

Pawan Kaul vs Delhi Development Authority & Anr.

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Court : Delhi

Decided On : May-05-2026

Judge : Hon'Ble Mr. Justice C.Hari Shankar,Hon'Ble Mr. Justice Om Prakash Shukla

Appeal No. : W.P.(C)/8555/2021

Appellant : Pawan Kaul

Respondent : Delhi Development Authority & Anr.

Advocate for Def. : Mr. Arun Birbal, Mr. Devvrat Yadav, Mr. Gaurav Patel

Advocate for Pet/Ap. : Mr. Mohit Siwach, Mr. Karan Sharma, Mr. Harsh Gautam, Ms. Khyati Goel

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 8555/2021, CM APPL. 27307/2022 PAWAN KAUL
.....Petitioner Through: Mr. Mohit Siwach, Mr. Karan Sharma, Mr. Harsh
Gautam and Ms. Khyati Goel, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANRRespondents Through:
Mr. Arun Birbal, Adv. Mr. Devvrat Yadav, SPC with Mr. Gaurav Patel, GP

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 05.05.2026

C. HARI SHANKAR, J.

1. This writ petition assails judgment dated 14 October 2020 passed by the Central Administrative Tribunal¹ in OA 1543/2020.

2. By the impugned judgment, the Tribunal has dismissed the OA which had been filed by the petitioner before it.

3. The facts are brief.

4. On 24 June 2019, the petitioner was promoted from the post of

1 the Tribunal hereinafter Digitally Signed By:AJIT Page 1 of 11 Junior Secretarial Assistant² to Senior Secretarial Assistant³ in the Delhi Development Authority⁴.

5. While he was employed as SSA, the DDA issued a show cause

notice to the petitioner, apropos a criminal case instituted against the petitioner by his wife by way of FIR 183/2016, under Section 498A and other connected proceedings of the erstwhile Indian Penal Code 1860, which also resulted in a charge-sheet filed before the learned Mahila Court on 24 August 2018.

6. Consequent on the petitioner filing a response, the DDA, by

order dated 5 October 2020, withdrew the promotion of the petitioner

and reverted him to the post of JSA. It is that order which forms subject matter of the challenge before the Tribunal. It is necessary, therefore, for us to reproduce the order, in its entirety, thus: DELHI DEVELOPMENT AUTHORITY Personnel Branch-III rd Block-S, 3 Floor, Vlkas Sadan, INA, New Delhi No. F7(224)13/PB-III/1431 Dated: 05/10/2020

ORDER

WHEREAS the applications were Invited for Limited Departmental Examination for the post of Senior Secretariat Assistant (SSA) vide circular No.45 dated 17.12.2018.

AND WHEREAS Sh. Pawan Kaul, SSA (the then JSA) S/o Sh. Shiv Charan applied for taking the said examination. AND WHEREAS the said examination was held as per the schedule issued vide Circular No. 32 dated 08.05.2019 i.e. on 2 JSA hereinafter 3 SSA hereinafter 4 the DDA hereinafter Digitally Signed By:AJIT Page 2 of 11 28.05.2019 & 09.06.2019.

AND WHEREAS the result was declared vide E.O. No. 680 dated 10.06.2019 and Sh. Pawan Kaul was also declared successful and after obtaining the VCR, all successful candidates including Sh. Pawan Kaul, were promoted to the post of SSA vide E.O. No. 739 dated 24.06.2019.

AND WHEREAS a complaint dated 06.03.2020 was received on 11.03.2020 against Sh. Pawan Kaul, SSA inter alia alleging that Sh. Pawan Kaul was facing criminal prosecution in case No. 3774/2018 (FIR No. 183/2016) under Section 498- A/406/34, IPC and the charge sheet was already filed in the court of Ms. Shivani Chauhan, MM, Mahila Court, South-West, Dwarka.

AND WHEREAS a copy of the said complaint was provided to Sh. Pawan Kaul, SSA vide letter dated 04.06.2020 with the direction to submit his version on the

points mentioned in the said complaint.

AND WHEREAS Sh. Pawan Kaul, SSA submitted his version vide letter dated 19.06.2020 inter alia that his wife had lodged FIR No. 183/16 under Section 498-A and the charge sheet was filed before the Honble Court of MM, Mahila Court-01 on 25.04.2018. He has further mentioned that he was summoned by the Honble Court during March, 2019 for appearance on 24.03.2019. He has further intimated that he has filed a divorce petition as HMA No. 1828/2018 before Rohini Courts titled Pawan Kaul Vs Reena Koli.

AND WHEREAS the Do PT has issued O.M. dated 14.09.1992 on the basis of the judgement dated 27.08.1991 of the Honble Supreme Court of India in case titled Union of India etc. Vs K.V. Jankiraman etc. (AIR 1991 SC 2010) inter alia laying down that the recommendations of DPC in respect of Govt. Servants, who are facing prosecution for criminal charge, shall be placed in sealed cover. The said provision is also applicable in case of promotions on the basis of limited Departmental Examinations.

AND WHEREAS the said Sh. Pawan Kaul, SSA failed to intimate the department about the filing of charge sheet in the court of MM, Mahila Court-01 on 25.04.2018 and therefore, this fact could not be linked with his promotion and accordingly he was erroneously promoted to the post of SSA on 24.06.2019. AND WHEREAS the said Sh. Pawan Kaul, SSA was called upon to show cause within 03 days as to why his promotion to the post of SSA vide E.O. No. 739 dated 24.06.2019 should not be Digitally Signed By:AJIT Page 3 of 11

withdrawn and the result be kept pending till finalization of criminal prosecution in 3774/2018 (FIR No. 183/2016) under Section 498-A/406/34, IPC. He was also advised to note that if no explanation is received within the stipulated time or the explanation is found not satisfactory, further action, as deemed fit, will be taken without any

further notice.

AND WHEREAS the said Sh. Pawan Kaul, SSA submitted his explanation vide his letter dated 17.09.2020 & 21.09.2020 admitting the fact of pendency of the criminal case under Section 498-A/406/34, IPC. He has also not denied that he had failed to intimate the department about the filing of charge sheet in the court of MM, Mahila Court-01 on 25.04.2018 in the said case. However, he has clarified vide his letter dated 21.09.2020 that he had intimated on 10.11.2016 about receipt of a notice under Section 41(A), Cr.P.C. from the office of DCP, Unit Women & Children, Nanak Pura, New Delhi for appearance on 16.11.2016. A perusal of the reply further reveals that none of the judgments of Honble Courts cited by him bars withholding of promotion either through DPC or through Limited Departmental Examination in case of pendency of such criminal prosecution. The judgments cited by the official also do not say that the O.M. dated 14.09.2022 issued by Do PT on the basis of the judgment of Honble Supreme Court of India in case of K.V. Jankiraman is not applicable in cases relating to criminal prosecution under Section 498-A, IPC. His contention that such a case does not involve moral turpitude lacks support of law or rules. He has failed to cite any rule position to support his contention.

AND WHEREAS the undersigned has carefully gone through the facts of the case, rule position and also the explanation submitted by the said official and finds that explanation submitted by the said official is not satisfactory. The instructions issued by DoP&T do not offer any reprieve in such cases. Sh. Pawan Kaul, SSA is the main accused in the above mentioned criminal case.

AND WHEREAS the undersigned is of the considered view that the ends of the justice would be met if he is reverted to the grade of JSA till the criminal proceedings are finalized by the court of competent jurisdiction.

NOW, THEREFORE, the undersigned, being the appointing authority by virtue of powers conferred under the DDA Conduct, Disciplinary & Appeal Regulations, 1999 hereby withdraws the result declared vide E.O. No. 680 dated 10.06.2019 and promotion orders to the post of SSA issued vide E.O. No. 739 dated 24.06.2019 in respect of Sh. Pawan Kaul, SSA. Consequently, the said Sh. Pawan Kaul, SSA is reverted to the

Digitally Signed By:AJIT Page 4 of 11 grade of JSA w.e.f 24.06.2019 (AN) with all consequences to follow, till a decision is taken after finalization of the above mentioned criminal proceedings by the court of competent jurisdiction. Sd/- (Rajiv Gandhi) Commissioner (P)/Appointing Authority

7. The Tribunal adopted the view that, as the petitioner was facing

criminal proceedings, the judgment of the Supreme Court in Union of India v. K.V. Jankiraman⁵ would apply, read with Office Memorandum dated 14 September 1992 issued by the Department of Personnel & Training⁶. The Tribunal was of the view that as per the decision in Jankiraman read with DOPT OM dated 14 September 1992, the recommendations of the Departmental Promotion Committee⁷ which considered the petitioners case for promotion as SSA was required to be relegated to a sealed cover, and it was only after the petitioner was acquitted in the criminal proceedings that the sealed cover could be opened and the recommendations of the DPC acted upon.

8. Paras 6 and 7 of the judgment of the Tribunal read thus:

6. Whether it was on account of the failure on the part of the applicant to inform the respondents about the pendency of the criminal case or on account of any inadvertent mistake or omission on the part of the respondents, the applicant was promoted, even while the criminal case filed against him was pending. The only course open to the respondents

was to withdraw the promotion and the same was done through the impugned order.

7. We do not find any merit in the OA and accordingly 5 (1991) 4 SCC 109 6 the DOPT hereinafter 7 DPC hereinafter Digitally Signed By:AJIT Page 5 of 11

dismissed. It is, however, directed that the case of the applicant shall be treated as the one in the sealed cover and in the event of his acquittal in the criminal case, the promotion shall be restored to him. There shall be no order as to costs.

9. Aggrieved by the aforesaid decision, the petitioner has approached this Court by means of the present writ petition.

10. We may note, incidentally, that while issuing notice in this writ

petition on 17 August 2021, this court had observed that the DOPT OM dated 14 September 1992 envisaged periodical reconsiderations of the case of an employee which had been relegated to the sealed cover and who was facing criminal proceedings and, on the expiry of two years from the placing of his case in the sealed cover, consideration of his case for ad hoc promotion to the next post. Learned Counsel for the respondent was therefore directed to take instructions on the said aspect.

11. However, it appears to us that the very invocation of the sealed

cover procedure was not justified in a case where the petitioner had been appointed as SSA consequent to an LDCE and not a regular promotion by a DPC. The Tribunal has clearly proceeded on the premise that the petitioner was promoted as SSA by a DPC and has, therefore, directed that the recommendations of the DPC be consigned to a sealed cover and opened after the petitioners criminal proceedings conclude.

12. We, therefore, granted time to Mr. Birbal, learned Counsel for

the DDA, to address us on the question of whether the sealed cover Digitally Signed By:AJIT Page 6 of 11 procedure was at all applicable in a case of appointment to a higher post consequent on an LDCE.

13. The order dated 5 October 2020, whereby the petitioner was reverted to the post of JSA, incidentally, observes that the DOPT OM dated 14 September 1992 also applies to LDCEs.

14. Mr. Birbal has, by way of response to our query, handed over a Circular dated 12 April 2022 issued by the Department of Posts, from which he places emphasis on the first two paragraphs which read thus:

I am directed to refer to D.G. P&T Letter no. 7/31/63-SPB-II dated 25.06.1965 pertaining to instructions dealing with allowing officials to appear in Departmental Examination against whom departmental proceedings/criminal prosecution are pending.

2. The above mentioned provision related to Departmental

Examination have been reviewed in consultation with Department of Personnel and Training (Do PT). It has been decided that instructions related to promotion of Government servant through DPC against whom disciplinary case / criminal prosecution is pending, as issued vide Do PT O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992, amended from time to time shall be applicable mutatis mutandis in case of promotion through Limited Departmental Competitive Examination (LDCE) also.

15. On the fact of it, the reliance on the aforesaid Circular is

misconceived. In the first place, the Circular has been issued by the Department of Posts and not by the DOPT. In the second place, the Circular has been issued in 2022, after the date when the petitioner was reverted from SSA to JSA on 5 October 2020 and could not, therefore, apply to the petitioner at all. Thirdly, a reading of para 2 of the circular indicates that it is the DOPT which has come to a conclusion, on the

basis of 14 September 1992 DOPT OM, that the

Digitally Signed By:AJIT Page 7 of 11 OM also applies to cases of LDCE, but the Department of Posts. This impression cannot bind the petitioner, who is not an employee of Department of Posts, nor can it bind this Court.

16. Nonetheless, we have ourselves perused the DOPT OM dated 14 September 1992 from which we may deem it appropriate to reproduce the following paragraphs: No. 22011/4/91-Estt.(A) GOVERNMENT OF INDIA MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE AND PENSIONS DEPARTMENT OF PERSONNEL & TRAINING North Block, New Delhi-110001, Dated the 14th Sept. 1992 OFFICE MEMORANDUM

Sub: Promotion of Government servants against whom disciplinary/Court proceedings are pending or whose Conduct is under investigation. Procedure and guidelines to be followed.

The undersigned is directed to refer to Department of Personnel & Training O.M. No. 22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.8.1991 of the Supreme Court in Union of India etc. v. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

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

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 a charge sheet has been issued and the disciplinary proceedings are pending; and

(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

17. The DOPT OM dated 14 September 1992, clearly, applies only to promotion following a DPC. In fact, the OM also acknowledges that the judgment of the Supreme Court in K.V. Jankiraman also applies to promotion by DPC.

18. Inasmuch as the petitioner was made SSA following an LDCE, there could be no question of applying the sealed cover procedure, the

judgment in K V Jankiraman or the DOPT OM dated 14 September 1992.

19. The Tribunal has not addressed the merits of the petitioners challenge, on the premise that the sealed cover procedure, the

judgment in K V Jankiraman and the DOPT OM dated 14 September

1992 apply. Following this erroneous premise, the Tribunal has relegated the petitioners case to the sealed cover and directed that the sealed cover be opened only after the criminal proceedings conclude.

20. As the sealed cover procedure and the DOPT OM dated 14 September 1992 do not apply in the present case, the impugned Digitally Signed By:AJIT Page 9 of 11

judgment of the Tribunal, which is based solely on this erroneous
premise, cannot sustain. It is, accordingly, quashed and set aside.

21. It is not necessary to remit the matter to the Tribunal, as the

order dated 5 October 2020, reverting the petitioner from the post of

SSA to the post of JSA, is also passed solely on the basis of the DOPT OM dated 14 September 1992 read with the judgment of the Supreme Court in K.V. Jankiraman. The order proceeds on a premise, expressly recorded in the order, that the DOPT OM dated 14 September 1992 also applies to LDCE.

22. The order dated 5 October 2020, reverting the petitioner from SSA to JSA cannot, therefore, sustain in law. It is accordingly quashed and set aside.

23. OA 1543/2020 filed by the petitioner before the Tribunal would stand allowed in the aforesaid terms.

24. The petitioner shall be entitled, therefore, to be reinstated as SSA forthwith.

25. During the currency of these proceedings, by order dated 2 June

2022, the petitioner was permitted to appear in the LDCE for the post of ASO (Level-7) with a further direction that the result of the examination be placed in a sealed cover. Needless to say, with the

order passed by us today, as the petitioner would stand reinstated as

SSA with effect from the date when he was reverted, the results of the petitioner in the LDCE conducted for the post of ASO would also be Digitally Signed By:AJIT

Page 10 of 11 opened and acted upon in accordance with law. However, the petitioner would not be entitled to any back wages for the period he has served as JSA consequent to his reversion.

26. We clarify that this would not stand in the way of the respondent proceeding qua the petitioner by any other means available in law.

27. The writ petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

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