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FINAL ORDER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Original Application No. 249 of 1986

Shri M.M.Haldar .. Applicant

--Vs.--

Union of India and another .. Respondents

Counsel for applicant .. Shri D.K.Kapur,
Advocate

Counsel for respondents .. Smt.Rajkumari Chopra,
Advocate

CORAM: Hon'ble Mr.Justice G.Ramanujam,
Vice-Chairman

and

Hon'ble Shri Birbal Nath,
Administrative Member

(ORDER OF THE TRIBUNAL PRONOUNCED BY Hon'ble
Justice Mr.G.Ramanujam, Vice-Chairman
on 28.5.1987)

In this original application,

the applicant has prayed for quashing

the order of suspension dt.28.2.1986, as

being illegal and arbitrary and for a

declaration that he is entitled for

✓ 28/5/87 promotion with effect from 26.5.1985, the

date when his junior in the select list of Grade-I Officers of 1984 was promoted, overlooking his claim and for a direction to pay all financial benefits, resulting from such declaration of promotion.

The circumstances under which the applicant has come forward, claiming the above reliefs may briefly be noted.

The applicant was working as Dy. Chief Controller of Imports & Exports in the Office of the Chief Controller of Imports and Exports, Ministry of Commerce, New Delhi up to 1985. He belongs to Scheduled Caste community.

He has been duly placed in the select list of Grade-I Officers of the Central Secretariat Service (for short, 'CSS') for the year 1984 as per OM No. 29/21/84-EO(MM) dt. 13.2.1985. In the said list, the name of the applicant appears at Sl. No. 23. All persons above him in the select list were

✓ 28/3/87

given promotion. When his turn

for promotion arose, ^{he had been overlooked.} There were

six vacancies between 26.6.85 to

12.2.1986 and for all the six vacancies,

^{as well as outsiders} juniors in the select list had been

promoted, but the applicant was

not promoted. When he was making ~~repeated~~

representations as regards his

non-promotion in accordance with

the select list, the concerned depart-

ment in the Ministry of Commerce

which ignored him for promotion got

his house raided with malafide inten-

tion on 18.2.1986 and nothing incrimi-

nating was found, as a result of the

said raid. However, on 28.2.1986, he

was placed under suspension under

Rule 10(1)(b) of the CCS(CCA)Rules on

the ground that a criminal case is

under investigation. According to the

applicant, his non-promotion subsequent

to his inclusion on 13.2.1985 in the

✓ 27/2/87

select list of Grade I Officers-1984, is illegal and arbitrary and violative of Art.14 and 16 of the Constitution and that the order of suspension which was passed on 18.2.1986 has nothing to do with his non-promotion from 13.2.1985.

The order of suspension is also vitiated by malafides, having regard to the fact that the Ministry of Commerce is bent upon justifying its stand in not promoting the applicant even after inclusion in the select list. The said application is opposed by the respondents by filing a counter to the following effect. —

— The applicant was no doubt included in the select list of Grade-I officers of the Central Secretariat Service for appointment to Dy. Secretary level posts, issued by the Department of Personnel and

Training on 13.2.1985. However, it was not

✓ 28/3/87

considered desirable to post the applicant in/under the Ministry of Commerce as he was not considered fit to hold higher responsibilities attached to the post of Jt. Chief Controller of Imports and Exports in the office of the Chief Controller of Imports and Exports. Therefore when a posting was given, the Department of Personnel and Training was requested to post him to some other Ministry/Department. The Department of Personnel and Training in turn advised that the applicant should be adjusted against one of the vacancies in the Ministry of Commerce itself. The Ministry of Commerce again expressed its difficulties in this regard. Later a direction was given by the Ministry of Personnel and Training, posting the applicant as Jt. Chief Controller of Imports and Exports in the office of the Chief Controller of Imports and Exports.

✓ 28/5/87

Exports. Again the Ministry of Commerce expressed its difficulties in ~~for~~ complying with the direction of the Department of Personnel and Training and requested for adjustment of the applicant in some other ministry.

Later it came to the notice of the Commerce Ministry that the applicant's assets were disproportionate to his known source of income and after a preliminary inquiry, a case was registered in a Criminal Court on the basis of the first information report, under Sec.5(2), read with Sec.5(1)(c) of Prevention of Corruption Act 1947. He was suspended under Rule 10(1)(b) of the CCS(CCA)Rules by an order dt.28.2.1986. The counter-averred that the suspension order has been passed in accordance with rules and the same cannot be challenged on any other tenable ground and so long as

✓ 28/1/87

the order of suspension continues to be in force, the question of promoting the applicant does not arise. Since the criminal case registered against him by the Central Bureau of Investigation is pending, the order of suspension cannot be interfered with by the Tribunal. Thus the stand taken by the respondents in the counter is that though the Department of Personnel and Training has posted the applicant as Dy. Chief Controller of Imports and Exports in the Ministry of Commerce, the same was not given effect to in view of certain difficulties, and that no promotion at this stage can be given to the applicant in view of the continuance of the suspension order in force, pending criminal proceedings and that the order of

✓ 28/5/87

^{also}
suspension dt. 28.2.1986 cannot be
challenged, as it is it has come
to be passed in view of the pendency
^{case investigation}
of the criminal ~~proceedings~~ against
the applicant. In the counter, the
respondents have also taken up a
stand by way of ^a preliminary objection
that the application, in so far as it
seeks interim relief ~~of~~ staying the
criminal proceedings initiated by the
Central Bureau of Investigation, is
not maintainable. Since we are consi-
dering at this stage the tenability
of the main reliefs claimed by the
applicant, we do not consider it
necessary to deal with the said pre-
liminary objection which can raise
only if relief is to be granted against
the Central Bureau of Investigation,
the prosecuting agency before the
criminal court. Now that we are dealing
with the main relief claimed in the

✓ WMS/87

main application, there is no ~~the~~
question of ~~considering~~ as to
the maintainability of the appli-
cation or the jurisdiction of the
Tribunal ^{arises} at this stage.

As already stated, the two ~~questions~~ that
have been raised
~~relief claimed~~ by the applicant in
this application are, (i) withholding
of promotion without any justification
between 13.2.1985, to the date when
his name was included in the select
list of Grade-I Officers of 1984, until
28.2.1986, the date of suspension; (ii) the
alleged arbitrary suspension ~~at~~ ^{on} 28.2.1986.

We proceed to deal with the
question of withholding of promotion after
the applicant's inclusion in the select
list. It has not been disputed in the
counter affidavit that the applicant's name
was included as Item No.23 in the Select

✓ 21/1/87 List of Grade-I Officers of the Central
Secretariat Service for the year 1984

and this is clear from the Office Memorandum

dt.13.2.1985. According to the applicant, all persons above him were promoted between 13.2.1985 and 25.6.1985 and six vacancies arose from 26.6.1985 to 12.2.1986 and

these six vacancies have been filled

up only by his juniors in the select as also outsiders

list, completely overlooking his

claims. This according to the

applicant is arbitrary and violative

of Art.14 of the Constitution. The

fact that the applicant was suspended

under Rule 10(1)(b) on 28.2.1986 cannot

stand in the way of his getting promotion

as per earlier. Further OM No.29/21-84 EO(MN)

dt.13.2.1985 of the Department of

Personnel and Administrative Reforms

~~is not disputed~~. It is also not in

dispute that the select list formed

year 1984 had been prepared under Rule 12(4)

of the CCS Rules 1962, Central Secretariat

Service -Promotion to Grade I and

Selection Grade Regulation 1964, as amended

✓ 28/3/87

from time to time. Para 2 of the
said OM dt.13.2.1985 is as follows:-

"Actual appointments will be
subject to the recommendations
of the Central Establishment
Board and approval of the Appoint-
ments Committee of the Cabinet in
each case. The order of seniority
in the Selection Grade will follow
the order of merit in the list,
irrespective of the actual dates of
appointment".

Based on the said select list, the
applicant has been making repre-
sentations for giving him promotion,
instead of appointing persons from
outside against vacancies which arose
after his inclusion in the select list.

repeated
Based on the applicant's representations,
L.

the Department of Personnel and Training
the following
had passed an order on 11.12.1985 in
L
No.29/24/85-EO(MM), Govt. of India, Depart-
ment of personnel and Training(Office of
the Establishment Officer).

✓ 20/5/87

" In pursuance of the directions
given by the Prime Minister,
the Department of Personnel and
Training hereby makes the postings

of the following CSS
selection grade Select List, 1984,
Officers as Dy. Secretaries in
the Ministry/Department mentioned
against each, with immediate effect
and until further orders:-

Sl.No. Name of the Position Present Posted
Officer (with in select posting as
date of birth) list

1 to 3

4. MM Halder 23 Dy.CCI&E Joint CCI&E
(b:1.6.1929) (US level) (DS level)
M/Commerce Ministry of
Commerce

5.

Sd/- R.K.Tikku, Secretary
Appointments Committee of the
Cabinet

The above communication dt.11.12.1985

clearly shows that on the directions of
the Prime Minister, ~~in charge of~~ ^{the} Department
of Personnel and Training, had promoted the
applicant from the Dy. Chief Controller of
Imports and Exports to the post of Jt.

Chief Controller of Imports and Exports,

Ministry of Commerce. This order, however,

was not given effect to by the Ministry
of Commerce on the ground that the applicant
was not considered fit to shoulder higher

✓ 28/3/87

responsibilities, viz. the post of
Jt. Chief Controller of Imports and
Exports in the Office of the Chief
Controller of Imports and Exports
and the Department of Personnel and
Training was requested to post him to
some other Ministry/department. However,
the Department of Personnel and Training
in turn advised that the applicant be
adjusted against one of the vacancies
in the Ministry of Commerce itself. But
this direction was not adhered to by the
Ministry of Commerce. Subsequently, a
direction was issued by the Department
of Personnel and Training to give effect
to the posting order passed by it earlier.
But the Department of Personnel and
Training was again requested by the
Ministry of Commerce to adjust the
applicant in some other Ministry. Though
the order dt. 11.12.1985 has been passed
by the Department of Personnel in pursuance

MSB

of the directions given by the Prime Minister, ~~promoting the~~ applicant as Lt. Chief Controller of Imports and Exports and insisted ~~the same to be given effect to~~, the Ministry of Commerce has consistently disobeyed the direction, which clearly indicates the biased and prejudiced mind of the concerned ^{officers} ~~persons~~ in the Commerce Ministry. ^{From} ~~In~~ the counter, which had been filed on 28.8.1986, it is seen that the Commerce Ministry has shown considerable disinclination to have the applicant within the ministry and has chosen to request the Department of Personnel and Training to give the applicant posting in some other ministry/ department. After going through the records and after hearing the counsel ^{on} ~~on~~ ^{fully} on either side ~~at some length~~, we are satisfied that the stand taken by the Commerce Ministry, which is totally in

✓ 28/8/86

utter disregard of the posting

order dt.11.12.1985, passed by

the Department of Personnel and

Training in pursuance of the

directions given by the Prime

Minister, is quite arbitrary and

unjustified. After the applicant

has been selected for promotion and put in

~~boxed~~ the select list of Gr.I

Officers published in the OM dt.13.2.85,

~~for~~
it is not fair ~~on the part of~~ the

Commerce Ministry to say that the

applicant is ~~not~~ ^{fit} enough to hold

posts involving higher responsi-

bilities, viz. attached to the post

of Jt. Chief Controller of Imports &

Exports. As already stated, the communi-

cation dt.11.12.1985, passed by the

Department of Personnel and Training,

clearly shows that the applicant was

given posting as Jt. Chief Controller

of Imports and Exports (Dy. Secretary level)

in the Commerce Ministry, after finding

✓ 11/5/87

him fit enough to hold that post. We

do not see how the Ministry of Commerce

could refuse to act and abide by the

orders passed on the basis of the

Prime Minister's directions, as con-

tained in the communication dt.11.12.1985,

file 28

from December 1985 ~~upto~~ August 1986, when

the counter was filed. By utter disregard

of the directions given by the Prime

Minister, the Ministry of Commerce has unjustly and
arbitrarily

deprived the applicant of his just

promotion, based on his inclusion in

the select list and on the posting order

given on the directions of the Prime

Minister. A perusal of the ~~file also~~ Counter affidavit itself

revealed that at least on three occasions

the Department of Personnel and Training

insisted that the posting order dt.11.12.85

should be given effect to and that the

on promotion

applicant should be accommodated in

the Commerce Ministry itself. It is thus

✓ 28/12/87

clear that even though the Commerce Ministry has not given effect to the ~~posting~~ order dt.11.12.1985 of the Department of Personnel and Training, the applicant should be taken to have been promoted and posted as Jt.Chief Controller of Imports and Exports(Dy.Secretary level) with effect from 11.12.1985 and he is entitled to the pay and allowances on that basis as on from that date, even though the Commerce Ministry has ~~unjustly~~ and ~~improperly~~ failed to give him the post ordered by the Prime Minister. The fact that at a later point of time, viz. 28.2.1986, the applicant was suspended ~~invoking the power~~ under Rule 10(1)(b) will not stand in the way of his getting earlier promotion, as per the order dt.11.12.1985 of the Department of Personnel and Training, which came to be passed long earlier. We therefore hold that the

✓ 28/3/87

Should be deemed to have been
applicant ~~is entitled for~~ promoted
Though
with effect from 11.12.1985. ~~It is no~~
doubt ~~true~~ that the applicant has
claimed a declaration that he was
entitled to be promoted from the ^{date of} first
vacancy of Dy. Secretary that arose
after his inclusion in the select
list, we are not inclined to give such
a relief as the select list of 13.2.85
itself contains a clause that the actual
appointments will be subject to the
recommendations of the Central Estab-
lishment Board and approval of the
Appointments Committee of the Cabinet
in each case. Therefore the mere fact
that a vacancy arose in the selection
grade does not automatically entitle
the applicant to get promotion. Therefore
the applicant's right will accrue only
from the date of actual appointment in
the promoted post. In this case, ^{the actual} posting
in the selection grade was done only
on 11.12.1985. In view of this we

✓ 28/12/87

hold that the applicant should be deemed to have been promoted only from 11.12.1985 and not from an earlier date and his pay and allowances be regulated accordingly from 11.12.1985 in the promoted post.

In this connection we would like to refer to the decision of the Principal Bench in O.P.Kumara - Vs. - Central Water Commission and others (ATR-1986-CAT-214). Therein it has been held that even if some complaints against the official is under investigation with the Central Bureau of Investigation, promotion cannot be deferred for that reason, once the official's name has been included in the select list by the Departmental Promotion Committee. The reasoning given in that case is that unless a concrete evidence is found against the officer, he should not be deprived of his legitimate rights of promotion. In the instant case, when

✓ MJS/87

the applicant was given promotion by an order dt.11.12.1985, there was no allegation which were pending investigation and yet the Ministry of Commerce kept him away from the promoted post purposely.

A reference can also be made to the decision of the Calcutta Bench in Shambunath das - Vs. - General Manager(ATR 1986(2)-CAT-110). Therein there was deferment of promotion because of pendency of disciplinary proceedings, which was later dropped.

A question arose as to whether the official should be given promotion from the date when the promotion was deferred. The Tribunal held that in a case where promotion was stalled because of pendency of the disciplinary proceedings and as soon as the said proceedings were dropped, his date of promotion should revert back from the date when the original order was issued

✓W387

and has to be deemed promoted retrospectively, with the result the official will get all the arrears of pay which would have been paid to him in the promoted post from an anterior date, up to the date of actual promotion. In this case, though the applicant was promoted pursuant to the directions of the Prime Minister, the Ministry of Commerce prevented the applicant from functioning in the promoted post, for reasons of its own and the applicant cannot be deprived of the benefit which he would have derived pursuant to the order dt.11.12.1985.

At this stage it is also significant to note that the civil list of the Central Secretariat Service Selection Grade and Grade-I Officers, published as on 1.1.1986, shows the applicant at Sl.No.269, as having been promoted on 11.12.1985 to the post of Jt.Chief

✓ 28/3/87

Controller of Imports and Exports.

From this it can certainly be taken that the applicant has been actually promoted as Jt. Chief Controller of Imports and Exports (Dy. Secretary level) in the Ministry of Commerce with effect from 11.12.1985, as shown in the Civil List

Coming to the applicant's suspension on 28.2.1986 under Rule 10(1)(b) on the basis of the facts referred to above, we are of the view that the suspension is clearly motivated. Though the Prime Minister has himself directed the posting of the applicant along with some others as Jt. Chief Controller of Imports and Exports (Dy. Secretary level)

by an order dt. 11.12.1985, the Commerce Ministry has consistently defied the direction and the Ministry had a motive to keep away the applicant from the said Ministry on some ground or other.

Though the counter says that the applicant was suspended under Rule 10(1)(b) on the ground that a case against the applicant in respect of a criminal case is under

✓ 28/3/87

investigation, it is not known whether first information report ~~had been~~ had been filed before a criminal court. However from the facts we infer that the whether filing of the first information report by the Central Bureau of Investigation before ^a criminal court was ~~long~~ long after the order of suspension. It has been repeatedly held by the Supreme Court that power under Rule 10(1)(b) can be exercised only after the first information report is filed before the criminal court and not before. The expression "a case in respect of any criminal offence is under investigation, inquiry or trial, has been understood by the Supreme Court as meaning a case in respect of which the first information report has been filed".

Therefore the mere investigation of certain allegations levelled against the applicant by the Central Bureau of Investigation or any other agency

✓ 28/87

is not a ground for invoking the power under Rule 10(1)(b). However, as the applicant's premises were raided only on 18.2.1986, ^{and} the first information report could not have been filed before the criminal court by 28.2.86, when the applicant was suspended under Rule 10(1)(b). Thus as on 28.2.86, when the order of suspension was passed, there was no case in respect of any criminal offence pending investigation, inquiry or trial, as contemplated under Rule 10(1)(b) against the applicant. Therefore the power under Rule 10(1)(b) has been ~~erroneously~~ and improperly exercised in this case.

Even assuming that the order of suspension was validly and legally passed on the day it bears, i.e. 28.2.86, having regard to the various guidelines issued by the Department of Personnel and Training in various memoranda, viz. OM 221/19/65-AVD dt. 7.9.65, 39/39/70-Ests. (A) dt. 4.2.1971

CM No.39/33/72-Ests.(A) dt.16.12.1972,

CM No.11012/7/78-Estt.(A) dt.14.9.1978

and CM No.42014/7/83-Estt(A) dt.18.2.84,

the continuance of the suspension order

beyond the period of six months should

be taken to be illegal. The scope of the

said guidelines has been considered in

detail by the Madras Bench of the Central

Administrative Tribunal in Mangaleswaran -

Vs.- Commissioner of Income Tax and another
(1987(2) AT.R.828)

(Original Application No.553 of 1986). Therein
had

the Bench held that whatever be the

reason for the delay in the investi-

gation of the alleged criminal offence

said to have been committed by the

Govt. servant, who is kept under sus-

pension, that is ~~the~~ ^a factor which

should be taken into account by the

Court for quashing the order of
~~and that being order of suspension~~
suspension, must be in consonance

with the various guidelines issued by

the Department of Personnel from time

time, suggesting speedy follow up action in respect of suspension cases. In the said judgement of the Tribunal, reference has been made to the decision of the Madras High Court in 1982(2)MLJ 134. The purport of the guidelines referred to in the various office memoranda referred to above, issued by the Department of Personnel, is that in regard to cases pending in Courts as also in respect of serving of the charge sheets on the Govt. servant in the case of disciplinary proceedings, the total period of suspension both in respect of investigation, inquiry and trial and disciplinary proceedings, should not ordinarily exceed six months and that suspension of a Govt. servant for an unduly long period involves not only hardship to the individual, but also involves payment of subsistence allowance, without the employee performing any useful service to Govt.

✓ 28/5/87

On the facts of this case, we find that except filing of the first information report by the Central Bureau of Investigation, no charge sheet has so far been filed and the matter is said to be still pending investigation.

In these circumstances, we find that even if the suspension is taken to have been passed validly under Rule 10(1)(b), at the first instance the continued suspension of the applicant in this case for more than a year cannot be legally sustained. The impugned order dt. 28.2.1986 is therefore quashed and the respondents are directed to restore the applicant to duty forthwith.

The application is allowed.

No order as to costs.

28/5/87
(Birbal Nath)
Admnve. Member

G. Ramanujam
(G. Ramanujam)
Vice-Chairman

28.5.1987

INDEX. Yes