

2

49

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.2715/2001

This the 13th day of December 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Hari Ram Malik,
Inspector of Central Excise,
Central Excise Commissionerate,
Delhi-III, C.R.Building, I.P.Estate,
New Delhi.
R/O C-915, Sushant Lok-I,
Gurgaon (Haryana).

... Applicant

(In person)

versus

1. Union of India through
Revenue Secretary, Ministry of Finance,
Government of India, New Delhi.
2. Chief Commissioner, Central Excise,
Delhi zone (Chairman of DPC),
C.R.Building, I.P.Estate,
New Delhi-110002.
3. Commissioner,
Central Excise Commissionerate, Delhi-I,
C.R.Building, I.P.Estate,
New Delhi.
4. Central Bureau of Investigation through
its Director, C.G.O. Complex,
Lodhi Road, New Delhi-110003.

... Respondents

(By Shri R.R.Bharti, Advocate for respondents 1-3 and Shri R.N.Singh,
Advocate for respondent No.4)

ORDER (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Applicant has challenged Annexures A-1 and A-2 dated 24.5.2001 and
9.8.2001 respectively issued by respondent No.3. By Annexure A-1 order
respondents have denied applicant's request for grant of *ad hoc* promotion stating

tb



that the matter would be placed before next DPC meeting and that no DPC meeting had taken place since the dates of his representations, i.e., 5.6.2000/29.8.2000. By Annexure A-2 respondents have intimated the reasons why applicant's case differs from the cases of Shri K.K.Kapoor and Shri S.R.Tiwari who were granted *ad hoc* promotions. It has been stated that those officers were prosecuted in a case under Customs Act, 1962 and that they belonged to a different Commissionerate cadre. Applicant has been prosecuted for possession of disproportionate assets worth Rs.9.45 lakhs.

2. Applicant who has appeared before us in person contended as follows:

- (1) Sealed cover procedure was followed in the case of the applicant in February, 1996. Thereafter CBI recommended closure of the case against the applicant. He pointed out that vide Annexure A-22 CBI was consulted in the matter and CBI responded that the criminal charges in his case had not been framed and that the promotion could be decided on merit by the department.
- (2) Relying on the consolidated instructions issued by DOP&T on Departmental Promotion Committees contained in paragraphs 17.8.1, 17.8.2 and 17.8.3 applicant contended that as a period of more than two years has expired since the DPC placed its recommendations in a sealed cover, he should be considered for *ad hoc* promotion on the basis of totality of his record of service without taking into account the pending disciplinary case/criminal prosecution against him. Such promotion can be made until further orders.
- (3) At present no punishment exists against him in the disciplinary/criminal proceedings.



3. The learned counsel of respondents, on the other hand, stated that applicant has been prosecuted for a serious offence of possession of disproportionate assets and that in the disciplinary proceedings penalty of reduction in pay by three states from Rs.8650/- to Rs.8125/- for three years with cumulative effect has been imposed upon the applicant on 8.2.2002. The cases of S/shri K.K.Kapoor and S.R.Tiwari are different from that of the applicant. While these two Inspectors were charged under the provisions of Customs Act, applicant is facing a serious prosecution for possessing disproportionate assets. The facts of the present case are different than those of the cases of S/Shri K.K.Kapoor and S.R.Tiwari. As such even if Shri Kapoor and Shri Tiwari have been accorded *ad hoc* promotions, denial of such promotion to applicant does not amount to violation of Article 14 of the Constitution.

4. We have considered the respective contentions of the parties.

5. Paragraphs 17.8.1, 17.8.2 and 17.8.3 of consolidated instructions on DPCs issued by the DOP&T are extracted below:

“17.8.1. Procedure for ad hoc promotion:

Para 5, 5.1 to 5.4 O.M.No.22011/4/91-Estt.(A), dated the 14th September, 1992.

In spite of the six-monthly review referred to in para 17.7.1 above, there may be some cases where the disciplinary cases/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing Authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad hoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is no likelihood of the case coming to a conclusion in the near future;



- (d) Whether the delay in the finalization 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 the *ad hoc* promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

17.8.2. Procedure for ad hoc promotion:

In case the Appointing Authority comes to a conclusion that it would not be against the public interest to allow *ad hoc* promotion to the government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide, whether the officer is suitable for promotion on *ad hoc* basis. Where the Government servant is considered for *ad hoc* promotion, the DPC should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

17.8.3. Procedure for ad hoc promotion

After a decision is taken to promote a Government servant on ad hoc basis, an order of promotion may be issued making it clear in the order itself that:-

- (1) the promotion is being made on purely *ad hoc* basis and the ad hoc promotion will not confer any right for regular promotion; and
- (2) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserves the right to cancel at any time the ad hoc promotion and revert to the Government servant to the post from which he was promoted."

6. Annexure A-22 is an acknowledgement from CBI regarding receipt of a letter dated 29.6.2000 from Joint Commissioner (P&V), Central Excise, Delhi-I, and the same cannot be said to be proof enough for consultation by the respondents in the case of applicant under the aforesaid DOP&T instructions contained in paragraph 7.8.1 *ibid*. Respondents have also not established that they had consulted the CBI and on the basis of CBI's views they had taken a decision not to accord *ad hoc* promotion to the applicant on the ground of serious charges



against him in the criminal proceedings. Respondents have also not refuted the contention that in the criminal proceedings even the charge has not been framed. Obviously, respondents have not taken any conscious decision in terms of the DOP&T instructions referred to above.

7. Applicant had through OA No.1504/2003 challenged the penalty of reduction by three stages in the time scale with cumulative effect imposed upon him in disciplinary proceedings against him. The impugned order therein dated 8.2.2002 was quashed and set aside and the matter was remanded back to the disciplinary authority to pass fresh orders resuming the proceedings from the stage of considering the original documents tendered by the applicant, and thereafter taking a view whether to disagree or not, and to pass an order to that effect within a period of two months. Respondents were also directed that in case of disagreement the disciplinary authority would take stock of the decision in the case of *Yogi Nath D. Bagde v State of Maharashtra*, JT 1999 (7) SC 62.

8. Thus, while no charge has been framed against applicant in criminal proceedings against him, no punishment exists against him in the disciplinary proceedings that have been remanded to the disciplinary authority for re-consideration from a specific stage.

9. In *State of Punjab & Ors. v Chaman Lal Goyal*, 1995 (2) SLJ 126 (SC), it was held as follows:

“The principles to be borne in mind in this behalf have been set out by a Constitution Bench of the Court in *A.R. Antulay v R.S.Nayak & Anr.* (1992 (1) SCC 225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that ultimately the court has to balance and weigh the several relevant factor – balancing test or balancing process – and determine in each case whether the right to speedy trial has been denied in a given case”. It has



also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that it is not the only course open to the court and that in a given case, the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstances of the case.

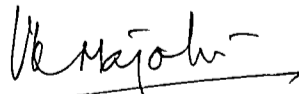
Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed.”

10. Taking into view the record before us as also the above discussion, we find that respondents have not taken the decision on the issue of consideration of applicant's case for according promotion on *ad hoc* basis after taking into consideration the ratio in the case of *Chaman Lal Goyal* (supra) and the aforesaid DOP&T instructions.

11. In result, we quash Annexures A-1 and A-2 directing the respondents to consider applicant's claim for grant of time-bound *ad hoc* promotion by passing a detailed and speaking order after taking into consideration the ratio of the case of *Chaman Lal Goyal* (supra) and the aforesaid DOP&T instructions, within a period of two months from the date of receipt of these orders.

12. The OA is partly allowed as above. No costs.

S. Raju
(Shanker Raju)
Member (J)


(V. K. Majotra)
Vice-Chairman (A)

13.12.04

/as/