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Central Administrative Tribunal  
Principal Bench, New Delhi

OA No. 11/97

New Delhi, this the 7<sup>th</sup> day of March, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Harjit Singh,  
R/o C-34, Sudershan Park,  
New Delhi. .... Applicant  
(By Shri A.K. Behra, Advocate)

Versus

1. Union of India through  
Secretary,  
Ministry of Finance,  
Deptt. of Expenditure,  
New Delhi.
2. Controller General of Accounts,  
Lok Nayak Bhawan,  
New Delhi.
3. Chief Controller of Accounts,  
Ministry of Finance,  
North Block, New Delhi.
4. Controller of Accounts,  
o/o Chief Controller of Accounts,  
Ministry of Finance,  
North Block, New Delhi. .... Respondents  
(By M.K. Gupta, Advocate)

O R D E R

By Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)--

The case of the applicant is that he has successfully qualified in the Junior Accounts Officer(Civil), for short JA0(C), examination conducted by the respondents during January, 1993 in accordance with the result declared by the respondents on 26.10.1993. However, the appointment to the post of JA0(C) could not be finalised as a disciplinary proceedings have been initiated against the applicant vide their Memo dated 25.11.1993. When the question of appointing the applicant to the post of JA0 (C) had considered, there was a pending disciplinary case

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against the applicant and according to the relevant office Memo on the subject, the promotion of the applicant was kept in sealed cover.

2. By this OA the applicant was seeking originally, to set aside the departmental proceedings pending against him and direct the respondents to appoint the applicant to the post of JA0(C) w.e.f. the date his juniors were so appointed with all consequential benefits. During the arguments the applicant did not press for these reliefs. He confined his submissions to the third relief namely to direct the respondents to review the case of the applicant and appoint him to the post of JA0(C) on adhoc basis, after the expiry of two years from the date of issue of the order on 26.10.1993.

3. The claim of the applicant is based on paras 4 and 5 of the office Memo dated 14th September, 1992. Paras 4 and 5 of the said Memo are reproduced herebelow:-

"4. It is necessary to ensure 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 has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings

in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

5. In spite of the six monthly review retained to in para 4 above, there may be some cases where the disciplinary case/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 adhoc 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 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 adhoc promotion, which may adversely affect the conduct of the departmental case / criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or

criminal prosecution arose out of the investigations conducted by the Bureau."

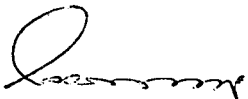
4. In accordance with these provisions, the applicant is claiming adhoc appointment w.e.f. 26.10.1993 after a review of the pending proceedings. Respondents on the other hand in compliance with the said paras 4&5 of the OM dated 14th September, 1992, reviewed the case of the applicant for promotion in view of the pendency of the disciplinary case and in view of the fact that the disciplinary proceedings could not be completed, till now, and passed an order dated 4.3.1997 stating therein that the applicant is being promoted as JA0(C) on adhoc basis in the scale of Rs. 1640-2900/- w.e.f. 3.3.1997 without prejudice to the charges contained in the memo of chargesheet already issued under Rule 14 of the CCA (CCS) Rules.

5. Learned counsel for the applicant submitted that he is accepting this order of adhoc appointment w.e.f. 3.3.1997 but he would like to press the appointment to be ante-dated to 26.10.1993, that date being more than two years of pendency of the disciplinary proceeding, in accordance with the above said OM dated 14th September, 1992. We are unable to accept this contention for the reason that even though, a ground for review has arisen for the respondents with regard to the consideration of promotion of the applicant after two years of the pendency of the disciplinary proceedings, such promotion / appointment can be made on adhoc basis at any time but it cannot be, by any stretch of imagination, with effect from a back date. The applicant will obtain all the reliefs including regular appointment from that date, when the

result of the promotion which has been kept under sealed cover in case it is found in his favour after it is reopened on finalisation of the disciplinary proceedings and no part of such reliefs can be anticipated and obtained at this stage.

6. In view of the above finding and in view of the acceptance of the orders dated 4.3.1997 by the applicant, and also in view of the fact that the applicant has confined his relief to relief no. 3 only, we are finally disposing of this OA as it requires no other directions from us. We would like to observe that this final disposal of this OA would reserve a liberty to the applicant to approach an appropriate forum as and when the cause of action arises. It is also worth mentioning that the respondents shall make every effort to complete the disciplinary proceedings as reasonably quick as possible.

7. With the above observations, this OA is disposed of.

  
(S.P. Biswas)  
Member (A)

  
(Dr. Jose A. Verghese)  
Vice-Chairman(J)