

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD**

OA/021/00253/2020

Reserved on : 04.09.2020

Pronounced on : 09. 09.2020



THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER

THE HON'BLE MR.B.V.SUDHAKAR : ADMINISTRATIVE MEMBER

Aparna Villuri, IRS,
D/o. V.R.Sudarshan, Aged 42 years,
Occ : Joint Commissioner of Income Tax (ad-hoc)(Group-A),
O/o The Commissioner of Income Tax (Transfer Pricing),
5th Floor, BSNL Building, Greens Road, Chennai,
Presently Residing at Flat No.302, Carcherla Castle,
Domalguda, Himayat Nagar, Hyderabad (On Leave) ...Applicant

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1. Union of India represented by
The Secretary, Government of India,
Ministry of Finance, Dept., of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes,
Government of India,
Ministry of Finance, Dept., of Revenue,
North Block, New Delhi-110 001.
3. Under Secretary to the Government of India,
Ministry of Finance, Dept., of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi-110 001.
4. The Principal Chief Commissioner of Income Tax,
Ayakar Bhavan, M.G.Road, Nungambakam, Chennai.
5. The Principal Chief Commissioner of Income Tax,
Andhra Pradesh & Telangana Region,
10-C, IT Towers, Masab Tank, Hyderabad-500 004.

....Respondents

(By Advocate : Mrs. K.Rajitha, Sr. CGSC)

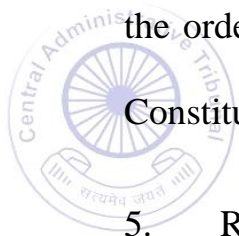
ORDER**(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)**

2. The OA is filed in regard to termination of adhoc promotion granted to the applicant.

3. Brief facts of the case are that the applicant working as Deputy Commissioner, Income Tax (for short "DCIT") at Hyderabad was granted adhoc promotion as Joint Commissioner Income Tax (for short "JCIT") on 31.12.2018 for a period of one year from 1.1.2019 and thereafter, she was transferred to Chennai to work in the same grade. On 27.5.2020, an order was issued extending the adhoc appointment of IRS officers from 1.1.2020 till 30.6.2020 and in the same order, applicant's adhoc appointment was terminated in view of vigilance status. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that she has rendered service as JCIT for 16 months and therefore, the adhoc promotion cannot be terminated vide DOPT OM dated 24.12.1986. Explanation was submitted by the applicant in respect of some aspects of work performed by her way back in 2018. Juniors to the applicant were allowed to continue to work as JCIT on adhoc basis. The applicant did have vigilance clearance when her adhoc promotion was granted as JCIT on 31.12.2018 and the said position has not changed till her reversion was ordered. Therefore, vigilance status should be no reason to terminate the adhoc promotion. Termination of the adhoc promotion would cause loss of status and monetary loss too. Hon'ble Patna Bench of this Tribunal granted interim relief in a similar case in OA No.156/2019, which was filed challenging termination of adhoc promotion on the grounds of initiation of disciplinary proceedings, whereas in respect of the applicant there is no such initiation of any disciplinary proceedings too. The adhoc promotion was granted for administrative reasons against clear vacancies. By

terminating the adhoc promotion, the benefit of adhoc service will not be available when the applicant is granted regular promotion in the grade of JCIT. Therefore, the order of reversion is malice in law and against Articles 14, 16 and 21 of the Constitution of India.



5. Respondents in the reply statement state that the applicant came up for adverse notice in regard to her performance. Explanation has been called and the matter is under advanced stage of examination. The applicant is currently working as DCIT in Chennai and hence, Hyderabad Bench of the Tribunal has no jurisdiction to adjudicate upon the issue. The appointing authority has terminated the adhoc promotion due to lack of vigilance clearance and is in accordance with DOPT OM dated 30.3.1988 as well as the terms and conditions laid down in the promotion order dated 31.12.2018. The action of the respondents is in consonance with the orders of DOPT dated 2.11.2012, 14.9.1992, 28.4.2014 and 30.3.1988. Relief sought by a similarly placed officer was negated by the Hon'ble Chandigarh Bench of this Tribunal in OA 416/2017 and the CWP No. 13792/2019 (O&M) filed against the said order has been dismissed by the Hon'ble Punjab and Haryana High Court on 9.7.2019. The adhoc promotion was not granted based on any DPC recommendations.

6. Heard both the counsel and perused the pleadings on record.

7. I. The applicant is predominantly banking on clause (ii) of the DOPT OM No. 11012/9/86-Estt. (A) dated 24.12.1986 (Annexure A-5) wherein it was stated as under:

“ii) Where the appointment was required to be made on ad hoc 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, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.”

Ld. Counsel for the applicant claimed that the applicant is better placed since the respondents have not even initiated any disciplinary case against the applicant.



Therefore, the decision of the respondents to terminate the adhoc promotion of the applicant as JCIT is null and void.

II. In this regard, it has to be adduced that adhoc promotion is granted in lieu of the person rightfully eligible for manning the post. Adhoc promotion is of transient nature and hence, in OM of DOPT dated 22011/3/75 Estt. (D)/29.10.1975 and reiterated by DOPT in 28036/8/87 Estt.(D) dtd. 30.3.1988 as well as in 28036/1/2001/ dated 23.7.2001, we find the clause, which is of relevance as under:

“It has therefore been decided that whenever an appointment is made on adhoc basis, the fact that the appointment is adhoc and that such an appointment will not bestow on the person a claim for regular appointment, should be clearly spelt out in the orders of the appointment. “

Respondents have faithfully complied with this clause by inducting it in the impugned order. It would imply that the applicant shall have no claim for continuance of the adhoc promotion too, because of the very transient nature of the adhoc promotion and the fact that she has not been rightfully made eligible to the post by conducting a regular DPC.

III. Further, the OM dated 30.3.1988 of DOPT has a specific clause 4 (iii) wherein it is stated that :

“Adhoc promotion may be made only after proper screening by the Appointing Authority of the records of the officer.”

The applicant is facing a vigilance inquiry, which forms part of the record of the officer. Hence, the Appointing Authority, taking this into cognizance, has declined the extension of adhoc promotion in JCIT, as sought by the applicant. The decision was in consonance with the above rule. The vigilance clearance, as explained by

the Ld. Counsel for the respondents, was not given for the applicant due to a pending vigilance inquiry relating to certain irregularities, which relate to violation of CCS (Conduct) Rules. Therefore, it cannot be gainsaid that the vigilance status of the applicant has not changed from the initial date of granting the adhoc promotion. The Appointing Authority is vested with the power to review adhoc promotions as the situations evolve and in fact, DOPT has ordained the review to be essentially done in a spate of memos released over the years.

IV. In particular, para 6 of DOPT OM of 1988 referred to, provides for review of adhoc promotions, which is extracted hereunder:

All adhoc appointments including adhoc promotions shall be reviewed on the basis of above guidelines.

Respondents have reviewed the adhoc promotion of the applicant and reverted her as DCIT after proper screening of the records. Hence, the action of the respondents is synchronising with the rules on the subject. One cannot therefore find fault with them.

V. It is also evident that the adhoc promotion was granted purely for administrative reasons without conduct of DPC. The appointing authority, after proper screening of the records for administrative reasons of a pending vigilance inquiry, has reverted the applicant. When the applicant was granted promotion for administrative reasons, the respondents cannot be prohibited to terminate the adhoc promotion for administrative reasons of an unfavourable record of service of the applicant. There are always two sides of the coin, which has to be accepted. It is an accepted norm of promotion that the performance of an employee, which counts, be it for adhoc or a regular promotion.

VI. Coming to the aspect of law, clause (ii) of the DOPT OM of 24.12.1986 fell for consideration before the Hon'ble Principal Bench of this Tribunal in Original Application No.2613/2008 on the 13th day of January, 2010, wherein it was held as under:



“6. Instructions on ad hoc appointments are governed by Government of India, DOP&T OM No.28036/8/87-Estt.(D) dated 30.3.1988. We may refer to only the instructions dealing with review of ad hoc appointments/promotions, as contained in para 6 of the said OM. The same reads, thus:

All ad hoc appointments including ad hoc promotions shall be reviewed on the basis of the above guidelines. In exceptional circumstances, wherever such appointments are required to be continued beyond the present term, the decision thereon may be taken by the authority prescribed in Para (4)(v). However, it may be noted that the continuance of such ad hoc appointments, including ad hoc promotions, will be subject to the overall restrictions of one year from the date of issue of these instructions. Ad hoc appointments, it appears, have to be reviewed and the basis for reviewing has to be the same guidelines on which a person may have been given ad hoc appointment, and which have been mentioned in the instructions on ad hoc appointments. Promotion cannot be made of a person on ad hoc basis when the person concerned may be facing a criminal charge. Insofar as, regular promotion is concerned, the same can be made even if a person is facing criminal case or departmental enquiry and the charge has not been framed, but insofar as, ad hoc promotions are concerned, there is no rule or judicial precedent that unless the charge is framed, be it in a criminal case or departmental enquiry, the person concerned must be promoted. The concerned authority, it appears, has held the present case to be covered by instructions of 1988, as while reviewing the continued ad hoc promotion of the applicant beyond the last extension given to him, it decided not to continue the same, even though the word mentioned in the order is reversion xxxx

Xxxxx

Insofar as, DOP&T OM No.11012/9/86-Estt.(A) dated 24.12.1986 is concerned, the same deals with the procedure to be followed when disciplinary proceeding is initiated against a government servant officiating in a higher post on ad hoc basis. The procedure in the said OM is outlined as follows:

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(ii) Where the appointment was required to be made on ad hoc 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, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.



Reliance of the counsel representing the applicant is upon the procedure contained in clause (ii) reproduced above. It is urged that the appointment or promotion of the applicant was purely for administrative reasons, and was not against a short-term or leave vacancy, and that the applicant held the appointment for more than a year and, therefore, he could not be reverted. We find no merit in the aforesaid contention of the learned counsel, as the instruction does not deal with the case of a person who may be facing criminal charge. In the present case, it may be recalled, the applicant is facing a charge of corruption, i.e., amassing wealth disproportionate to his known sources of income. It is not a case where the applicant is facing only a departmental enquiry. In our considered view, instructions contained in OM dated 24.12.1986 would not be applicable in the case of the applicant.”

The above verdict makes a clear distinction between promotions on adhoc and regular basis. In the instant case, the applicant is facing vigilance inquiry and hence, would not be eligible for adhoc promotion. Applicant has not cited any rule or judicial precedent that unless the charge is framed, be it in a criminal case or departmental enquiry, the person concerned must be promoted on adhoc basis. The case cited supra invalidates the functionality of the OM dated 24.12.1986 and hence, the said OM is of no assistance to the applicant. Besides, the above case fully covers the case on hand. The Coordinate Bench judgment is binding on the Tribunal as per the verdict of the Hon’ble Apex Court in ***S I Rooplal v. Lt. Government through Chief Secretary, Delhi & Ors*** in Civil Appeal No. 5363-64 of 1997.

VII. Moreover, applicant cannot gain any vested right in the post of JCIT to which she was promoted on an adhoc basis as pointed by the Hon’ble Apex Court in ***State of Rajasthan v. Jagdish Narain Chaturvedi, (2009) 12 SCC 49***, as under:

“1... Ad hoc employee has no right to the post and ad hoc appointment does not count for seniority.”

VIII. Besides, it is not open to any Government employee to claim alteration of status unless the relevant rules provide for the same as held by the



Hon'ble Apex Court in ***State of M.P. v. Dharam Bir, (1998) 6 SCC 165*** as under:

“9. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service”

The applicant is seeking an alteration of status from that of DCIT to that of JCIT on adhoc basis. However, the rules laid down in the OM dated 30.3.1988 as discussed above, does not permit any alteration sought in the form of extension of adhoc promotion in JCIT by the applicant as per the above legal principle.

IX. Further, to give benefit of continuance of adhoc promotion would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution of India, as it would amount to treating unequals as equals. The applicant is making a claim that her juniors are allowed to be continued in the post of JCIT on adhoc basis whereas, she, though being senior, has been reverted. The applicant is facing vigilance inquiry whereas her juniors are not. Therefore, she is unequal to them in this respect and hence, making a claim that her adhoc promotion should be continued by equating her case with those of the juniors lacks justifiable reason. If her plea is conceded to, then it would be a sure case of violation of Articles 16(1) & 14 of the Constitution of India. Equity is an integral part of Article 14 of the Constitution of India. By acceding to the relief sought by the applicant, we would be promoting inequity and hence, we desist.

X. Going a step ahead, we find it appropriate and relevant to cite the observation of the Hon'ble Supreme Court in *State of Orissa v Sukanti*

Mahapatra (AIR 1993 SC 1650) the Hon'ble Apex Court as under:



“Assuming that their having served for long years is a valid reason for regularisation, that without anything more, will not meet the requirement of the action being in public interest and what has been done under the Impugned order is to regularise illegal entry into services as if the rules were not in existence. “

Telescoping the legal principle to the case on hand, we find that the rules exist as stipulated in DOPT memo of 1988 which govern the review of adhoc promotion by the appointing authority. The Appointing Authority, after proper screening of records of the applicant in the context of vigilance inquiry, has terminated the adhoc promotion granted to the applicant as JCIT, which is evidently in public interest. JCIT is a senior position for which the respondents have a right to promote on adhoc basis those who are not under the cloud of vigilance inquiry keeping public interest in view. The applicant claiming that she has been working on an officiating basis for more than one year in the said post and hence, is eligible to be continued as per OM dated 24.12.1986, which was invalidated by the Hon'ble Principal Bench, will not overrule the necessity to take care of public interest in granting adhoc promotion. The aspect of public interest has been emphasized in DOPT memo dated 12.1.1988 as well for granting adhoc promotions. Once the applicant clears herself of the vigilance angle, then she would be re-eligible for consideration of adhoc promotion to the said post as per extant instructions. Till then, respecting the respondents decision, which cannot be said to be unfair, is the proper way of looking at the issue.

XI. The decision taken in respect of sensitive matters like promotions after due consideration has to be respected rather to find a possible error.

Unsettling a settled position is definitely not a fair preposition. We take support of Hon'ble Supreme Court observation in ***Debabrata Mohanty vs Rabindra Kumar***



Mishra on 25th October, 2018 in Civil Appeal No.10723 of 2018 (Arising out of SLP (C) No.27435/2017), for making the above observation.

“(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.”

The decision of the respondents was based on rules as discussed above. The vigilance inquiry was the making of the applicant because of inadequacies in her performance. If the applicant were not to face the vigilance inquiry, she would have been continued as JCIT along with her juniors. Therefore, trying to find a possible error in the decision of the respondents by citing an OM of 1986 and ignoring the later OMs of 1988 and 2001 which are relevant, is difficult to appreciate. In fact, Hon'ble Principal Bench of this Tribunal has invalidated the cited OM dated 24.12.1986 in a similar case as referred to above. The settled position is that those facing vigilance inquiry cannot expect adhoc promotion to a higher post, as was brought out in paras supra and we do not venture to unsettle it.


XII. The Hon'ble Chandigarh Bench of this Tribunal in OA 416/2017 of this Tribunal has rejected similar relief sought by a similarly situated employee and the CWP No.13792/2019 (O&M), filed against the said order, was withdrawn by the petitioner and the same was accordingly dismissed by the Hon'ble Punjab and Haryana High Court on 9.7.2019. The Ld. counsel tried to distinguish the said judgment by claiming that the applicant therein was issued a charge memo and that the applicant in this case was not. However, the Hon'ble Principal Bench judgment cited supra demolishes the argument of the Ld. Counsel of the applicant in as many words as possible and hence, requires no repetition.

XIII. The interim order cited by the applicant, issued by the Patna Bench is of no relevance. Further, respondents have also cited the order of the Mumbai Bench of this Tribunal in OA No. 243/2020 wherein interim relief was declined.

As both the orders are of interim nature and susceptible to change, they are not binding.

XIV. Applicant pleaded that the reversion from the post of JCIT working on an adhoc basis to that of the substantive post of DCIT would cause loss of status and adversely affects her in monetary terms/ seniority. When the applicant was not found fit to be continued as JCIT on adhoc basis as per rules and in public interest discussed in paras supra, pondering about losses referred to is not in the realm of reason. *De facto*, it would not be construed as a penalty within the meaning of Rule 11 of CCS (CCA) Rules, 1965. Therefore the plea made is not appealing to the Tribunal to intervene on behalf of the applicant.

XV. Essentially, we need to point out that there is a marked difference between adhoc and regular promotions and all the OMs submitted by the respondents and the applicant have been perused and those relevant to adhoc promotions have been delved upon from the perspective of rules and law. Both the sides were trying to juxtapose the application of the OMs released by the DOPT in regard to promotions to their advantage, but we took precaution to pick those which dealt with adhoc promotions to uphold justice. Besides, respondents' contention that the issue does not come under the purview of this Bench is not sustainable as a part of the cause of action occurred when the applicant was working in Hyderabad as DCIT. After the OA was admitted, raising such an objection, at this stage, is not maintainable.



XVI. To conclude, we find that the action of respondents in terminating the adhoc promotion of the applicant to the post of JCIT is in accordance with rules and law as was brought out in paras supra. There is no malice in law as alleged by the applicant. Consequently, there being no merit in the OA, the same is dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

VL/evr