel for the respondents, on the other hand, supported the reasons given by the High Court in the impugned judgment and submitted that the subsequent developments are of no consequence inasmuch as the fate of the appellant's case does not depend upon the issue as to whether the area in question, where golf club was constructed, was forest area or not. It was pointed out that the

¹

(1991) 4 SCC 109

allegations against the appellant are altogether different, namely, when he was asked to inquire into the matter, he gave two conflicting and diametrically opposite reports and in the second report which was given by the appellant, in favour of Col. Sandhu, undue favour was shown to him. He further submitted that the sealed cover procedure could be adopted when the DPC meeting was held at a time when the chargesheet had already been submitted.

14. Office Memorandum dated 14.09.1992 lays down the circumstances under which the assessment done by the DPC is to be kept in the sealed cover. Three such circumstances which are given are stipulated in para 2 of the said O.M., which reads as under:

“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.

- (i) Government servants under suspension.
- (ii) Government servants in respect of whom a chargesheet 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 in respect of Shri (name of the Government servant). Not to be opened till the terminator 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.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committee convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.”

15. It would also be fruitful to quote para 7 of the O.M., which reads as under:

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

16. The employee in respect of whom chargesheet has been issued and the disciplinary proceedings are pending or in respect of whom prosecution for criminal charge is pending, his assessment is to be kept in a sealed cover and is not to be given effect to. The question is as to when prosecution for criminal charge is treated to have been 'pending'. This aspect came up for consideration in ***K.V. Jankiraman's*** case and the

Court held that sealed cover procedure is to be resorted to only after the charge memo/chargesheet is issued, as is clear from the following passage in para 16 of the judgment:

“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...”

17. In view of the aforesaid law laid down by this Court, the crucial aspect is

as to whether the prosecution for criminal charge was pending against the appellant when the DPC meeting was held. In **K.V. Jankiraman's** case, this Court gave imprimatur to the order of the CAT holding that if the chargesheet is filed in a criminal court, sealed cover procedure can be resorted to. This was conclusion No.4 of the CAT judgment, which was upheld by this Court, and this conclusion reads as under:

“(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;”

18. In the present case, chargesheet was filed by the CBI, after completion of the investigation, on 09.12.2008 and the meeting of the DPC was held thereafter i.e. on 29.03.2011.
19. In order to overcome the aforesaid hindrance coming in the way of appellant, he submitted that the date of reckoning should be the date on which the vacancy occurred and not the date on which the DPC was held. This argument cannot be countenanced having regard to the law laid down by this Court in **Arindam Chattopadhyay and others v. State of West Bengal and others**² and **P. Grover v. State of Haryana**³.
20. Therefore, move on the part of the DPC to resort to the sealed cover procedure is justified. We may record at this stage that the aforesaid position contained in O.M. dated 14.09.1992 in respect of sealed cover

² (2013) 4 SCC 152

³ (1983) 4 SCC 291

procedure has been repeated in subsequent office memoranda. Vide O.M. dated 02.11.2012, the Ministry of Personnel, Government of India had issued certain clarification keeping in view the dicta laid down in **K.V. Jankiraman's** case. After quoting the three circumstances stated in O.M. dated 14.09.1992, wherein sealed cover procedure can be followed, para 6 of the O.M. 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 chargesheet 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 the DPC recommendation to be kept in sealed cover. **The sealed cover procedure is to be resorted to only after the charge memo/chargesheet 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.**

(emphasis supplied)”

21. In para 7, it is clarified that even after recommendation of the DPC, but before appointment of the officer, if any of the three situations arise, the case is deemed to be kept in sealed cover by virtue of para 7 of O.M. dated 14.09.1992⁴.
22. This O.M. further clarifies the stage when prosecution for a criminal charge can be stated to be pending as this was not specified in O.M. dated 14.09.1992. Reference in this para is made to Rule 9(6)(b)(i) of

⁴ Para 7 of O.M. dated 14.09.1992 came up for interpretation in Union of India and another v. R.S. Sharma, (2000) 4 SCC 394, giving effect to the aforesaid provision.

Central Civil Services (Pension) Rules, 1972 which provides that criminal charge would be treated as pending in the case of criminal proceedings, on the date on which the complaint or a report of police officer, on which Magistrate takes cognizance, is made. It, thus, makes it clear that the date on which report of police is made would be the relevant date.

23. We, thus, do not find fault with the action of the respondents in keeping the result of the DPC in sealed cover.

24. While it may be so, other contention of the appellant regarding review of his case has adequate merit. O.M. dated 14.09.1992 as well as other O.Ms. impress the necessity of ensuring that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It is further provided that the appointing authorities should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover. Such review should be undertaken on the expiry of 6 months from the date of convening the first DPC which had adjudged the suitability and kept the findings in sealed cover. This review is also to be done subsequently as

well, after every six months. It is also mandated that the review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and further measures be taken to expedite the completion. Para 5 of the O.M. dated 14.09.1992 takes into consideration the situation where such proceedings are not concluded even after the expiry of 2 years and impresses upon the appointing authorities to consider the desirability of giving promotion to such Government servants keeping in view the following aspects:

- (a) whether the promotion of the officer will be against the public interest;
- (b) whether the charges are grave enough to warrant continued denial of promotion;
- (c) whether there is any likelihood of the case coming to a conclusion in the near future;
- (d) whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- (e) whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

25. In the instant case, no review, after every six months, after the

convening of the first DPC way back in the year 2011, has been done. No doubt, the criminal proceedings have not been initiated because of the challenge to such proceedings by the appellant in the High Court and this Court where the matters remain pending, at the same time, such review should have been taken. This was more so when after examining the case of the appellant, at one point of time, view was to even withdraw the sanction and drop the prosecution. Even when the Central Government repeatedly asked the State Government to do so, the State Government kept on dragging its feet. No doubt, it has now been decided not to withdraw the sanction and that issue is the subject matter of SLP (Criminal) No. 7647 of 2009. Fact remains that delay in this behalf has been on the part of the State Government. There are other significant developments insofar as issue of golf course in a forest area is concerned, it is almost dead now. The persons involved in the said main case stand discharged. Even the public servants involved therein stand promoted. In view thereof, the Government should have considered the desirability of giving the appellant ad-hoc promotion when *prima facie* none of the circumstances mentioned in para 5 of O.M. dated 14.09.1992 and extracted above appear to exist.

26. We, therefore, dispose of these appeals with directions to the respondents to consider the case of the appellant for ad-hoc promotion keeping in view the circumstances of this case including the

developments after the judgment of the High Court which are noted in brief hereinabove. Such a consideration shall, be done within a period of one month of this judgment. The contempt petitions also stand closed.

No costs.

.....J.
(A.K. SIKRI)

.....J.
(ABHAY MANOHAR SAPRE)

**NEW DELHI;
DECEMBER 14, 2016.**



JUDGMENT