

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.38/93

1/97A

New Delhi this the 24th day of May, 1999.

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (A)  
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Sushil Kumar,  
S/o Shri Braham Dev,  
R/o C/o Shri H.D. Mehndiratta,  
House No.290, GH 9, Paschim Vihar,  
P.O. Nangloi,  
Delhi-110041.

...Applicant

(By Advocate Shri S.K. Sawhney)

-Versus-

Union of India through:

1. The Secretary,  
Ministry of Industry,  
Deptt. of Industrial Development,  
Udyog Bhawan, New Delhi.
2. The Director (Vigilance),  
Govt. of India,  
Deptt. of Indl. Development  
Nirman Bhawan, 'C' Wing,  
7th Floor, Maulana Azad Road,  
New Delhi-110011.

...Respondents

(By Advocate Shri P.H. Ramchandani)

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J):

The applicant is aggrieved by the punishment order of censure passed against him by the respondents by order dated 20.11.91 against which the review filed by him has also been rejected by order dated 17.10.92 and the respondents ignoring his claim for ad hoc promotion.

2. Shri S.K. Sawhney, learned counsel for the applicant has submitted that the respondents have not conducted the departmental enquiry in accordance with the relevant rules. He has submitted that certain documents which were asked for by the applicant were not supplied to him which has caused him prejudice and he was not, therefore, given a reasonable opportunity to defend his case in the departmental

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proceedings. He has, therefore, submitted that the penalty order of censure which was originally passed on 13.10.84, after the departmental proceedings were completed and subsequently on 20.11.91 from the same date should be quashed and set aside. The latter order has been passed in pursuance of the directions given by the Tribunal in OA-585/86 decided on 29.7.91. During the period when the applicant was facing the disciplinary proceedings one Shri M.G. Seshodhry, who was his junior, was promoted as Deputy Director (Leather & Footwear). Learned counsel has contended that the impugned penalty order dated 20.11.91 passed in compliance with the directions of the Tribunal in the earlier OA filed by the applicant (OA-585/86) is not a speaking order. He has further contended that the applicant being senior, could not have been ignored for adhoc promotion for all time. A submission has also been made that the sealed cover procedure should have been adopted before the promotion order of Sh. Seshodhry was passed on <sup>B/-</sup>13.10.84. In the circumstances, the applicant has prayed for quashing of the impugned penalty order of censure of 20.11.91 as well as rejection of his review by order dated 17.10.92. He has also sought a direction to the respondents to promote him as Deputy Director on adhoc basis with effect from the date Shri Seshodhry was promoted as Deputy Director (L&F), i.e., 11.1.84 with all consequential benefits.

3. The respondents in their reply have controverted the above facts. Shri P.H. Ramchandani, learned counsel has submitted that the penalty order of censure has been passed by the disciplinary authority, based on the findings of the enquiry officer and other evidence on record and after obtaining the advice of the Union Public Service Commission. The respondents have also stated that additional documents

asked for by the applicant which were found to be relevant were supplied to him. The learned counsel has also stressed on the fact that these aspects of the departmental proceedings have already been the matter of adjudication in OA-585/86, when the penalty order of censure dated 13.10.84 was challenged. He has, therefore, submitted that this question is not open for further adjudication. The respondents have also submitted that as there was a vigilance case pending against the applicant at the time when his junior Shri M.G. Seshodhry was promoted on ad hoc basis as Deputy Director (L&F), there was nothing wrong in the promotion. Subsequently, a regular DPC was held which met on 28.3.90, by which time applicant had already retired from service w.e.f. 31.8.89 on attaining the age of superannuation. Hence, his name could not be considered and his juniors were promoted on regular basis in 1990. The respondents have submitted the original DPC records for our perusal.

4. Shri Ramchandani, learned counsel has submitted that in complinace with the order of the Tribunal dated 29.7.91 in OA-585/86 the disciplinary authority has thoroughly re-examined the facts and circumstances of the case and passed a speaking order dated 20.11.91. By this time, as mentioned above, the applicant had already retired from service on 31.8.89. He has, therefore, submitted that the present impugned order dated 20.11.91 has been passed as per the directions of the Tribunal, i.e., to pass a speaking order. The learned counsel has, therefore, submitted that in the facts and circumstances of the case the respondents have fully complied with the directions of the Tribunal dated 29.7.91. He has also submitted that since the applicant was facing a vigilance case, which ultimately resulted in imposition of a

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minor penalty of censure, he could not be promoted on ad hoc basis when his junior was promoted, and by the time the DPC met on 28.3.90 for considering persons for regular appointments as Deputy Directors, the applicant had already retired from service w.e.f. 31.8.89. In the circumstances he has submitted that the application is baseless and may be dismissed. In the rejoinder the applicant has reiterated his averments made in the OA. 17

5. We have carefully considered the submissions made by the learned counsel for the parties, pleadings and other documents on record.

6. The applicant had challenged the penalty order of censure passed against him on 13.10.84 in OA-585/86. In the Tribunal's order dated 29.7.91 it had been noted that although the departmental enquiry had started for a major penalty and the chargesheet was framed under Rule 14 of the CCS (CCA) Rules, 1965, ultimately it took place under Rule 16 when a minor penalty of censure had been imposed on him. In the departmental enquiry, the enquiry officer had found only Article-I proved and Articles II, III & IV were held as not proved. The Tribunal in its earlier order has noted that the applicant had urged that the enquiry officer did not give him a fair opportunity of being heard. There is also a mention that copies of documents were not served on the applicant but this contention has not been upheld. In the circumstances, having regard to the principles of res judicata, the contention of Sh. S.K. Sawhney, learned counsel for the applicant in the present OA, based on the same facts has to be rejected.

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7. In pursuance of the Tribunal's order in OA-585/96, the respondents have passed the impugned order dated 20.11.91. It is relevant to note that the Tribunal in its earlier order has not quashed the disciplinary authority's order passed on 13.10.84 but has only directed the disciplinary authority "to pass a speaking order in the fitness of things on application of his mind on the report of the enquiry officer." We note from a perusal of the impugned order that the disciplinary authority has narrated the facts leading to the order in paragraphs 1-8. In paragraph-9 he states that he has reconsidered the whole matter, including the findings of the enquiry officer and has noted the relevant facts. On a careful perusal of the impugned order it cannot be held that the same is a non-speaking order, as contended by the applicant and this ground also fails. In the circumstances of the case the respondents have passed the subsequent speaking order dated 20.11.91 of penalty of censure from the original date of imposition, i.e., 13.10.84.

8. The respondents have also stated that because the applicant was facing a vigilance case in January, 1984 he could not be promoted and his junior Sh. M.G. Seshodhry was promoted on ad hoc basis as Deputy Director (L/F). The learned counsel for the applicant, relying on a number of judgements of the Tribunal submitted that ad hoc promotions can be made only on the basis of seniority subject to fitness. [A.D. Khunger vs. Union of India (1991 (2) ATJ 326 CAT-Chandigarh Bench); Ambika Prasad Sarma Vs. Union of India & Ors. (1993 (1) ATJ 606 CAT-Guwahati Bench); Himangshu Shekhar Bhattacharjee Vs. Union of India & Ors., 1993 (1) ATJ 653 CAT-Guwahati Bench; P. Mohan Vs. Union of India, 1993 (1) ATJ 667 CAT-Madras Bench) and N.T. Joseph vs.

Union of India (OA-37/91) (CAT Full Bench. Bahri Bros. Vol.III p. 398)]. He has submitted that Shri M.G. Seshodhry who was junior to the applicant was promoted as Deputy Director (L&F) on ad hoc basis on 11.01.84. Therefore, after the period when the order of censure passed against the applicant had expired, the applicant should have been considered for ad hoc promotion, which the respondents have not done. We find merit in this submission. The said ad hoc promotion of the junior officer could not have been continued on this basis for more than six years till he was regularised, thereby omitting to consider the applicant for similar ad hoc promotion while he was in service, as he was admittedly senior.

9. We see force in the learned counsel's contention that the applicant should have been considered and promoted on ad hoc basis in the vacancy which existed at least after 1985 and be given the consequential monetary benefits. From the departmental File dealing with the DPC for promotion to the post of Deputy Director (L&F), it is noted that there were three vacancies for the year 1984, one in 1986, and two in 1987. Normally, under the rules and instructions for ad hoc promotions, the same cannot be continued beyond a period of one year, as done in the case of Shri Seshodhry. The respondents having passed the order of censure against the applicant on 13.10.84 which has been reconfirmed again by the later order dated 20.11.91 from the same date, ~~and~~ this cannot come in the way of the applicant's consideration for ad hoc promotion after a period of one year. In A.D. Khunger's case (supra), the Tribunal has held that the imposition of a penalty of censure resulting in withholding of promotion has resulted in double jeopardy to the concerned Government

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servant. In the present case, the promotion claimed by the applicant is on ad hoc basis. Nothing has been placed on record by the respondents to show any justification for continuing the ad hoc promotion of Shri Seshodhry from January, 1984 for more than six years, while the relevant rules and instructions on the subject do not normally allow ad hoc appointment to continue beyond a period of one year. After one year of the imposition of the penalty of censure on the applicant, that is by 13.10.85 Shri Seshodhry would have completed one year and 10 months as Deputy Director (L&F) on ad hoc basis. There was no reason why the respondents could not have considered the applicant, who was admittedly senior to Shri Seshodhry, for the ad hoc appointment at that time. However, applicant's claim for promotion on ad hoc basis w.e.f. 11.1.84, i.e., when persons junior to him were promoted to the post of Deputy Director (L&F) is not tenable as the departmental proceeding was pending against him. That does not, however, mean that after 13.10.85, when the junior had also completed more than one year of ad hoc service, the respondents ought not to have considered the applicant's case for ad hoc promotion to the post of Deputy Director (L&F), which they have failed to do. The minor penalty of censure imposed on the applicant in 1984 cannot be held against him to deprive him of ad hoc promotion even after one year, as this will amount to double jeopardy.

10. In the facts and circumstances of the case the OA partly succeeds and is allowed to the extent that the applicant shall be entitled to consequential benefits of ad hoc promotion to the post of Deputy Director (L&F) w.e.f. 14.10.85 upto his date of superannuation on 31.8.89, till which time admittedly his junior had continued in this position. In fact his junior had continued as ad hoc Deputy Director (L&F) till his regularisation by a DPC which met on

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28.3.90. Necessary action shall be taken by the respondents to give the consequential benefits, including difference in pay and allowances for this period to the applicant, within two months from the date of receipt of a copy of this order. No order as to costs.

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*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan)  
Member (J)

*S.R. Adige*

(S.R. Adige)  
Vice-Chairman(A)

'San.'