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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No 1252/1997
with
O.A. No. 1737/1997

Decided on: 4 6 98 19

Shri R.S. SagarApplicant(s)

(By Shri G.K. Aggarwal Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri Madhav Panikkar Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? yes
2. Whether to be circulated to the other Benches of the Tribunal? yes

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1252 of 1997

with

O.A. No. 1737 of 1997

New Delhi this the 4th day of June, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

O.A. 1252/1997

Shri R.S. Sagar
170, Deendayal Upadhyay Marg,
New Delhi.

..Applicant

By Advocate Shri G.K. Aggarwal.

Versus

1. Union of India through
Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
New Delhi-110 011.
2. The Director General (Works)
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.
3. The Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-110 011.
4. The Appointments Committee of the Cabinet
through Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi-110 004.
5. National Commissioner for Scheduled Castes
and Tribes,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

..Respondents

By Advocate Shri Madhav Panikkar

O.A. 1737/1997

Shri R.S. Sagar
170, Deendayal Upadhyay Marg,
New Delhi.

..Applicant

By Advocate Shri G.K. Aggarwal.

Versus

1. Union of India through
Secretary,
Department of Personnel and Training,
North Block,
New Delhi-110 001.

2. Union of India through Secretary,
Ministry of Urban Affairs and Employment,
Nirman Bhawan,
New Delhi-110 011.
3. The Appointments Committee of the Cabinet
through Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi-110 004.
4. The Director General (Works)
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.
5. The Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-110 011.
- ... Respondents

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Both the above applications have been heard together and are being disposed of by the following order:-

O.A. 1252/1997

2. Applicant challenges the impugned charge-sheet dated 10.9.93 under Rule 16 of the CCS (CCA) Rules, 1965 and the order of punishment of 'censure' dated 11.3.1996 and the order dated 2.5.97 on his review petition and prays that these impugned orders should be quashed and set aside with all consequential benefits of retrospective promotion, his arrears, seniority etc. as regular permanent Superintending Engineer and subsequent promotions as Chief Engineer etc.

3. A short recital of the facts of the case will be necessary. Applicant while working as Executive Engineer was not promoted to the post of Superintending Engineer and his case was kept in a sealed cover, which was the subject matter of his Original Application No. 1682 of 1995. In this O.A.

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he prayed that he should be promoted to the post of Superintending Engineer (Civil) (hereinafter referred to as 'SE(C)') on regular basis with effect from the date on which his junior had been regularly promoted. This O.A. was dismissed on 11.1.1996 and it was held that the action of the respondents in adopting the sealed cover procedure was held to be not arbitrary or unreasonable or against the rules/instructions justifying interference. It was also held that his regular appointment as SE(C) would depend on the results of the disciplinary proceedings against him and, therefore, the question of his further promotion as Chief Engineer (C) would not arise. It was also directed that the respondents should take necessary steps to complete the disciplinary proceedings and pass final orders thereon as expeditiously as possible. Applicant at that time had been served with 2 charge-sheets one dated 30.10.1985 for major penalty and the other dated 10.9.1993 for minor penalty. In the earlier proceedings concerning the charge-sheet dated 30.10.1985, it was stated that the enquiry was completed and the report was also submitted to the disciplinary authority. The other proceedings related to the charge-sheet dated 10.9.1993 which was stated to be in progress and was under consideration of the disciplinary authority. In respect of the first proceedings relating to the charge-sheet dated 30.10.1985 after the enquiry, the disciplinary proceedings were dropped by the order dated 3.7.1996. The second proceedings relating to the charge-sheet dated 10.9.1993, resulted in the awarding of a minor penalty of 'censure'. This order and the consequential order of the appellate authority are under challenge in this application as stated above. The applicant made a

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representation seeking promotion as a regular permanent Superintending Engineer (he was already working as ad hoc Superintending Engineer) on the ground that the punishment order of 'censure' was not a bar to the reopening or acting on the contents of the sealed cover relating to his regular promotion. This was followed by his application O.A. 458/97 seeking the same relief. While disposing the above O.A., the respondents were directed to dispose of the representation and the Review Petition he had filed against the said punishment within a month. The Review Petition was disposed of by the appellate authority by the impugned order dated 2.5.1997. Following the recommendations of the Departmental Promotion Committee and pursuant to the letter of Union Public Service Commission, applicant was also promoted as a regular Superintending Engineer by the order 27.3.1997 with effect from the date he assumed the charge of the post of Superintending Engineer (Civil). Thereafter, applicant filed another OA 617/97 praying that one post of Chief Engineer be kept for him till the disposal of his representation dated 17.2.1997. This O.A. was also disposed of with the direction that the result of the DPC meeting held on 14.3.97 in respect of one post of Chief Engineer shall not be declared till 28.4.97. Simultaneously the applicant filed another OA 787/97 to challenge the order dated 21.3.97 by which his representation dated 17.6.97 was rejected and was informed that his request for regularisation in the post of Superintending Engineer and fixation of seniority from the date of his initial appointment in the grade of Superintending Engineer could not be acceded to as he was not exonerated of the charges contained in the charge-sheet dated 10.9.93 and a penalty of censure was duly

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approved and imposed on him vide orders dated 11.3.96. Applicant contended that censure was no bar to promotion. In the interim order dated 17.4.97 on the above O.A., respondents were directed to consider the applicant for ad hoc promotion from SE(C) to CE(C) under Next Below Rule and in the meantime, one post of Chief Engineer be filled up, if not otherwise filled up. Respondents in the meanwhile promoted some juniors to the applicant from SE to permanent CE (C) and there was no mention of one post having been kept for the applicant in terms of the order of 17.4.97. Thereupon, he filed MA 1191/97 seeking compliance of the interim order dated 17.4.97. This OA was subsequently allowed to be withdrawn with liberty to file a fresh application. Thereafter, applicant filed the present OA seeking the aforesaid reliefs.

4. The main ground taken by the applicant is that the impugned charge-sheet dated 10.9.93 was ab initio void and not maintainable as this was inordinately delayed for over 10 years and the delay was not attributable to the applicant.

5. Secondly, he alleges that the impugned charge-sheet was also barred by constructive res judicata as it related to the acts related in the same period and in the same post covered by the earlier charge-sheet of 30.10.85, the proceedings of which were dropped subsequently.

6. Thirdly, the stale and innocuous allegation as contained in the impugned charge-sheet did not constitute any misconduct and there was no allegation of any mala fide on the applicant.

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7. The applicant also contends that even if there had been any act of negligence, that would not amount to misconduct. He also alleges that the impugned charge-sheet which has been totally perverse and unfounded was designed to persecute the applicant, who is a Scheduled Caste officer.

8. In the counter-reply filed by the respondents, it has been asserted that the charge-sheet which was dated 10.9.93 was delayed mainly due to the applicant submitting his final reply to the explanation memo dated 31.3.1986 calling for his explanation by his representation dated 11.10.1991. On the basis of his explanation and on the material facts on record, the disciplinary authority had come to the conclusion that the applicant had exhibited lack of devotion to duty and the disciplinary authority had issued the impugned charge-sheet of censure. The respondents have also strongly denied the allegation that there had been any discrimination and his promotion was denied because of his belonging to the Scheduled Caste community. The impugned orders of punishment was also passed after the applicant submitted his reply to the charge-sheet of 10.9.93 by his representation dated 5.4.94, which was duly considered by the disciplinary authority before the issue of the impugned order. The President has also passed a detailed and speaking order on his Review Petition.

9. The learned counsel for the applicant fervently argued that inordinate delay of over 11 years in the issue of memo of charge and further delay of 3 years in the issue of the penalty order had clearly rendered the entire disciplinary proceedings unsustainable in the eyes of law. He relies on the judgment of

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the Hon ble Supreme Court in The State of Madhya Pradesh Vs.

Bani Singh and Another, AIR 1990 SC 1308 where it was held that unexplained inordinate delay not attributable to the applicant would be sufficient ground for quashing the charge-sheet. It was open to the respondents to proceed against the applicant after they had issued the initial memorandum calling for his explanation by their letter dated 31.3.86 but had not chosen to take any consequential action and delayed the charge-sheet for almost 7 years and issued the impugned charge-sheet which also related to the alleged acts of commission and omissions during 1982-83. Further, he maintains that such a delay would be fatal to the memo of charge particularly when no detailed investigation or enquiry into the complex nature of the contracts had been held. The learned counsel argued that even if he was proceeded against under Rule 16, considering the nature of the alleged misconduct and the complexity of the transactions involved it would have been appropriate for the respondents to hold an enquiry against him under Rule 16 (i)(b) of the CCS (CCA) Rules, 1965 but the respondents did not hold any enquiry and straightaway imposed on him the impugned order of punishment. He cites reference to the order of the Supreme Court in Secretary to Government, Prohibition & Excise Department Vs. L Srinivasan, JT 1996(3) SC 202. The applicant also raised the contention that occasional act of negligence or inefficiency would not amount to misconduct. He relies heavily on the statement of the disciplinary authority to the effect that "though Superintending Engineer himself is not expected to verify the market rates or availability, yet he should have asked his Executive Engineer to verify the actual rate paid by the contractor from the paid vouchers which was not done". The

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charge-sheet on the above item of the work was issued by the respondents only by 10.9.1993, i.e., after 10-12 years, after the execution of the work, it is stated by the respondents that the charge-sheet had been delayed because of the delay in the furnishing of the explanation by the applicant by his letter dated 10.10.1991 and after examining the reply, the aforesaid charge memo was issued. It is, therefore, the respondents contention that the delay is attributable to the applicant also. In a recent judgment in **State of Andhra Pradesh Vs. M. Radhakishan**, JT 1998(3) SC 123, the Hon'ble Supreme Court observed as follows:-

".....In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations".

12. We are not persuaded by the arguments of the counsel for the applicant that the delay in the issue of the charge-sheet has rendered the disciplinary proceedings themselves unsustainable. Although in the original memorandum dated 31.3.1986, the applicant was called upon to furnish the explanation within 15 days of the date of the receipt of the

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memorandum and it could be well within the respondents power, to issue, the charge-sheet after the expiry of the above period, the applicant explained the full back ground in respect of the sanction for extra items only by his letter dated 11.10.1991. It was only thereafter, the impugned charge-sheet was issued after considering his explanation. It cannot, therefore, be said that the inordinate delay in the issue of the impugned charge-sheet is not attributable to the applicant, as well. When the applicant himself had given his detailed explanation only after delay of almost 5 years, he is estopped from raising the plea of delay on the part of the respondents in the issue of the charge-memo after considering his explanation. In view of this, the learned counsel's reliance on the decision of the Supreme Court in Bani Singh's case (Supra) is not helpful in this case as there had been delay on the part of the applicant also.

13. Regarding the second contention of the learned counsel that the respondents should not have gone ahead in the matter without detailed enquiry as it involved technical details and the commission or omission could not have been considered merely on the basis of the written explanation, it may be pointed out that proceedings were initiated against the applicant for imposition of minor penalty only. In terms of CCS (CCA) Rules, 1965 where minor penalty proceedings were initiated, the holding of enquiry is not mandatory. It is left to the discretion of the disciplinary authority whether an enquiry should be held or not. In reply to the charge-memo dated 10.9.93 also, the applicant had not asked for any detailed enquiry including inspections of documents and

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cross-examination of witnesses. In the circumstances of the case, the fact that the enquiry had not been conducted under these proceedings, cannot vitiate the proceedings. It cannot, therefore, be said that the non holding of detailed investigation has in any way prejudiced giving fair consideration by the respondents on the detailed explanation tendered by the applicant in reply to the charge-sheet. In the circumstances, the decision in L. Srinivasan (Supra) relied upon by the applicant is of no avail.

14. As regard the third contention that mere act of negligence or inefficiency as in this case would not amount to misconduct, from the perusal of the orders passed by the disciplinary authority and also the orders passed on the review petition filed by the applicant on the impugned punishment order, it cannot be said that the charge against the applicant has been totally baseless. The learned counsel has argued that an occasional act of negligence or omission, even if it were to be seen, cannot constitute misconduct. We are unable to appreciate this contention. The applicant has been specifically charged that by his negligence in having approved the extra items without fully satisfying himself about the correctness of rates and without getting the relevant market rate ascertained, there has been a misconduct on his part. As a Supervisory officer, he was expected to ensure that the extra items even if justified, was to be allowed taking into account the best financial interests of the Government. Approving of extra items involving additional expenditure to Government is not meant to be, a routine exercise, and that is why this power is vested with a superior authority, according to the

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financial limits laid down in this behalf. In view of this matter, the decision of the disciplinary and appellate authorities cannot be held to be arbitrary or without justification. We also do not accept the other contentions of the applicant that the charge-sheet is barred by principle of constructive res judicata. We are of the view that this principle is not applicable in the facts and circumstances of the case.

15. In the conspectus of the above discussion, the O.A. lacks in merit and is dismissed but with no order as to costs.

O.A. 1737/97

16. The prayer in this application is that the impugned office memorandum dated 14.9.1992 Annexure A-1 be either set aside or the penalty of 'censure' may be excluded from its purview and the applicant's promotion be ordered as per the recommendations of the sealed cover at the yearwise DPC meeting held in 1994 or otherwise with all consequential benefits.

17. The basic facts and the connected events are already outlined in the above order in O.A. 1252 of 1997 and need no repetition. The main grievance of the applicant in this case is that the penalty of 'censure' although has been challenged in the earlier O.A 1252/1997 should not come in the way of his regular promotion as Superintending Engineer w.e.f. 31.12.1983 as per recommendations kept in sealed cover when DPC meeting was held in 1994 for preparation of yearwise panel. The applicant was imposed the penalty of 'censure' which was upheld

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by the President on his revision petition and the O.A. No. 1252 of 1997 was filed to challenge the same. In this application, the plea of the applicant is that the O.M. dated 14.9.92 is inconsistent with the judgment of the Apex Court in **Union of India Vs. K.V. Jankiraman, AIR 1991 SC 2010**. As the above O.M. is applied even in cases of 'censure', which is not a bar to the opening and acting on the recommendations of the sealed cover for purposes of promotion as held in O.A. 2300 of 1989 - S.S. Rudra Vs. U.O.I. dated 5.9.1990, the applicant contends that nowhere in the judgment in Jankiraman's case it has been laid down that irrespective of the quantum and the nature of misdemeanour/circumstances, the imposition of any penalty from 'censure' to 'reduction in rank', as a matter of course, would act as a bar to the opening of the contents of sealed cover for purposes of promotion. He also further alleges that withholding of promotion is another minor penalty. The penalty of censure imposed on him was not meant to interfere with the sealed cover procedure and there was no bar to the respondents to the opening of the sealed cover on the date of the DPC. However, respondents did not open the sealed cover and instead of opening the sealed cover and declaring his promotion with effect from 1983 as per the yearwise vacancy, he was finally promoted on a regular basis only by the order of the respondents dated 27.3.1997 at Annexure A-5 from the date he assumed the charge. The applicant contends that the respondents have simply not opened the sealed cover in DPC held in 1994 in view of the impugned O.M. dated 14.9.92 and para 3.1 thereof which is reproduced below:-

"3.1. If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the

criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

18. As stated above, the applicant stated that the censure should not be treated as a penalty or a bar and, therefore; he seeks a declaration that the O.M. dated 14.9.1992 should be either set aside or at least the censure as a penalty should be excluded from its purview.

19. The other contention of the applicant is that both censure and withholding of promotion are listed as minor penalties in the ascending order of severity and, therefore, since there is a separate penalty of withholding of promotion as a minor penalty, the mere fact of 'censure' should not come in the way of promotion of the applicant and should not act as a bar for opening the sealed cover recommendations.

20. The applicant also contends that since both 'censure' and withholding of promotion are listed as minor penalties under Rule 11, the disciplinary authority on the one hand has imposed penalty of 'censure' and has also indirectly punished the applicant in exactly withholding of his promotion is well under the executive instructions of O.M. dated 14.9.92.

21. We have heard the learned counsel for the parties and have perused the pleadings and other connected records including the proceedings of the DPC.

22. Admittedly, the DPC proceedings were held on 3.10.94 to make an assessment of eligible officers for officiating promotion to Superintending Engineer with reference to the

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vacancy position starting from 1984 onwards right upto 1993-94 and yearwise panels had been prepared of in respect of the persons assessed in the DPC. It is seen from the proceedings of the DPC that the seniority in the grade of Executive Engineer (Civil) which is the feeder cadre for promotion to the level of Superintending Engineer of 14.8.1975 was quashed by the Hon'ble Supreme Court by their judgment dated 23.5.1984 in P.S. Mahal's case and seniority was to be decided as per the direction given by the Apex Court. The department thereafter, revised the seniority list, and issued a fresh list on 4.8.89 which was also subject to the outcome of the petition filed by Shri R.L. Bansal before the Hon'ble Supreme Court and the Apex Court delivered the judgment in Bansal's case also on 8.5.92 and in compliance of the directions, the respondents issued further revised seniority list of Assistant Engineer (Civil) on 12.8.92. In the meanwhile, the DPC was also informed that one Shri B.P. Bindal and some other Executive Engineers had also filed a petition in the Principal Bench of the Central Administrative Tribunal and while disposing of this petition, the Tribunal by its order dated 30.12.92 directed the department to work out the correct seniority list of Executive Engineers for considering promotion, following the prescribed procedure in pursuance of the corrected seniority list of Assistant Engineers dated 12.8.92 and to consider the cases of the applicants for promotion to the post of Executive Engineers and upwards on the basis of the corrected seniority list of Assistant Engineers from the appropriate dates notionally. This notional promotion should also be available even to those who had retired in the meanwhile, according to the rules. In the light of this direction, the DPC was informed that the

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proposal before it was in compliance of the directions of CAT dated 30.12.92 and as such even the officers who had retired etc. had to be considered by the DPC. In the light of this indications and directions of the courts from time to time, the said DPC could meet only in 1994 to prepare the yearwise panel, as mentioned above. We find that even for the assessment years from 1984 onwards upto 1993-94, the applicant was considered and the assessments were put in a sealed cover in his case right upto 1993-94. At the time of holding of the DPC on 3.10.94, the applicant was facing two departmental proceedings one for major penalty by the charge-sheet dated 30.10.1985 and the another for minor penalty by the charge-sheet dated 10.9.1993, as stated earlier. It was in this context the applicant's case though considered by the DPC yearwise was put in a sealed cover in all these assessment years upto 1993-94. The charge-sheet for major penalty was dropped only by the order dated 3.7.96 and the charge for minor penalty resulted in the imposition of the minor penalty of 'censure' by order dated 11.3.96 which was impugned in the OA 1737/97. Thereafter, by a subsequent DPC only, the applicant was also promoted by the order dated 27.3.97 on a regular basis.

23. In the circumstances, it cannot be said that the respondents have erred in keeping the case of the applicant in the sealed cover from 1983-84 to 1993-94. We have given our anxious consideration to the contention of the applicant that the O.M. dated 14.9.92 had been invoked prejudicially against the applicant even though he was only subject to a minor penalty of 'censure' which should not act as a bar to his

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Promotion. We notice that the aforesaid O.M. was issued after taking notice of the judgment of the Apex Court in U.O.I. Vs. K.V. Jankiraman. Para 2 of the aforesaid O.M. reads as follows:-

"2. At the time of consideration of the cases of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the DPC:-

- (i) Government servant 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".

24. The procedure for placing a recommendation of the DPC in a sealed cover is outlined in the subsequent paragraphs. Para 3.1 makes it clear that in cases where the disciplinary proceedings resulted in the imposition of penalty, the findings of the sealed cover shall not be acted upon. We are not persuaded by the argument of the learned counsel for the applicant that the penalty of 'censure' should not act as a bar for the DPC to open the sealed cover. 'Censure' is one of the minor penalties under Rule 11 of the CCS (CCA) Rules, 1965 and the restraint in not acting upon on the findings of the sealed cover in the event of any penalty imposed as a result of the disciplinary proceedings is not dependent on the severity of the punishment. So long as 'censure' is also a penalty imposed as a result of disciplinary proceedings, no further distinction can be made to show that 'censure' is a very mild penalty so as to exempt it from the purview of the aforesaid O.M. dated

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14.9.92. We do not find any illegality in the aforesaid O.M. and, therefore, we reject the contention of the applicant and his prayer that the impugned O.M. should either be set aside or to declare that censure should be excluded from its purview.

25. Regarding the next contention that the effect of the application of the aforesaid O.M. even in censure cases would have the indirect effect of withholding the promotion without the applicant being imposed the separate penalty of withholding of promotion, as provided under the rules, we are not in a position to agree with this contention. Although the applicant was awarded censure and his case was continued to be placed in a sealed cover upto 1993-94, there is no bar for the subsequent DPC to make a fresh assessment of the case which has been done in his case and the applicant has been cleared for his promotion. If withholding of promotion had been ordered as a penalty, he could not have been considered for subsequent promotions until the expiry of the period during which his promotion had been ordered to be withheld.

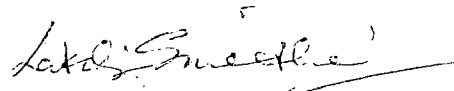
26. Taking into account the facts and circumstances of the case, there is no merit in the applicant's claim for ante-dating his promotion as Superintending Engineer from 1983 onwards. The major penalty proceedings against him were dropped only in 1996 and the other minor penalty proceedings were also subsisting when the DPC met in 1994. In the circumstances, the action of the respondents in considering his case in the subsequent DPC and ordering his promotion from the date of his taking over charge by the order dated 27.3.97 cannot be called in question.

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27. In the facts and circumstances of the case and in the conspectus of the above discussion, this application lacks merit and is accordingly dismissed. There shall be no order as to costs.

28. In the result, both these applications are dismissed with no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAM)
MEMBER (J)

Rakesh