

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1301/88

DATE OF DECISION: 29.1.92.

SHRI I.C. SHARMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI N.D. BATRA, COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

1. Whether Reporters of the local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER(A)

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)

7-A

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1301/88

DATE OF DECISION: 29.1.92.

SHRI I.C. SHARMA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

SHRI N.D. BATRA, COUNSEL

FOR THE RESPONDENTS

SHRI P.P. KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri I.C. Sharma, the applicant in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 has assailed the action of the respondents in denying him promotion as Inspector of Central Excise (Ordinary Grade) in 1970 on the ground that a vigilance case was pending against him. On consideration of his representation the applicant, however, has been assigned notional date of promotion in the grade of Inspector Central Excise (Rs.1640-2900) w.e.f. 23.1.1976 vide Collectorate of Central Excise order No.196/81 dated 21.7.1981. His subsequent representation to the Central Board of Excise and Customs (CBEC) and the Secretary, Ministry of Finance (Department of Revenue) have been rejected by the Board after consultation with Department of Personnel and Training vide letter No.PL-1286/Inspector/ET-1/78 dated 7.4.1988. His next grievance is that he made a written request on 11.4.1988 to the Collector of Central Excise to furnish a

2

8

copy of CBEC's letter with a view to find out the reasons for rejection of his representation but the same has been declined vide Administrative Officer, Central Excise Division III, Faridabad, Endorsement dated 7.4.1988 (Annexure I). Thus the applicant has neither been provided with a speaking order nor has he been informed of the reasons for rejection of his representation thereby violating the principles of natural justice. Before proceeding further it may be useful to reproduce the impugned order dated 7.4.1988 which is apparently the cause of action for filing the present O.A. on 8.7.1988:

".....This is with your letter No.II-39(4)86/Div.III/1649 dated 24.2.88 Sh. I.C. Sharma, Inspector may be informed that the Board has intimated that his representation for grant of promotion pending review proceedings has been rejected by the Board after consultation with Department of Personnel & training..."

2. The applicant was initially appointed as Lower Division Clerk (LDC) on 6.2.1956 and later appointed as Sub Inspector w.e.f. 10.4.1960. The post of Sub Inspector was gradually phased out and upgraded to that of Inspector. According to the Recruitment Rules relevant at that time the Sub Inspectors were eligible for promotion to the grade of Inspector on non-selection post on the basis of seniority subject to rejection of unfit. The applicant contends that he was considered for promotion by the Departmental Promotion Committee (DPC) held in 1970, 1971 and 1972 and was found fit for promotion but he was not promoted on the ground that a vigilance case was pending against him. The ground for withholding of his promotion, however, has been disputed by him as his contention is that he has already been exonerated in the said vigilance case by the disciplinary authority vide order dated 1.3.1969 (Annexure IV).

2

9

He was chargesheeted on 15.10.1962 in a case of accepting of some illegal gratification in 1960 and after holding an enquiry under the law the disciplinary authority had exonerated him vide said order dated 1.3.1969. While he was awaiting promotion further, having been exonerated on 1.3.1969 his case was reviewed by the President of his own motion in terms of Rule 29 (1) (i) of the CCS (CCA) Rules, 1965 and a memo served on him on 30.7.1970, advising him that the President had reviewed the order of the disciplinary authority and had disagreed with the findings of the Collector for reasons recorded in the note annexed with the memo dated 30.7.1970. Accordingly, he was called upon to show cause as to why the penalty of dismissal from service be not inflicted on him. The charge against him was held to be partly proved after considering the reply of the applicant to the show cause notice in consultation with the Union Public Service Commission (UPSC) and the President imposed penalty of reduction in pay to the stage of Rs.110 in the scale of pay of Rs.110-180 for a period of one year without cumulative effect vide order dated 18.2.1978 (Annexure VI).

3. The short issue for adjudication, therefore, is whether the promotion to the grade of Inspector could be denied to the applicant after he had been exonerated on 1.3.1969 and finally punished with reduction in pay to the stage of Rs.110 for one year without cumulative effect on 18.2.1974 and what would be the impact of the final order of the President dated 18.2.1974?

While considering the above issue, another aspect deserves to be kept in view by us was that the applicant was initially chargesheeted on 15.10.1962 and was exonerated after holding enquiry vide order dated 1.3.1969. He was served show cause notice on 30.7.1970 under Rule 29 (1) (i) of CCS (CCA) Rules, 1965 and the finally order reducing his pay to the stage of Rs.110 in the time scale of Rs.110-180 for a period of one year without cumulative effect was passed on 18.2.1974. Thus from October, 1962 to February

2

b

1974 the fate of the applicant was kept in animated suspension except for the short period when he was not under the cloud from 1.3.1969 when he was exonerated and the date the show cause notice was served on him on 30.7.1970. The reliefs claimed by the applicant are:-

- i) that he be promoted as Inspector, Central Excise from 1970 with all consequential benefits.
- ii) That the President's order dated 18.2.1974 (Annexure VI) be deemed to be in substitution of original order dated 1.3.1969 and given effect to accordingly, with consequential benefits.

4. Shri N.D. Batra, learned counsel for the applicant submitted that the order of the President dated 18.2.1974 replaced the order of the disciplinary authority dated 1.3.1969. Thus the disciplinary authority's order is substituted by the said order of the President. In the circumstances the currency of the period of penalty imposed on the applicant would be over on 28.2.1970. Thereafter the applicant should become entitled to his promotion as Inspector.

5. Shri P.P. Khurana, learned counsel for the respondents on the other hand submitted that the applicant was not considered for promotion as Inspector in 1970 as a vigilance case was pending against him. He was promoted as Inspector on 29.3.1978 on the basis of 1975 DPC and assigned notional seniority w.e.f. 23.1.1976 in accordance with his placement in the panel in 1975. The learned counsel further submitted that according to the scheme of upgradation the applicant was eligible for promotion to the grade of Inspector w.e.f. 29.9.1970 - the date his junior was promoted. The learned counsel further submitted that the applicant had been found fit by the DPC held in 1970, 1971 and 1972 but the findings were kept in sealed cover despite his exoneration by the disciplinary authority on 1.3.1969 on

2

account of the pendency of the vigilance case against him; simultaneously the disciplinary case was under review by the President of India. He was further involved in another vigilance case in 1973 in which he was exonerated in 1978. Admittedly, the applicant was not promoted as Inspector, as his case was under review which led to the award of penalty of reduction of pay. While admitting the President's order dated 18.2.1974 substituted the disciplinary authority order dated 1.3.1969, the learned counsel contended that the President's order did not state that the punishment was to be awarded retrospectively and as such it would have prospective effect.

6. The applicant has filed a rejoinder.

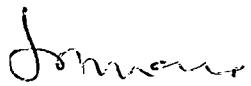
7. We have heard the learned counsel for both the parties and perused the record. Admittedly, the President's order dated 18.2.1974 substituted the order of the disciplinary authority dated 1.3.1969, the respondents, however, contend that the President's order did not state that the penalty would be imposed retrospectively w.e.f. 1.3.1969. The word 'substitute' means "replacement by cancellation of the previous one. It might also mean the replacement of one by another which might be equal to it but differently expressed....AIR 1960 Asam 11 N.N. Chakravorty v. State of Asam" Black's Law Dictionary Fifth Edition attributes the following meaning to the word 'substitute': "one who or that which stands in place of another; that which stands in lieu of something else....." The substitution cannot, therefore, take place only in an ineffectual form but it has to be effective substitution. In that view of the matter the order of exoneration dated 1.3.1969 cannot but be deemed to be replaced by the order of the President imposing penalty of reduction of pay to the stage of Rs.110 in the scale of Rs.110-180 for a period of one year without cumulative effect. The President's order thus would be deemed to have come into effect from 1.3.1969 and not from 18.2.1974 as


12

construed by the respondents. We are accordingly of the view that the penalty would take effect from 1.3.1969 and its currency would lapse on 28.2.1970. The respondents have stated that there was a vigilance enquiry pending against the applicant, and, therefore, although he was found fit for promotion by the DPC in 1970, 1971 and 1972 the recommendations of the DPC were kept in the sealed cover in respect of the applicant. Since the currency of the penalty had elapsed on 28.2.1970 the applicant would be entitled to promotion in accordance with the recommendations of the DPC. The vigilance enquiry without framing charges and serving a memo on him cannot be held against him and cannot be used as an instrument for withholding his promotion.

8. In the above conspectus of the matter, we order and direct that the respondents shall open the sealed cover and promote the applicant as Inspector from the date his next junior was promoted, i.e., 29.9.1970. It is further directed that the penalty shall be implemented only in the grade of Rs.110-180 and not in the grade of Rs.260-400 which came in effect from 1.1.1973. The applicant shall further be progressed notionally w.e.f. 29.9.1970 in the grade of Inspector with actual benefit accruing from 23.1.1976. He would also be entitled to seniority in the grade of Inspector with reference to his promotion w.e.f. 29.9.1970.

The O.A. is disposed of, as above, with no order as to costs.

  
(J.P. SHARMA)  
MEMBER(A)

  
(I.K. RASGOTRA)  
MEMBER(A)