

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn. No. OA 2214/90

Date of decision: 11.12.1991

Shri Vimal Chandra Pandey

...Applicant

Vs.

Union of India through the
Secretary, Ministry of Home
Affairs and Another

...Respondents

For the Applicant

...Shri A.K. Behra,
Counsel

For the Respondents

...Shri N.S. Mehta,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who is working as Administrative Officer in the Directorate of Health Services of Delhi Administration, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- "(i) Call for the records of the case.
- (ii) Quash the notification extending the probation of the applicant till 30th June, 1991, annexed hereto as Annexure A-13.
- (iii) To direct the respondents to confirm the applicant in DANI Civil Service with effect from 24.6.1981

in the light of the observation of the Tribunal contained in para 9 of the judgment dated 5.5.1989.

(iv) To direct the respondents to pay special pay at admissible rates wef January, 1983.

(v) To direct the respondents to appoint the applicant in Selection Grade wef May/June, 1984, when the immediate junior of the applicant Shri Girish Chandra Joshi was appointed in the selection grade.

(vi) To direct the respondent to appoint the applicant in the Junior Administrative Grade wef 17.5.1989 when his immediate junior Shri Girish Chandra Joshi was appointed in that grade.

(vii) To quash the orders dated 10th August, 1990 (Annexure A-10) and 24.8.1990 (Annexure A-11).

(viii) To direct the respondents to pay arrears of pay and allowances calculated after giving the benefits claimed in above prayers.

(ix) To direct the respondents to pay interest on the above amount at the rate of 20% per annum from the due date to the date of actual payment.

(x) To allow the cost of the legal proceeding;

(xi) To pass any other order or direction which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case".

2. On 30.10.1990, the Tribunal passed an interim order restraining the respondents from effecting any recovery from the pay and allowances of the applicant

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pursuant to their orders dated 10.8.1990 and 24.8.1990 at Annexures A-10 and A-11 to the application. The interim order was thereafter extended till the case was finally heard and orders thereon was reserved.

3. The facts of the case are as follows.

On the basis of the results of I.A.S. etc. examination held by Union Public Service Commission in 1977, the applicant was appointed to Grade II of the Delhi Andaman and Nicobar Islands Civil Services on probation for two years with effect from the 25th June, 1979(FN). By the same notification, Shri Girish Chandra Joshi was appointed to the same service as the immediate junior of the applicant. The period of probation of two years of the applicant expired on 24.6.1981. He continued even thereafter without any communication about confirmation.

4. On 26.2.1982, a case under section 5(2)/47 of the Prevention of Corruption Act and Section 161 of the I.P.C. was registered against the applicant. The applicant has stated that on 26.2.1982 itself the Commissioner of Sales Tax Department recommended termination of service of the applicant and sent this recommendations to the Ministry of Home Affairs.

5. The respondents passed an order in August, 1982 extending the period of probation from 25.6.1982

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to 24.6.1983. The applicant has stated that no communication regarding extension of his probation period from 25.6.1981 to 24.6.1982 was received by him. His services were terminated with effect from 13.9.1982 vide order dated 13.9.1982 and he was relieved of his duties as S.T.O. on 21.9.1982.

6. The applicant challenged the aforesaid order in CWP 3480/82 filed in the Delhi High Court. In the meanwhile, the criminal charge against the applicant was tried by the Special Court and he was honourably acquitted by the court of Additional District and Session Judge, the Hon'ble presiding officer as Special Court on 3.9.1984. The State preferred an appeal to the High Court against the order of acquittal but the appeal of the State was dismissed. Thus, finding of acquittal of the applicant became final.

7. The Writ Petition filed in the High Court was transferred to this Tribunal. By judgment dated 5.5.1989, the Tribunal quashed the order of termination dated 13.9.1982 and directed the respondents to reinstate him. The respondents vide their order dated 12.7.1989 reinstated him in service. It was also directed that the period from 22nd September, 1982 to the date of petitioner's reinstatement shall be treated as duty for all purposes and petitioner will be entitled to all consequential benefits. By order dated 12.7.1989, the respondents also directed that the applicant's reinstatement was "without prejudice to any action to be taken against him for his misconduct".

8. On reinstatement, the applicant was posted as Administrative Officer, Directorate of Health Services, Delhi Administration on 7.8.1989. He claims that on his reinstatement, the respondents are under a duty to:

- "(i) pay the arrears of pay and allowances admissible to the applicant for the period 22.9.1982 to 6.8.1989;
- (ii) to give notional appointment to the applicant in selection grade as well as Junior Administrative Grade wef the dates his junior Shri Girish Chandra Joshi was appointed and to pay the applicant the arrears of pay and allowances in the higher grades wef the dates of such notional appointment;
- (iii) confirm the applicant in DANI Civil service;
- (iv) take a decision about crossing the efficiency bar of the applicant in Grade-II;
- (v) pay the applicant special pay which is being paid to all seniors and juniors of the applicant including Shri Girish Chandra Joshi since January, 1983".

9. The applicant has stated that the respondents did not take any action to grant consequential benefits to him. In the meanwhile, the immediate junior of the applicant, namely, Shri Girish Chandra Joshi was appointed to the selection grade in May/June, 1984 and to the

Junior Administrative grade on 17.5.1989.

10. In December, 1989, the applicant was paid the arrears of pay and allowances but the following consequential benefits were not given to him:-

"(i) To give notional appointment to the applicant in selection grade as well as Junior Administrative Grade w.e.f the date his immediate Junior Shri Girish Chandra Joshi was appointed and to pay the applicant the arrears of pay and allowances in the higher grades w.e.f the date of such notional appointment.

(ii) To pay the applicant special pay which is being paid to all seniors and juniors of the applicant including Shri Girish Chandra Joshi since January, 1983*.

11. On 12.3.1990, the respondents passed an order allowing him to cross the efficiency bar at the stage of Rs.810/- raising his basic pay to Rs.845/- with effect from 1.6.1989. This was on the basis of the recommendation of the D.P.C. On 10.8.1990, the respondents revoked the above mentioned order without giving any reasons. In view of this, the Chief Medical Officer passed an order on 24.8.1990 directing recovery of the amount paid to the applicant as a result of the earlier order of March, 1990 allowing him to cross the efficiency bar. *Or*

12. The applicant has stated that according to his understanding, the Departmental Promotion Committee which met in March, 1990 for recommending names for appointment to the Selection Grade in consultation with U.P.S.C. was pleased to recommend the name of the applicant as No.1 in the panel. However, he was denied appointment to the Selection Grade whereas by order dated 24.5.1990, about 30 persons junior to him have been given appointment to the Selection Grade.

13. The applicant has put in about 11 years and 3 months of service in DANI Civil Service. The Ministry of Home Affairs have issued a notification whereby his probation has been extended upto 30.6.1991.

14. The case of the respondents is as follows. The period of probation of the applicant was initially extended for a period of one year from 25.6.1981 to 24.6.1982 and later for another one year from 25.6.1982 to 24.6.1983. They have stated that there was no alternative available to the Government but to further extend the period of probation upto 30.6.1991 in view of the peculiar facts of his case. After completion of 2 years of service, his probation had to be extended twice for periods of one year each and after that he was discharged from service. He had to be taken back in service after remaining out of service for about seven years. Since the order of the Tribunal did not prevent the Government from initiating disciplinary proceedings

against him, it was decided to proceed against him departmentally. For taking up the case of an officer for successful completion of probation, one of the conditions is that no disciplinary proceedings should be pending or contemplated against him. Now that disciplinary proceedings are pending against him, there was no other alternative available to the Government but to further extend the period of his probation.

15. The respondents have stated as the applicant is being proceeded against departmentally under CCS(COA), Rules, 1965, his case cannot be put up to Departmental Promotion Committee for clearance of Efficiency Bar. Delhi Administration had inadvertently placed his case before the Departmental Promotion Committee for assessing his suitability for crossing of EB. The omission on the part of Delhi Administration was rectified by cancelling the order allowing him ~~xxxxxx~~ to cross EB as his case cannot be considered by DPC for crossing of EB till departmental proceedings are concluded against him. As regards his promotion, they have stated that as he has not been confirmed in DANI Civil Service and no seniority has been assigned to him, the question of consideration of his name by the DPC for promotion to Selection Grade of the service does not arise. His case for promotion can be considered after he has been cleared for completion of probation, confirmed in service and assigned seniority.

16. We have gone through the records of the case carefully and have considered the rival contentions. The first question relates to the validity of the extension of the period of probation of the applicant till 30.6.1991 and his right to confirmation wef 24.6.1981.

17. Rule 21 of the Delhi and Andaman and Nicobar Islands, Civil Service Rules, 1971, inter alia, reads as follows:-

"(1) Every person appointed under rule 17 to Grade II of service, unless already confirmed in the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service, shall be on probation for a period of two years;

Provided that in reckoning the above period of two years, the period of probation as member of the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service shall be counted.

(2) Every person appointed under rule 5 to Grade II of the service shall be on probation for a period of two years.

(3) The Central Govt. may in the case of any person extend or reduce the period of probation.

(4) A probationer who has no lien on any post under the Central Govt. or any State Govt. or Administration of a Union Territory or North East Frontier Agency shall be liable to be

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discharged from the service at any time

without notice if:-

(i) On the basis of his performance or conduct during probation, he is considered unfit for further retention in the Service; or

(ii) If on the receipt of any information relating to his nationality, age, health or antecedents the appointing authority is satisfied that he is ineligible or otherwise unfit for being a member of the service".

18. In our opinion, the effect of the quashing of the impugned order of termination issued in September, 1982 and his reinstatement with all consequential benefits is that he must be deemed to have continued in service from September, 1982 to the date of reinstatement without blemish. The Supreme Court has adversely commented upon placing an employee under suspension for several years.

(Vide R.L. Gupta Vs. Union of India & Others, 1988(2)

SLJ 164 at 172; State of Gujarat Vs. Akhilesh C.

Bhargav and Others, 1988(2) SLJ 85; R.K. Bharati Vs.

Union of India, ATC 1989(2) CAT 456).

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19. In R.L. Gupta's case, the Supreme Court has held that "to place a judicial officer, promoted to the Higher Judicial Service, on probation nearly nine years after his promotion as in this case, is a mere farce.

Ordinarily, an officer should be and if he is found unsuitable within the period of probation, he should be weeded out of service.....Is it just and reasonable to place an officer on probation nearly nine years after his appointment and then turn him out of service if his services are found to be unsatisfactory during the period of probation which would fall in the tenth and eleventh year of his service in that cadre?".

20. In Akhilesh C. Bhargav's case, the Supreme Court dealt with the discharge of a probationer belonging to the Indian Police Service. He was appointed to that Service in July, 1969, but was discharged by an order issued in April, 1974. Rule 3(1) of the Indian Police Service (Promotion) Rules, 1954 provides, inter alia, that every person recruited to the Service shall be appointed on probation for a period of two years. At the relevant time, sub-rule (3) of the said Rules provided that the Central Government may, if it so thinks fit in any case of class of cases extend the period of probation. In that case, there was no order of extension. It was contended that no order of extension was necessary to be made as the process of confirmation was not automatic and even if the two-year period as provided in Rule 3(1) has expired, confirmation

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would not ipso facto follow and a special order had to be made. Reliance had been placed on a series of decisions of the Supreme Court which had held that an order of confirmation had to be made and confirmation would not follow automatically.

21. The Supreme Court, however, observed in the above case that the decision was somewhat different. While the probation rules prescribe an initial period of two years of probation, it did not provide any optimum period of probation. Administrative instructions were issued by the Ministry of Home Affairs, Government of India, on 16th March, 1973, indicating the guidelines to be followed in the matter. The Supreme Court referred to the following relevant portion of the administrative instructions:-

"....."

(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. Accordingly, a probationer, who does not complete the probationers' final examination within a period of four years, should ordinarily be discharged from the service.

22. The Supreme Court observed that the Rules read with instructions create a situation as arose for consideration by the Constitution Bench in the case of State of Punjab Vs. Dharam Singh, AIR 1968 SC 1210. In that case, the Supreme Court had interpreted the Punjab Educational Service

(Provincialised Cadre) Class III Rules and found that there was a maximum limit of three years beyond which the period of probation could not be extended. When an officer appointed initially on probation was found to be continuing in service beyond three years without a written order of confirmation, the Supreme Court had held that it tantamounted to confirmation.

23. In view of the above, the Supreme Court held in the case of Akhilesh C. Bhargav that the respondent stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the probation rules did not apply and, therefore, proceedings in accordance with law were necessary to terminate the service. In the result, the Supreme Court ruled that Akhilesh C. Bhargav had become a confirmed officer of the Gujarat I.P.S. Cadre and under Rule 12(hb) of the Probation Rules, his service could not be brought to an end by the impugned order of discharge.

24. In the light of the above, the notification extending the probation of the applicant till 30.6.1991 is not legally sustainable. He should be deemed to have been confirmed in DANI Civil Service w.e.f. 24.6.1981. In this context, reference may also be made to para 9 of the judgment dated 5.5.1989 in TA 838/85 wherein it has been

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observed as follows:-

"From the above, it will be seen that the Annual Confidential Reports of the petitioner do not contain any adverse remarks either on his integrity or general unsuitability. In fact if these reports were considered within a reasonable period of the completion of the probation of two years in June, 1981, the petitioner would have been confirmed in service".

25. We may now consider the tenability of the claim of the applicant for appointment in the selection grade with effect from May/June, 1984 and in the Junior Administrative Grade with effect from 17.5.1989, when his immediate junior, Shri Girish Chandra Joshi, was so appointed and whether he is entitled to cross the Efficiency Bar at the stage of Rs.810/- raising his pay to Rs.845/- with effect from 1.6.1985 in the pre-revised scale of pay of Rs.650-30-710-35-810-EB-35-880-40-1000-EB-40-1200.

26. Admittedly, a memorandum for initiating disciplinary proceedings under Rule 16 of the CCS(CCA) Rules, 1965, was issued to the applicant only on 14.12.1990. The DPCs for considering the suitability of officers for appointment in the Selection Grade and in the Junior Administrative Grade had met earlier. The respondents did not adopt sealed cover procedure in the case of the applicant but he was not considered at all for the grant of Selection

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Grade and for promotion to the Junior Administrative Grade. This is clearly impermissible in law.

27. In Union of India Vs. K.V. Janakiraman, 1991(2) SCALE 421, the Supreme Court has held that consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceeding against an official. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/charge sheet has already been issued to the employee.

28. In the light of the above discussion, the application is disposed of with the following orders and directions:-

(i) We set aside and quash the notification extending the probation of the applicant till 30.6.1991 at Annexure A-13 to the application. He must be deemed to have been confirmed in DANI Civil Service w.e.f. 24.6.1981.

(ii) We hold that the order passed by the respondents on 12.3.1990 allowing the applicant to cross the Efficiency Bar at the stage of Rs.810/- raising his pay to Rs.845/- with effect from 1.6.1985 in the pre-revised scale of Rs.650-30-710-35-810-EB-35-880-40-1000-EB-40-1200 was validly issued and we set aside and quash the impugned order dated 10.3.1990 at Annexure A-10 to the application purporting to revoke the earlier order dated 12.3.1990 without giving any reasons.

(iii) The respondents are directed to constitute review DPCs to consider the suitability of the applicant for grant of Selection Grade and for promotion to the Junior Administrative Grade as on the respective dates on which DPCs were held as a result of which Shri Girish Chandra Joshi, his immediate junior was found fit for the grant of Selection Grade and for promotion to the Junior Administrative Grade. The review DPC shall not take into consideration the vigilance investigation which may have been pending against the applicant on those respective dates. In case the review DPCs find him otherwise fit for the grant of Selection Grade and for promotion to the Junior Administrative Grade, he shall be granted Selection Grade and promotion to the Junior Administrative Grade from the respective dates on which his immediate junior was granted selection grade and was promoted to the junior Administrative Grade. He would also be entitled to all consequential benefits, including arrears of pay and allowances from the due date.

(iv) The respondents are directed to comply with the above directions within a period of three months from the date of communication of this order.

(v) We make it clear that the respondents will be at liberty to review the matter after a decision is taken on

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the disciplinary proceeding initiated against the applicant and take appropriate action in accordance with law.

(vi) There will be no order as to costs.

D. K. Chakravorty
11/12/81

(D. K. CHAKRAVORTY)
MEMBER (A)

Partha
11/12/81
(P. K. KARTHA)
VICE CHAIRMAN (J)

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22.07.92.

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OA 2214/92

Present: Shri A.K. Behra, counsel for the
petitioner.

Issue notice to the respondents,
returnable on 20.08.92.

Personal presence of the respondents
is dispensed with for the time being.

Deekshatul
(A.K. Raygarh)

Member (C)

22.07.92.

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Pr
(V.S. Malhotra)

Chairman

22.07.92.

22/7/92

Deekshatul
(A.K. Raygarh)

20.08.1992.

(29)

CCP 229/92 in
OA-2214/90

Present: Shri A.K. Behra, counsel for the petitioner.

Mrs. Sumedha Sharma, proxy counsel for Mrs. Avnish Ahlawat, counsel for the respondents.

Two weeks' time is granted to the respondents to file reply.

Call on 22.09.1992.

Dulalji
(I.K. Rasgotra)
Member (A)

Am
(V.S. Malimath)
Chairman

skk

Reply not filed

22.9.92

Petitioner through Shri A.K. Behra, Counsel.

On behalf of the respondents Mrs Avnish Ahlawat, Counsel, is present.

Adjourned to 14.10.1992.

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Aud. B.L.

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14.10.92
CCP 229/92 in OA 2214/90

Present : Sh.A.K. Behre, counsel for the petitioner.

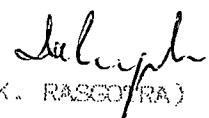
Mrs. Avniash Ahlawat, counsel for the respondents.

At the request of the learned counsel for the petitioner, be listed on 16.10.92.


(J.P. SHARMA)

MEMBER (J)

14.10.92


(I.K. RASGOFRA)

MEMBER (A)

14.10.92

Replied by
R.H. 1
R.H. 2
J.P. SHARMA

(1) (2)

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16.10.92

COP 229/97

OA 2214/90

Present: Shri A.K. Behrs, counsel for the petitioner.

Shri K.S. Mehta, Sr. Standing Counsel, for the respondents.

The learned counsel for the petitioner states that he has filed two rejoinders under filing No.9572 & 9573 on 14.10.92. They are not on the judicial file. The rejoinders be traced and placed on record. Call on 20.11.92.

(J.P. SHARMA)
MEMBER (J)
16.10.92

Subrata
(I.K. RASGOURA)
MEMBER (A)
16.10.92

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30.10.92.

CCP 229/92 in

DA 2214/90

Present: Shri A.K. Behra, counsel
for the petitioner.

Shri N.S. Mehta, Senior Standing
Counsel and Mrs. Avnish Ahlawat,
Counsel on behalf of the
respondents.

The petitioner has asserted in the rejoinder that the review DPC came to the conclusion that the petitioner is not fit for being promoted to the Junior Administrative Cadre taking into consideration the penalty of censure imposed on him in spite of the specific direction in the judgement of the Tribunal that the said punishment should not be taken into account. As the source of information on the basis of which this assertion is made was not disclosed, we are not willing to accept the statement. Shri Behra, learned counsel for the petitioner then asserted that the information has been received from a responsible officer of the U.P.S.C. We asked Shri Behra to ascertain from his client the source of information on the basis of which he has made this statement,

✓ in which event we may give him time to file an

On the basis of the instruction of his client, who was present in the Court, Shri Behra submitted that the information has been given by Shri A.K. Saxena, Under Secretary, U.P.S.C. We grant one week's time to the petitioner to file a further affidavit in this behalf. The reply shall be filed after serving an advance copy on the respondents before 5.11.92 and the further reply, if any, by the respondents, shall be filed by 12.11.92.

Call on 16.11.92. The records of the DPC shall be kept ready by the counsel for the respondents on that date.

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A)

V.S. Malimath
(V.S. MALIMATH)

CHAIRMAN

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*Affidavit filed
Reply not filed*

In the Central Administrative Tribunal
Principal Bench: New Delhi

CCP No.229/92 in Date of decision: 16.11.1992.
OA No.2214/90

Vimal Chandra Pandey ...Petitioner

Versus

Dr. Madhav Godbole & Another ...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri A.K. Behra, Counsel.

For the respondents Shri N.S. Mehta, Senior
Standing Counsel for respondent No.1.

Mrs. Mukta Gupta, proxy
counsel for Mrs. Avnish
Ahlawat, counsel for
Respondent No.2.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The complaint in this case is that the judgement of the Tribunal in OA-2214/90 has not been complied with. Shri Behra, learned counsel for the petitioner submitted that the penalty of censure imposed on the petitioner has been taken into account by the DPC which was convened in pursuance of the direction of the Tribunal in the said judgement. The Tribunal has directed that the review DPC shall not take into consideration the vigilance investigation which may have been pending against the petitioner. The petitioner has asserted before us that he has information that the DPC has taken the penalty of censure

into account, he having been told so by an official of the UPSC Shri A.K. Saxena. We had asked the petitioner to file an affidavit in this behalf which he has done. We asked the petitioner to file the affidavit because we were surprised that a responsible officer of the Union Public Service Commission would have divulged about as to what transpired in the DPC to the petitioner. We need not say much about it. It is for the Union Public Service Commission to maintain discipline in its own organisation. As far as we are concerned, we are concerned with the truth of allegation so far as the contempt proceedings are concerned as to whether the penalty of censure has been taken into consideration by the DPC. Shri Mehta, Senior Standing Counsel for respondent No.1 has placed before us the minutes of the review selection committee which was held in pursuance of the direction of the Tribunal. On a perusal of the same, we find that the said selection committee was fully conscious of the mandate of the direction in the judgement. The thrust of the direction in the judgement of the Tribunal is that the DPC should not take into consideration the vigilance investigation which may have been pending against the petitioner and the consequences flowing

from the same. The committee has extracted the relevant direction of the judgement in this behalf before proceeding to perform its function. The proceeding indicate that after excluding the penalty imposed in pursuance of the proceedings pending against the petitioner that he was graded as good as that was not adequate. The petitioner could not get any advantage of the said grading. We are satisfied on perusal of the proceedings of the review DPC that the penalty of censure has not been taken into account in assessing the merits of the petitioner.

2. Shri Behra at one stage of the arguments submitted that it is not enough that we perused the minutes of the DPC but that we should see the proceedings of the DPC, which, in his opinion would indicate that the penalty of censure was also taken into account. We are not impressed by this argument.

It is difficult to believe that the selection committee which was convened only in the light of the direction of the judgement and which had read direction in the judgement before proceeding to discharge its function would have thought of taking into consideration the penalty of censure imposed on the petitioner.

The committee consisted of Member, Union Public Service Commission, Chief Secretary, Delhi Administration, Chief Secretary, Andaman and Nicobar Administration and Joint Secretary to Government of India, Ministry of Home Affairs, New Delhi. These officers

are experts in the field of administration and they must be regarded as fully conscious of their responsibility to comply with the direction of the Tribunal. We must, therefore, draw the inference that they have not taken into consideration the penalty of censure. There is, therefore, no substance in this contention.

3. It was next argued by Shri Behra, learned counsel for the petitioner that special pay should have been granted to the petitioner w.e.f. 15.6.1984 - the date from which he has now been given the selection grade on the ground that that was the date on which his junior was given the selection as grade. It is his case that every one similarly situated has been granted the special pay there is no justification for denying the same so far as the petitioner is concerned consequent upon his being granted the selection grade w.e.f. 15.6.1984.. The reply of the Delhi Administration, respondent No.2 to this part of the case of the petitioner firstly is that the petitioner having come forward with the specific prayer in the O.A. for grant of special pay and that special prayer not having been specifically granted in the judgement of the Tribunal the said prayer must be deemed to have been rejected. There is considerable force in this contention.

✓ We see no good reason why we should not accept this

contention that the special prayer for grant of special pay was not granted by the Tribunal. It is difficult to bring this relief in the circumstances in the general direction for grant of consequential benefits. Even otherwise it was pointed out by the respondents that the case of the petitioner was considered for grant of special pay and it was found that he is not eligible for the same as Special pay is granted to a government servant on consideration of the special arduous nature of the duties or specific addition to the work or responsibilities. It is stated that since the petitioner has not worked on the job which carried any special pay no special pay was payable to him. In other words the stand taken by the respondents is that special pay was not attached to the post as such. It was only payable when a particular person is required to discharge special and arduous nature of duties or there is addition to the work or responsibilities. On facts they say that no such situation having been arisen, special pay was not liable to be paid to the petitioner from the year 1984. It is, therefore, not possible to take the view that the stand taken by the respondents is untenable or amounts to contumacious violation of the judgement of the Tribunal. Hence this petition

fails and is dismissed. Notice of contempt is discharged. No costs.

Delurah
(I.K. Rasgotra)
Member(A)

Malimath

(V.S. Malimath)
Chairman

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