

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.243/2020

Dated this Friday the 15th day of January, 2021.

Coram: Dr.Bhagwan Sahai, Member (A)
Ravinder Kaur, Member (J).

Mayur Gajanan Kamble,
Joint Commissioner of Income Tax, Panaji,
Residing at: 137, Cusadel Sol,
Miramar Road,
Panaji, Goa-403 001. .. Applicant.

(By Advocate Shri S.V. Marne).

Versus

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi - 110 001. .. Respondents.

(By Advocate Shri Subir Kumar).

Order reserved on : 08.10.2020

Order delivered on : 15.01.2021.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A)

Shri Mayur Gajanan Kamble has filed this
O.A. seeking quashing and setting aside of impugned
order dated 27.05.2020 denying continuation of adhoc
promotion to him as Joint Commissioner of Income Tax
and thereby reverting him to the post of Dy.
Commissioner of Income Tax. He also seeks

declaration that his adhoc promotion to the post of Joint Commissioner of Income Tax be deemed to have been continued after 27.05.2020 with all consequential benefits. He also seeks cost of this application from the respondents.

1 (b). The respondents have filed their written arguments to the O.A. The applicant's counsel has also filed rejoinder. Both the counsels were heard on 08.10.2020.

2. Brief facts of the case:

2 (a). The applicant has stated that he belongs to 2009 batch of Indian Revenue Service (Income Tax) and joined as Assistant Commissioner of Income Tax on 21.12.2009. He was promoted as Dy. Commissioner of Income Tax on 15.02.2012. He became eligible and due for promotion to the post of Joint Commissioner of Income Tax in 2018. Because of delay in holding the meeting of DPC for regular promotion, the Department granted adhoc promotion to 183 officers, including him, to the post of Joint Commissioners of Income Tax for one year from 01.01.2019. This was an in-situ promotion and all those officers promoted on adhoc basis were directed to continue to discharge the same functions and duties as they were doing before adhoc promotions.

2(b). After his promotion as Joint Commissioner of Income Tax from 01.01.2019, the applicant was first posted at Mumbai as Officer on Special Duty and thereafter on transfer was posted at Panaji, Goa by order dated 14.08.2020, where he joined on 03.09.2019. The period of one year of his adhoc promotion expired on 31.12.2019 but on or before that date, the respondents did not issue any order extending the period of adhoc promotion or terminating it. Therefore, all those 183 officers continued functioning on the post of Joint Commissioners of Income Tax awaiting further orders of the Central Board of Direct Taxes (CBDT).

2(c). The applicant was issued memorandum of charges dated 30.04.2020 relating to his posting as Dy. Commissioner of Income Tax at Mumbai during 2016 alleging that he had withheld refund of Income Tax to tax payer. Thereafter the respondent no.2 i.e. Chairman, CBDT, New Delhi issued order no.90/20 dated 27.05.2020 continuing the adhoc promotion of 170 officers to the post of Joint Commissioners of Income Tax from 01.01.2020 to 30.06.2020. However, in the same order 6 officers, including the applicant, were denied extension of adhoc appointment to the post of Joint Commissioners of Income Tax and the term of that appointment was continued from 01.01.2020 till

27.05.2020.

2(d). The applicant is aggrieved by this order of respondent no.2 and states that neither Principal Chief Commissioner of Income Tax, Karnataka has issued another order posting him as Dy. Commissioner of Income Tax nor the controlling officer of the applicant at Panaji i.e. Chief Commissioner of Income Tax, Panaji has withdrawn the charge of Joint Commissioner of Income Tax from him. Thus he claims that he is continuing to function as Joint Commissioner of Income Tax.

3. Contentions of the parties:

In the O.A. and rejoinder filed by the applicant, it has been contended that -

3(a). not extending the adhoc promotion of the applicant as Joint Commissioner of Income Tax and his reversion to the post of Dy. Commissioner of Income Tax is illegal, ab-initio void and deserves to be set aside;

3(b). the reason for not extending his adhoc promotion appears initiation of disciplinary proceedings against him with issuing of charge-sheet dated 30.04.2020 but this is not as per DOPT OM dated 24.12.1986, as incorporated in Rule 10 of CCS (CCA) Rules, 1965. Rule 10(ii) has provided that where the appointment was required to be made on adhoc basis

purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against him, he need not be reverted to the post held by him only on the ground that disciplinary proceedings have been initiated against him. In view of this stipulation under DOPT OM dated 24.12.1986, since the applicant's adhoc promotion was not against a short-term vacancy or leave vacancy and it was against regular vacancy, his adhoc promotion as Joint Commissioner of Income Tax held by him for more than one year should not have been withdrawn by the respondents;

3(c). relying upon the above DOPT OM, the Patna Bench of this Tribunal in its order dated 18.02.2019 held that adhoc promotion as Joint Commissioner of Income Tax held for more than one year by the applicant therein could not have been reverted on the ground of initiation of disciplinary proceedings. In view of these stipulations, by not extending the adhoc promotion of the applicant the respondents have committed illegality by issuing the order dated 27.05.2020. Because of their own administrative difficulties, they cannot make the applicant to suffer. Therefore, the impugned order should be set

aside;

3(d). by its order dated 01.06.2020 this Tribunal refused grant of interim relief to the applicant. This order was challenged by the applicant in Writ Petition before the Bombay High Court, Goa. Although the High Court refused to interfere with the order of this Tribunal but directed it to dispose of the present O.A. expeditiously and decide whether the plea of the applicant that the pendency of the disciplinary proceedings against him was not good or valid reason for reverting him;

3(e). another officer Shri Rajesh Kumar to whom also adhoc promotion as Joint Commissioner of Income Tax was not extended by the respondents, approached the Jaipur Bench of this Tribunal in O.A.218/2020 but grant of interim relief was refused by the Tribunal observing that the interim relief sought amounted to final relief. Against that order of the Tribunal, Shri Rajesh Kumar approached the Rajasthan High Court in Civil Writ Petition No.7364/2020 on which the High Court stayed his reversion by order dated 23.07.2020;

3(f). the contention of the respondents that for continuation of adhoc promotion beyond 27.05.2020, vigilance clearance was necessary is not correct. The Apex Court judgment in case of K.V. Janakiraman did not deal with the issue of grant of vigilance

clearance for continuation of adhoc promotion of an officer and that judgment dealt only with three issues relating to date from which it could be said that the disciplinary or criminal proceedings are pending against an employee, what course is to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal, and what benefits an employee who is completely or partially exonerated is entitled to and from which date.

The respondents have failed to appreciate the grievance of the applicant in correct perspective. Had the applicant been promoted on regular basis from 01.01.2019, initiation of disciplinary proceedings with charge-sheet dated 30.04.2020 would not have resulted in his reversion;

3(g). the contention of the respondents that the DOPT OM dated 30.03.1988 has superseded the earlier OM dated 24.12.1986 is also not correct because the former OM deals with totally different issue and that is not related to vigilance clearance for continuation of adhoc promotion. The objective underlying the OM dated 30.03.1988 is to regularize / limit the tendency to grant adhoc promotions, whereas the objective behind issuance of OM dated 24.12.1986 was for instructions for continuation of adhoc

promotions of officers against whom disciplinary proceedings are initiated;

3(h). reliance of the respondents on order of Chandigarh Bench of this Tribunal dated 07.05.2019 in O.A.416/2017 filed by Shri Yogendra Mittal is misleading. As recorded in Para 10 of the order of the Tribunal, the charge-sheet was served on Shri Mittal before he had completed one year of adhoc promotion whereas in case of the present applicant the charge-sheet has been issued on 30.04.2020, when he had already completed one year on adhoc promotion on 30.12.2019; and

3(i). the DOPT OM dated 14.09.1992 Para 5 issued after the Apex Court decision in case of Janakiraman, permits grant of adhoc promotion to officers against whom disciplinary proceedings are pending and their cases were kept in sealed cover for more than two years. In view of these submissions, therefore, the O.A. should be allowed.

The respondents have contended that -

3(j). appointment of the applicant on adhoc promotion as Joint Commissioner of Income Tax by office order dated 31.12.2018 does not confer any right to him for continuation as officiating Joint Commissioner and for his seniority or for his regular promotion. His ad hoc appointment as Joint

Commissioner of Income Tax was not extended beyond 31.12.2019 by order dated 27.05.2020;

3(k). proposal for extending the adhoc appointments to the officers covered in the office order dated 31.12.2018 was initiated on 06.11.2019 to which DOPT concurred on 31.01.2020 but the process could be completed only by 27.05.2020. Therefore, continuation of the applicant on the post of Joint Commissioner of Income Tax from 31.12.2019 till 27.05.2020 on adhoc promotion could not be held to be with formal sanction of the Competent Authority of the respondents and it was merely an administrative necessity as his reversion at that time in May 2020 could not have been effected retrospectively from 01.01.2020. Therefore, in view of having discharged the duties as Joint Commissioner of Income Tax on adhoc basis till 27.05.2020, his adhoc promotion was only continued till the order of reversion was issued on 27.05.2020;

3(1). the proposal seeking approval of the Appointing Authority (Finance Minister, Government of India) submitted in February, 2020 did not propose the name of the applicant for extension of his adhoc promotion. That proposal was approved by the Appointing Authority on 20.03.2020 for discontinuation of adhoc appointment of the applicant

along with 5 other officers and for continuing their adhoc appointment till the date of their reversion or discontinuation as administrative necessity since they had continued discharging the duties of Joint Commissioner on adhoc basis;

3 (m) . the order of ad hoc promotion and appointment of the applicant as Joint Commissioner of Income Tax specifically mentioned that it would be governed by the instructions in DOPT OM dated 30.03.1988 and the instructions issued by the Government from time to time. Therefore, reliance of the applicant on DOPT OM dated 24.12.1986 is misconceived. The impugned order dated 27.05.2020 did not extend the adhoc appointment of the applicant and he was merely allowed to have remained on the post of Joint Commissioner of Income Tax from 01.01.2020 to 27.05.2020 as administrative necessity. No formal sanction was issued in favour of the applicant to continue as Joint Commissioner of Income Tax on adhoc basis beyond one year i.e. after 31.12.2019 and, therefore, his appointment on adhoc promotion expired after one year i.e. on 31.12.2019, in line with Para 4(i) of the DOPT OM dated 30.03.1988.

Para 4(i), (iii)(b) and Para 6 of the DOPT OM dated 30.03.1988 are relevant to the present case which empower the department to continue or make adhoc appointment of officers who fulfil the eligibility conditions and the total period for which the ad hoc appointment can be made is limited to only one year. Such adhoc appointments can be extended beyond one year only with prior concurrence of the DOPT and such adhoc appointments need to be reviewed in accordance with the guidelines prescribed in that OM;

3(n). the applicant was not considered for extension of his ad hoc promotion in view of the pending vigilance clearance against him and service of charge-sheet on him under Rule 14 of CCS (CCA) Rules dated 30.04.2020. Vigilance clearance is a mandatory requirement under service conditions of the applicant for extending adhoc promotion as per the above mentioned DOPT OM. The fact of non-approval by the Competent Authority to extension of adhoc promotion of the applicant due to pending vigilance clearance can be verified by the Tribunal from the case record submitted in sealed cover;

3(o). before DOPT concurred with proposal of Ministry of Finance for extension of adhoc promotions of the officers involved in the order dated

30.09.2018, DGIT (Vigilance) submitted this view against the applicant on already recommended major penalty proceedings by CVC against him and further action was being taken accordingly with the approval of the Disciplinary Authority. DGIT (Vigilance) provided fresh/updated vigilance status on 01.05.2020 withholding vigilance clearance for him. Since name of the applicant was not considered by the respondents for extension of adhoc promotion and on 06.02.2020, it was proposed to dispense with his adhoc appointment along with 5 others. Merely because the applicant continued to discharge the functions as Joint Commissioner of Income Tax after 31.12.2019 without any legal and formal sanction of the competent authority does not entitle him for extension of his adhoc promotion. Since the order of reversion of the applicant from the post of Joint Commissioner of Income Tax could not be issued early, in view of having discharged his duties upto 27.05.2020, his continuation was merely regularized. Thus no vested legal right accrued in favour of the applicant for continuation as Joint Commissioner of Income Tax after 31.12.2019;

3(p). even in the DOPT OM dated 24.12.1986, Para (ii), stipulation was conditional and more in the form of guidance stating that only because of

initiation of disciplinary proceedings against the officer if he has continued on adhoc promotion for more than one year, he need not be reverted. Therefore, intention of the Government in case of the present applicant and in the DOPT OM was clear that even if the officer has held the post for more than one year in a particular case, reversion can be made by the Appointing Authority. Since the adhoc promotion of the applicant was as per stipulation of the DOPT OM dated 30.03.1988, which clearly provides in Para 4(iii)(a) that adhoc appointment can be made only after proper screening by the Appointing Authority of record of the officer. As per clause 4(ii)(b), only those officers who fulfil the eligibility conditions prescribed in the Recruitment Rules should be considered for adhoc appointment and as per clause para 6 of the OM, all adhoc appointments, including adhoc promotions, need to be reviewed on the basis of the above guidelines. Therefore, the action of the respondents in issuing the impugned order not extending the adhoc promotion of the applicant is valid as per the stipulations under the relevant DOPT OMs. A procedural delay in not granting extension does not amount to deemed approval and since the Appointing Authority had specifically decided on 20.03.2020 itself not to

extend the adhoc promotion of the applicant and to revert him, there is no force in the contention of the applicant;

3(q). Delhi High Court order in the case of **V.P. Singh Vs. MTNL and Others (2011 SCC Online Del 2548)** held in Para 5 that even if departmental proceeding is contemplated, an incumbent holding the promotional post on the officiating basis can be reverted. Para 4(ii) of DOPT OM dated 24.12.1986 is only a guideline and it does not bar the authority to quash the order of reversion and reversion does not tantamount to punishment.

In Apex Court judgment in case of **UPSC Vs. M. Sathiya Priya and others, (2018) 15 SCC 796** (Para 17 and 18), it has been held that courts should show deference and consideration to recommendations of Expert Committee in absence of any allegations pertaining to malice or arbitrariness in decision making.

Chandigarh Bench of CAT in OA 00416/2017 (Yogendra Mittal Vs. UOI) has upheld decision of respondents not to extend his adhoc promotion.

Ahmedabad Bench of this Tribunal in its order dated 28.08.2020 in **O.A.133/2020 in case of Naresh Kumar Goel Vs. Union of India & Others** (one of the six officers in Para 2 of the impugned order)

after examining the issue of pendency of disciplinary proceedings and absence of vigilance clearance, dismissed the O.A. and upheld the recommendation of the Screening Committee constituted before passing the order dated 31.12.2018 and thereafter for extending the adhoc appointments. It has been held in that order (Para 12 and 14) that adhoc promotion was given on 31.12.2018 and thereafter it was not extended by the impugned order, to qualify for promotion, the least that is expected of an employee is to have an unblemished record and that is the minimum expectation to ensure a clean and efficient administration, and to protect the public interest particularly when an employee/officer has no right of promotion according to settled principles of the Apex Court in several pronouncements.

In view of these submissions, as the O.A. has no merit, it should be dismissed.

4. Analysis and conclusions:

We have carefully considered the submissions in the O.A., rejoinder of the applicant, written arguments and affidavit of the respondents and rival contentions of the parties in arguments of their counsels. We have also perused the case record submitted by the respondents. Based thereon, the case is analysed as follows:-

4(a). The main issue involved in the present O.A. is whether not extending of adhoc promotion of the applicant to the post of Joint Commissioner of Income Tax beyond 31.12.2019 was justified and legally valid.

4(b). The undisputed facts are that the applicant was promoted on adhoc basis as Joint Commissioner of Income Tax (in the list of 183 officers) by order of respondents dated 31.12.2018. That promotion was purely on adhoc basis, approved for a period of one year from 01.01.2019 or the dates they assumed the charge of Joint Commissioner of Income Tax, whichever was later. The above promotion of the officers, including the applicant, was subject to these conditions i.e. (i) such appointments shall not confer any right to the officers for continued officiating or seniority or for regular promotion and shall be governed by the instructions of DOP&T as contained in OM No.28036/8/87-Estt.(D) dated 30.03.1988 and instructions issued by Government from time to time; and (ii) these appointments do not confer any right or equity in favour of the appointees.

The impugned order of the respondents dated 27.05.2020 has extended the appointments on adhoc promotion of 170 of the 183 IRS officers to the grade

of Joint Commissioner of Income Tax from 01.01.2020 to 30.06.2020. In Para 2 of this order it has been stated that in view of their vigilance status, the Competent Authority has decided not to extend the term of adhoc appointment in respect of six IRS officers of 2009 batch (which included the applicant) to the post of Joint Commissioner of Income Tax and decided to revert these officers to their substantive post of Dy. Commissioners of Income Tax with effect from afternoon of 27.05.2020. It has been further stated in Para 2 of the order, (after names of the six officers), that the term of their adhoc appointment to the post of Joint Commissioners of Income Tax is continued from 01.01.2020 till date of their reversion to their substantive post of Dy. Commissioners of Income Tax i.e. upto 27.05.2020 (AN).

There is no order of the respondents extending adhoc promotion of the applicant to the post of Joint Commissioner of Income Tax after 31.12.2019 and as per Para 2 of the impugned order, adhoc appointment to the post of Joint Commissioner of Income Tax from 01.01.2020 till 27.05.2020 was only due to his having continued on that post upto that date, though without any order of extension.

4(c). The main reliance of the applicant is on Para 10 (ii) of DOPT OM dated 24.12.1986, stipulating that when the appointment was required to be made on adhoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

4(d). The DOPT OM dated 30.03.1988 contains revised instructions on the subject of adhoc appointments and it has prescribed procedure to be followed for adhoc appointments by different Ministries. Para 4 of that OM mentioned conditions under which in exceptional circumstances adhoc appointments may be resorted to. It has been further stipulated that total period for which the appointment or promotion may be made on adhoc basis, will be limited to one year only. In case there are compulsions for extending any adhoc appointment or promotion beyond one year, the approval of the Department of Personnel and Training should be sought atleast two months in advance before expiry of one year period. If the approval of DoPT to the

continuation of the adhoc arrangements beyond one year is not received before the expiry of the one year period, the adhoc appointment/promotion shall automatically cease on the expiry of the one year term.

As per Para 4(iii)(a) of that DoPT OM, adhoc promotions may be made only after proper screening by the appointing authority of the records of the officer.

As per Para 4(iii)(b) only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for adhoc appointment.

Para 6 of above DOPT OM dated 30.03.1988 stipulates that all adhoc appointments, including adhoc promotions, shall be reviewed on the basis of the above guidelines. However, continuation of such adhoc appointments, including adhoc promotions, will be subject to the overall restrictions of one year from the date of issue of these instructions.

From the above stipulations of the DOPT OM on this subject, it is clear that the adhoc appointments/promotions are to be made as per the guidelines in that DoPT OM and they are subject to overall restriction of one year after 31.03.1988. Since the order of adhoc promotion and appointment of

the applicant as Joint Commissioner of Income Tax was issued on 31.12.2018, the maximum period permitted for such adhoc promotion was only upto 31.12.2019. For further continuation of the adhoc promotion of the applicant beyond 31.12.2019, as contended by the respondents and as per the case record submitted by them, it gets clearly established that before expiry of that period of one year, no such order was issued by the respondents.

4(e). The contention of the respondents in this regard is that the continuation of the applicant along with other five officers as Joint Commissioner of Income Tax beyond 31.12.2019 was only because of procedural delay and that is why the impugned order continued their adhoc promotion only to regularize the discharge of functions as Joint Commissioner of Income Tax by those officers from 01.01.2020 to 27.05.2020. From the record it is also clear that for continuation of adhoc promotion of the applicant beyond 31.12.2019, the respondents neither proposed to the Competent Authority nor the Competent Authority has accorded any approval. However, when the proposal was actually submitted to the Appointing Authority (Finance Minister) for approval on 06.02.2020, the vigilance status of the applicant and decision of the Disciplinary Authority for initiating

disciplinary proceedings against him for major penalty based on CVC recommendation were already on record. Therefore, in that proposal extension of adhoc promotion of the applicant was not processed.

4(f). In fact from the copy of the case record made available for our perusal by the respondents, it is seen that the CVC had proposed initiation of major penalty proceedings against the applicant as early as 03.06.2019, on which CGIT (Vigilance) gave his opinion and on 19.11.2019 the Disciplinary Authority decided to take action against the applicant as per the recommendations of the CVC i.e. initiate disciplinary proceedings for major penalty. From these facts it is clear that before expiry of one year period of adhoc promotion of the applicant, the CVC had recommended initiation of major disciplinary proceedings against him and the Disciplinary Authority had decided on 19.11.2019 for initiation of those disciplinary proceedings. But only due to the procedural delay, the charge-sheet against the applicant came to be served on 30.04.2020.

Thus there was sufficient ground/material available with the respondents for initiation of major penalty proceedings against the applicant and it had also been decided to take such action. Therefore, before expiry of period of one year of

adhoc promotion of the applicant, non-availability of vigilance clearance and initiation of disciplinary proceedings against him were already there on record. Because of this reason, contention of the applicant that the disciplinary proceedings against him were initiated after expiry of one year of his adhoc promotion does not hold ground. Similarly his reliance on stipulation under DoPT OM of 24.12.1986 and the case law of Chandigarh Bench of this Tribunal is of no help to him.

4(g). The case record also reveals that when the screening committee recommended promotion on adhoc basis of the applicant and other officers in 2018, it was also mentioned that such promotion would be subject to vigilance clearance. So when the stage for extension of adhoc promotion of the applicant reached, vigilance clearance against him was not available. Later updated vigilance status was also submitted by the DGIT (Vigilance) on 01.05.2020 withholding vigilance clearance for him. Therefore, in our considered opinion, adequate justification was available with the respondents in respect of the applicant for not proposing extension of his adhoc promotion and thus not extending his adhoc promotion beyond 31.12.2019 was fully justified. Similar was the view of Ahmedabad Bench of this Tribunal in

O.A.133/2020 filed by Shri Naresh Kumar Goel, one of the six officers in order of 27.05.2020 (along with the present applicant) for whom adhoc promotion was not extended. The submission of the respondents also has merit that continuation of the applicant on adhoc promotion upto 27.05.2020 was only as administrative necessity to regularize the work performed by him as Joint Commissioner, Income Tax till that date.

5. **Decision:**

In view of the aforesaid analysis of facts of the case and stipulations under relevant DOPT instructions, we find no merit in this O.A. which may justify grant of the relief sought by the applicant. Hence the O.A. is dismissed. The parties to bear their own cost.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
28/01/21

