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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A.250/1990. DATE OF DECISION: January 15, 1991.

Shri S.C.H. Asnani Applicant.

V/s.

Union of India & Another Respondents.

CORAM: Hon'ble Shri B.S. Sekhon, Vice Chairman (J).
Hon'ble Shri P.C. Jain, Member (A).

Shri Umesh Misra, counsel for the Applicant.
Shri N.S. Mehta, counsel for the Respondents.

(Judgment of the Bench delivered by
Hon'ble Shri P.C. Jain, Member (A).)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who is a member of the Indian Supply Service, is aggrieved by the impugned order dated 10.2.1989 (Annexure 'A'), by which he while on deputation to Bureau of Industrial Costs and Prices, was granted proforma promotion to Grade II of the Service with effect from 18.11.88 (AN) under Next Below Rule. He has prayed for the following reliefs: -

"Under the circumstances, it is prayed that this Hon'ble Tribunal may kindly be pleased to command the respondents, their officials and agents to give all the benefits to the applicant as if he was not reverted from the post of Deputy Director Grade II of Indian Supplies Service alongwith future benefits.

Grant any other relief or reliefs which are fit under the circumstances of the present case.

All the costs of the application in the interest of justice. "

2. Briefly stated, the relevant facts are that the applicant was appointed as Assistant Director (Supplies) in Grade III of the Indian Supply Service with effect from 1.3.1977 on the basis of Engineering Service Examination, 1975 conducted by the U.P.S.C. He was considered and

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empanelled for promotion to the post of Deputy Director of Supplies (Grade II of the Service) by the Departmental Promotion Committee/meeting held on 22.3.1984. While according to the applicant, he was promoted on regular basis and against a permanent vacancy to the post of Deputy Director with effect from 1.8.1984, according to the respondents, he was promoted on officiating basis. He was reverted to the post of Assistant Director vide Office Order dated 8.3.1985 (Annexure E). According to the applicant, the aforesaid reversion amounted to a major penalty inflicted upon him in violation of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, but according to the respondents, the reversion became necessary as some of the officers who were on deputation reverted to the DGS&D and as the applicant was the junior-most officiating empanelled officer as Deputy Director of Supplies at the Headquarters, he was given the option to go to Calcutta where one of his juniors was officiating as Deputy Director, but the applicant did not choose to go to Calcutta and, as such, he had to be reverted. He was subsequently promoted as Deputy Director on an ad-hoc basis with effect from 19.2.1986 for a period of three months and was allowed to continue for a further period of three months. He was relieved with effect from 18.8.1986 vide Office Order dated 18.8.1986 while still officiating as Deputy Director of Supplies on an ad-hoc basis, to take up the post of Deputy Director (Engineering) in the Bureau of Industrial Costs and Prices on deputation basis. While on deputation, he was promoted, as already stated, as Deputy Director of Supplies with effect from 18.11.1988 in absentia vide Office Order dated 17.1.1989 and Notification in this regard was issued on 10.2.1989 (Annexure 'A') - the impugned order. It may also be stated here that the applicant represented on 6.3.1985 against his likely reversion and again on 19.3.1985 against his reversion vide order dated 8.3.1985. Both these

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representations were replied to vide Memorandum dated 20th/ 22nd March, 1985 (Annexure R-III).

3. The respondents have contested the application by filing a reply to the application and the applicant has filed a rejoinder thereto. We have perused the material on the file and have also heard the learned counsel for the parties. The respondents, in their reply as well as during the oral submissions by their counsel at the time of final hearing, have taken the plea of limitation, as the applicant is aggrieved by his reversion order dated 8.3.1985 and his representation had been rejected in March, 1985. The learned counsel for the applicant argued that it is a continuous cause of action and that since the applicant's reversion with effect from 8.3.1985 was in violation of the provisions of Article 311 of the Constitution, no limitation is applicable in this case.

4. We have given careful consideration to the rival contentions of the parties on the point of limitation and we are of the view that the O.A. in regard to the relief prayed for in para 8 of the O.A. is hopelessly barred by limitation. It is not in dispute that the reversion order was passed on 8.3.1985. It is also not in dispute that his first two representations in this regard had also been replied to in March, 1985 itself. Repeated representations do not have the effect of either extending the limitation or providing a fresh limitation (S.S. RATHORE Vs. STATE OF MADHYA PRADESH - AIR 1990 S.C. p. 10). The contention of the applicant that the reversion amounted to imposition of a major penalty and as such, it violated the provisions of Article 311 (2) of the Constitution is not sustainable. There is nothing before us to show that the applicant was not the juniormost empanelled Deputy Director at the Headquarters when he was reverted for want of vacancy. It is not in dispute that the applicant was told that if he was prepared to go to Calcutta, he could continue as Deputy Director as a person junior to him was

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working as such at that place, but he did not avail of this offer. Further, Explanation (iv) under Rule 11 of the C.C.S. (C.C.A) Rules, 1965 provides as below: -

"(iv) reversion of a Government servant officiating in a higher Service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher Service, grade or post or on any administrative ground unconnected with his conduct;"

Such a reversion in accordance with the opening sentence of the Explanation ibid "shall not amount to a penalty within the meaning of this rule". As the reversion of the applicant has nothing to do with his conduct and it was purely on administrative ground, it cannot be said to be a penalty. The question of initiating disciplinary proceedings and giving a reasonable opportunity to the applicant for the proposed action of reversion, did not arise, and as such, the question of violation of Article 311 of the Constitution also does not arise. It was also argued by the learned counsel for the applicant that as the applicant had been promoted on a regular basis, his reversion could not have been ordered without following the procedure prescribed in the CCS (CCA) Rules, 1965. In this respect, our attention was drawn to Office Order dated 3.8.84 (Annexure 'C'), according to which the applicant was "promoted as Deputy Director of Supplies (Grade II of Indian Supply Service) on regular basis with effect from 1-8-1984 (FN)". The respondents have stated in their reply that the D.P.C. meeting held on 22.3.1984 was for selection and empanellment of officers for officiating promotion to the post of Deputy Director of Supplies and that the applicant was appointed on officiating basis with effect from 1.8.1984 vide Office Order dated 3.8.1984 (Annexure 'C'). Though the applicant in his rejoinder has questioned the correctness of this statement, he has not been able to file any proof in support of his contention. Further, the applicant was not shown to

have been confirmed in the post of Deputy Director before his impugned reversion with effect from 8.3.1985. Learned counsel for the respondents also argued that the use of the words "on regular basis" in the promotion order (Annexure 'C') is to distinguish the appointment on promotion on an ad-hoc basis and that it has no other meaning. In these circumstances we have to hold that the applicant was promoted to the post of Deputy Director on officiating basis and that his reversion did not amount to a penalty in terms of the provisions of Rule 11 of the CCS (CCA) Rules, 1965.

5. In para 4 (VII) of the O.A., the applicant has made an alternative submission and the same has also been repeated in his rejoinder. According to this alternative submission, as the applicant had been working continuously as Deputy Director with effect from 19.2.1986, his seniority in the post of Deputy Director should be counted from 19.2.86 and not from 18.11.88. The respondents, in their reply, have stated that the validity of the panel for officiating promotion to the post of Deputy Director of Supplies prepared by the D.P.C. meeting held on 22.3.1984 expired on 21.3.1985. Subsequently ~~xx~~ another panel for officiating promotion for the aforesaid post was prepared by the D.P.C. in its meeting held on 4.11.88 and when orders of promotion of the empanelled officers were issued, order for proforma promotion of the applicant was also issued on 17.1.89 and subsequently a Notification was issued on 10.2.89, which is the impugned order. It may be noted here that no relief on the basis of this alternative submission has been prayed for by the applicant in the reliefs sought under para 8 of the O.A. Further, the alleged continuous officiation on ad-hoc basis includes a major part of the service on deputation to a post which was admitted to be an ex-cadre post. Service on an ex-cadre post on deputation does not count for seniority and the judgment of the Hon'ble Supreme Court in Narinder Chadha's case, which has been relied upon by the applicant on this point, is not applicable. The pleadings of the parties before

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us do not disclose that at the time the applicant was appointed to officiate as Deputy Director on an ad-hoc basis for a period of three months, he was the senior-most among all eligible officers in the cadre and whether his ad-hoc promotion had been ordered after consideration of all the eligible persons. The applicant has not filed any seniority list from which his inter-se seniority at the relevant time could have been seen. Whether the right procedure was followed before ordering the ad-hoc promotion for a limited period is also not clear from the pleadings of the parties. It was held by the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers Association & Others Vs. State of Maharashtra and Others (Judgment Today 1990 (2) SC 264 (Five-Judge Bench) that where the initial appointment is only ad-hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. In these circumstances, we are unable to arrive at a concrete finding in regard to the alternative submission of the applicant that his seniority in the post of Deputy Director of Supplies should be counted from 19.2.1986. This alternative submission also comes under the category of multiple reliefs sought in a single application and is accordingly hit by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. The applicant would be free to pursue this claim by filing a separate application in accordance with law, if so advised.

6. In view of the foregoing discussion, we hold that the O.A. in regard to the relief prayed for in para 8 thereof is barred by limitation and, as such merits rejection. O.A. is accordingly hereby rejected. No costs.

C. Jain
(P.C. JAIN)
Member(A)

15.1.1991.

B. S. Sekhon
(B.S. SEKHON)
Vice Chairman (J)

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