

NO
Promotion

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

U.O.A./259/89 with
O.A. No./306/90
~~XXXXXX~~
~~XXXXXX~~

DATE OF DECISION 3rd November, 1992.

Shri Girṇharbhai Kalidās Nayee Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan

: Vice Chairman

The Hon'ble Mr. R.C. Bhatt

: Member (J)

O.A./259/89

Girdharbhai Kalidas Nayee

Applicant

Vs.

1. Union of India,
Through:
Selecrtary Telecom Deptt/Ministry,
New Delhi.
2. General Manager,
Telecom,
Ahmedabad.
3. Telecom,
District Manager,
Rajkot.

Respondents

O.A./306/90

Shri Girdharbhai Kalidas Nai

Applicant

Vs.

1. Union of India,
Through:
Secretary Communication,
Govt. of India,
New Delhi.
2. General Manager,
Tele Communication,
Ashram Road,
Ahmedabad.

Respondents

J U D G M E N T

O.A. 259 of '89
with
O.A. 306 of '90

Date: 3.11.1992

Per: Hon'ble Mr. R.C. Bhatt, Member (J)

1. Heard Mr. B.E. Gogia learned advocate
for the applicant and Mr. Akil Kureshi learned advocate
for the respondents.

2. These two applications filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, are heard together, by consent of learned advocates for the parties and are being disposed of by a common judgment.

3. The applicant, a Junior Engineer, serving with the respondents Telecommunication Department, has filed O.A./No. 259/89 seeking the relief that the respondents be directed to treat him as having been promoted as a Asst. Engineer or the respondents be directed to release^a_L the promotion orders as Asst. Engineer in favour of the applicant from the dates his Juniors as referred to in para 4 (iv) were promoted as Asst. Engineer with all the consequential benefits of salary etc., while O.A./306/90 is filed by him seeking the relief that reversion order of the applicant by G.M.T. Ahmedabad dated 17th March, 1986, incorporated in order dated 21st March, 1986, be declared as illegal, null and void and the applicant be declared having continued as Asst. Engineer so long his juniors as mentioned in Annexure A/5 continued. During the pendency of this O.A./306/90, the applicant has amended the application contending that the applicant had preferred an appeal dated 7th April, 1986,

against the impugned order dated 21st March, 1986, and also continued further representations, but he received a reply in terms of Asst. Engineer (Admn.) office of the T.D.M. Rajkot, dated 25.4.1989, that a vigilance case was deemed to be pending against him. The applicant has therefore, challenged the said reply dated 25th April, 1989, also, as illegal, null and void.

4. Taking first the facts of O.A./306/90, avered that he the applicant has joined the service as Engineering Supervisor in P & T Department now Telecommunication department on 9th November, 1972, that the said post of Engineering Supervisor was re-named as Junior Engineer, that the applicant was promoted on ad-hoc basis as Sub-Divisional Officer, Telegraphs which is equivalent to the post of A.E. and in the same cadre on 9th Feb. 1984, which was subsequently revised to a scale of Rs. 2000-3500 from 1st January, 1986. It is the case of the applicant that he worked continuously in the said post at Godhra till he received the reversion order dated 21st March, 1986, reverting him to the post of Junior Engineer and posting him under T.D.M. Rajkot. The applicant thought that the said reversion order was issued by way of punishment and therefore submitted representation dated 7th April, 1986, to the G.M. Telecommunication, Gujarat Circle, Ahmedabad, and sent

reminder on 25th November, 1987, for early decision as his juniors were officiating in the higher grade. It is the case of the applicant that S/Shri A.E. Patel, N.G. Vachher, and J.L. Aggar who are juniors to him as J.E. were also promoted as A.E. on ad-hoc basis like applicant much later to the applicant, were continued on promotion post on adhoc basis while only he was reverted by order dated 2nd September, 1988. It is alleged by the applicant that his reversion order was by way of penalty and hence, in violation of Article 311 of Constitution of India as no inquiry has been held against him and the same is also in violation of Article 14 and 16 of the Constitution of India as juniors were continued and therefore, according to the applicant he was entitled to be deemed to continue as Asst. Engineer on adhoc basis till his juniors were allowed to continue as A.^E on adhoc basis. The applicant preferred an appeal against the impugned order of reversion and made further representation to which he received a reply dated 25th April, 1989, by the office of T.D.M. Rajkot that a vigilance case was deemed to be pending against him. The applicant has alleged that there has not been ~~pending~~ any vigilance case against him and the reply dated 25th April, 1989, he declared as illegal.

5. The respondents have filed reply contending that the applicant has filed similar O.A./259/89 for similar relief and hence, this application deserves to be dismissed and further the applicant had filed another application No. O.A./38/92 for similar relief which has been rejected by this Tribunal on 21st Feb. 1992. It is also contended that the application is barred by limitation. It is also contended that the applicant was promoted on ^{ad}ad hoc/temporary basis and ultimately he was reverted on account of administrative ground. The respondents have denied that the order of reversion was passed by way of punishment. It is contended that the applicant was not promoted to the next promotional post as the vigilance case against him was pending as per D.O.T. New Delhi, memo dated 1st August, 1988, and the applicant was informed ^{by} according by letter dated 17th April, 1989, by the T.D.M. Rajkot, and therefore, he was not allowed to officiate locally as T.E.S. Grade-B Officer. The respondents have denied that the juniors were promoted by-passing the legitimate claim of the applicant for promotion. It is contended by the respondents that the C.B.I. Ahmedabad has registered a case against the applicant regarding GPF fraud involving an amount of Rs. 1.71.749.40 vide R.C. No./12/86 dated 28th May, 1986, and after the completion of the inquiry

on 7th January, 1988, the C.B.I. had prosecuted four officials. Regular Departmental Inquiry was also recommended against the applicant and other four persons. It is contended that the order dated 17th March, 1986, and 21st March, 1986, are legal and valid. It is contended that the disciplinary case was contemplated against the applicant on 15th September, 1986, and he was charge-sheeted on 2nd Feb. 1990. It is contended that due to the C.B.I. case against the applicant and others and regular departmental action for major penalty ^{he has} ~~have~~ also been recommended against the applicant, for which the Department would take action and hence the action of the respondents reverting the applicant to his substantive post was justified.

6. The applicant has filed rejoinder contending that he is not aware of any vigilance case against him and he was nowhere connected in G.P.F. fraud case.

7. So far the facts of O.A./259/89 are concerned, the case of the applicant is that he was promoted on adhoc basis as Sub-Division Officer, Telegraphs, which is ^{equivalent} to the post of A.E. and in the same cadre, on 9.2.1984 which was subsequently revised to the

...8....

scale of Rs. 2000-3500 from 1st January, 1986, and he worked in that post at Godhra till he received the reversion order dated 21st March, 1986, reverting him to the post of J.E. and posting him under T.D.M.

Rajkot. It is alleged by him that he has filed O.A.ST.

No. 739/88 challenging the said reversion order retaining his juniors in the higher posts but in the mean time

after his reversion, further employees juniors to him

shown in para 4 (iv) have been promoted on adhoc basis

as Asstt. Engineer under T.D.M. Rajkot. The case of the

applicant is that he cannot be bye-passed and he cannot

be refused promotion on adhoc basis while juniors were

granted such promotion. It is alleged by him that

one Mr. J.G. Joshi, who is much junior to him was promoted

on local basis as Asst. Engineer vide memo dated 22nd

September, 1988, The applicant, therefore, submitted

representation dated 25th November, 1987, to the Telecom.

District Manager, Rajkot, and then he further made

representation on 23rd March, 1989, to the Chief General

Manager, Telecom. Gujarat Telecom. Circle, to which he

received a reply dated 3rd May, 1989, from Asst.

Engineer Cable, Rajkot, forwarding letter dated 25th

April, 1989, from Asst. Engineer (Adm.) T.D.M.'s Office

Rajkot, a copy of which is vide Annexure A/6 informing him that a Vigilance case is deemed to be pending against him. The applicant has challenged this Annexure A/6 being palpably wrong, contending that he was not aware of the vigilance case pending against him nor was he asked to submit explanation in respect of any vigilance case, except that 2-3 years back he was called by C.B.I. Inspector, Ahmedabad and was asked some questions in relation to one G.P.F. fraud cause. It is alleged by the applicant that he cannot be denied of his right of consideration for promotion on local or adhoc or regular basis for indefinites period on such vague grounds.

8. The respondents have filed reply contending that the application suffers from delay and latches and further it is contended that the applicant was reverted vide office memo dated 17th March, 1986, on account of administrative ground and that as the applicant was promoted on adhoc basis to officiate as S.D.O.T., he did not have any claim for his promotion, that he was not further promoted to the next promotion because, the vigilance case was deemed to be pending against him as per D.O.T., New Delhi memo dated 1.8.1988 and, hence, he did not deserved any officiating promotion and fact of deemed pendency of vigilance case was brought to the notice of the applicant through a letter dated

17th April, 1989, by T.D.M.Rajkot, and hence, the applicant was not allowed to officiate locally as T.E.S. grade B officer. It is contended that the applicant did not deserve any promotion on adhoc basis again and it has no relevance to the other officers promoted on adhoc basis.

9. The applicant has filed rejoinder controverting the averments made by the respondents in the reply. The respondents have filed further reply to the rejoinder contending that the disciplinary case was already contemplated against the applicant on 15th September, 1986, and there were other serious lapses as exceeding the power and authority in issuing "No Objection" certificate for an international pass-port in favour of an official who was also involved in the aforesaid case and the applicant was awarded a penalty of censure on 6th December, 1986.

10. The applicant has prayed in O.A./259/89 that the respondents be directed to treat the applicant as having been promoted as Asst. Engineer or the respondents may be directed to release the promotion orders as Asst. Engineer in favour of the applicant from the dates his juniors, as referred to in para 4 (iv) were promoted /

as Asst. Engineer with all the consequential benefits of O.A. of salary etc. The applicant in para 4 (iv) has alleged though that the promotion given to the juniors named therein were adhoc promotions, but he could not be bye-passed.

10.A We will deal with this contention of the applicant's later as to whether he should be treated as having been promoted from the date his juniors were promoted on adhoc basis as Asst. Engineer but so far the question of regular promotion is concerned, it is important to note that the respondents in the reply to O.A./306/90 have contended that the applicant had filed O.A./38/92 before this Tribunal seeking the promotion but the same was dismissed on 21st Feb. 1992, and the copy of the judgment of the said application is produced by the respondents at Annexure R/1. This applicant in the O.A./38/92 had alleged that he was working as Junior Telecom Officer and he had successfully passed the required examination and had completed the required service for promotion in the cadre of T.E.S. Gr. B and was selected by the D.P.C. as "Fit" for promotion vide letter dated 19th November, 1990, but the promotion was denied to him on the ground that he was involved in fraud case and the C.B.I. had recommended Departmental action against the officer concerned.

Reading the judgment of O.A./30/92, it is found that the chargesheet had been served on applicant on 2nd Feb. 1990, whereas the D.P.C. meeting which considered the case of the applicant and found him "Fit" for promotion was held in November, 1990, and this Tribunal relying on the case in Union of India and Ors. Vs. K.V. Jankiraman A.I.R., 1991, page no. 2010 Supreme Court, dismissed the applicants' application. This fact is conceded by the applicant before us. The applicant, in the case before us, has produced the order of the disciplinary authority dated 27th August, 1992, by which the competent Disciplinary Authority in exercise of the powers vested in it by rules of CCS (CCA) Rule, 1965, exonerated the applicant of all charges framed against him in G.P.F. fraud case that occurred in Baroda Telecom. Division for which chargesheet was issued to the applicant. The learned advocate for the applicant, therefore, submitted that now that the applicant is exonerated from all the charges framed against him, the regular promotion should be given to him which was available to him in due course with all the arrears of pay for the period of notional promotion preceding the date of actual promotion. In this connection, it is necessary to refer to para 26 of the said judgment of Union of India Vs. K.V. Jankiraman

(Supra) in which it is held as under:

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blame-worthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefits of doubt or on account of non-availability of evidence due to the attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary to ignore however, such circumstances, when they exist and lay down an inflexible rule that every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardies public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances, be illegal. While therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional

promotion preceding the date of actual promotion" we direct that in place of the said sentence the following sentence be read in the Memorandum.

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Whether the authority denied arrears of salary or part of it, it will record its reasons for doing so."

In this view of the matter, if the order of the disciplinary authority has become final meaning thereby that if the department has not proceeded further against the applicant by way of appeal or other legal proceedings in the said case, the applicant would be entitled to the regular promotion from the date on which he would have normally been promoted but for the disciplinary proceedings but whether he will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking in to consideration all the facts and circumstances, of the disciplinary proceedings as held in the above decision.

11. Now, we proceed to deal with the case of the applicant in O.A./306/90 by which the applicant has challenged his reversion order by G.M.T. Ahmedabad, dated 17th March, 1986, incorporated in Annexure A/2 order dated 21st March, 1986, and also we deal with the case of applicant in O.A./259/89 in which he has sought the relief directing respondents to release the promotion orders as Asst. Engineer from the dates his juniors referred to in para 4(iv) of application were promoted on adhoc basis as Asst. Engineer. The order of reversion of the applicant vide memo dated 21st March, 1986, in O.A./306/90 Annexure A/2 which was in accordance with the previous order dated 17th March, 1986,

reads as under:

"On resumption of duty by Shri A.M.Kachhia, J.E. GMW Bombay as S.D.C. Telegraphs, Godhra, Shri G.K. Nayee, Offg. S.D.O. Telegraphs, Godhra, is reverted to the cadre of J.E. on administrative grounds and posted under T.D.M. Rajkot."

The case of the applicant is that the reversion order is by way of penalty and thus is unconstitutional and in violation of Article 14 and 16 of the Constitution of India as much as S/Shri A.B. Patel, N.G.Vadher, and J.D.Agher, who were juniors to him as J.E. were also promoted as A.E. on adhoc basis like the applicant much later to him and who were continued on promotion post on adhoc basis and were reverted only by order dated 2nd September, 1988, vide Ann. A/5. The applicant was promoted on adhoc basis vide order Ann A/1 dated 9th Feb. 1984, from his post of J.E. DDT Mehsana, to S.D.O.T. Godhra, and to officiate locally in T.E.S.Group B purely on temporary and adhoc basis. According to the applicant, the post of Sub-Division Officer Telegraphs,

is equivalent to the post of A.E. He submitted that by the impugned order of reversion Annexure A/2 dated 21st March, 1986, he was reverted as J.E. under T.D.M. Rajkot. He preferred an appeal dated 17th April, 1986, against the impugned order and made further representation to which he received the reply in terms of Asst. Engineer, (Adm.) office of the T.D.M. Rajkot's dated 25th April, 1989, that a vigilance case was deemed to be pending against him. The learned advocate for the applicant submitted that this reason was palpably wrong and even if there was such pendency of vigilance case, the applicant cannot be reverted. The applicant has produced the letter dated 25th April, 1989, at page no. 20 of the file. The respondents have contended that the order of reversion was not passed by way of punishment but as he was involved in G.P.F. Fraud case and as the disciplinary case also was contemplated against the applicant he was not promoted. The case of the applicant is that he should be deemed to be continued on promotion post on adhoc post till his juniors shown in Annexure A/5 were reverted by order dated 2nd September, 1988. The applicant's part of grievance in O.A.No. 259/89 is that he should be deemed to have been promoted from the date of his juniors referred in para 4 (iv) of that O.A. were promoted on adhoc basis. It is the case of the applicant that

even after his reversion order, further promotions on
ad hoc basis to the post of Asst. Engineer under T.D.M.
Rajkot were given to seven persons. The applicant has
produced at Annexure A/3, the order dated 22nd September,
1988, to show that one Mr. J.G. Joshi who was junior to
him was promoted on local basis as Asst. Engineer. The
applicant is not able to show the order regarding others.
Learned advocate for the applicant submitted that there
was no vigilance case against the applicant and hence,
there was no reason why he was not promoted on ad hoc
basis when the juniors was promoted. The learned advocate
for the respondents submitted that two case were contemp-
leted against the applicant, one was a case about the
"No Objection" certificate in pass-port for which a
penalty of "censure" was passed on 6th December, 1986,
and other was G.P.F. fraud case. He submitted that the
ad hoc promotions to the juniors were either continued
or given after the applicant only on local basis. He
also relied on two Annexure R/1 and R/2 produced with
the reply. Annexure R/2 dated 1.1.1988 shows that where
the competent disciplinary authority has decided in
writing to institute disciplinary proceedings although
the charge sheet has not been actually issued the
vigilance clearance in case of promotion, confirmation
etc. be withheld. This instruction is in modification

to the earlier circular dated 13th Dec. 1977, and 3rd Dec. 1987, produced at R/1 which refers to the subject of the vigilance/ disciplinary case deemed to be pending against the officers.

12. In order to know whether there was any prima-facie case against the applicant and whether the vigilance case was deemed to be pending against him at the relevant time, We directed respondents to produce the original record. The respondents have produced the original record of the disciplinary cases against the applicant. In the first file part one VO/CONF/85/71, Re/48/85-AED Fraud in GPF Accts, page note 1/N shows that R.C./48/85 dated 31st December, 1985, had been registered by the SPE CBI Ahmedabad against some official named there in G.P.F. fraud case. There is other note no. N/13 dated 5.3.1986 as under:

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"As per the endorsement given on these 13 Cheques, Shri Nayee has authorised Shri Ranger, T.O.A. of his office to receive the amount on his behalf from the Bank. Had Shri Nayee taken proper precautions in discharging his duties as mentioned above, the fraud of Rs. 1.20.270/- could have been prevented/ detected early. Not only this, during his tenure as S.D.O., Godhra, three thefts have also been occurred in his jurisdiction, i.e. 2 at Godhra and one at Halol."

Therefore, the officer concerned reported on the
that
same date applicants continuance as S.D.O.T. Godhra,
is not advisable in the interest of the department,
and the order was passed on the same date that as the
applicant was working only in local arrangements, he
should be straight way reverted first and posted to
Rj. T.D.M. with instruction not to post him in any
sensitive post. In the other file No. VO/Conf/86/32
produced by the respondents on the subject of complaint
against the applicant about the issue of N.O.C. beyond
his powers, the order dated 15th September, 1986, shows
that the authority decided to take disciplinary proceeding
against the applicant and others. It is also mentioned
therein that the applicant as S.D.O.T. was not at all
competent to issue NOC for obtaining an international
Pass-port, but he had done so, which was a serious
lapse on the part of Shri Nayee. So on 15th September,
1986, the authority decided to take action against him.
On page 22 there is final order dated 6.12.1986 against
the applicant. He was charge sheeted vide letter dated
12th November, 1986, under CCS (CCA) Rules, 1985,
and the Divisional Engineer Phones Extl. Rajkot imposed
on him the penalty of "Censure" under Rule 16 of CCS
(CCA) 1965 by this order. In the third file produced
by the respondents being no. VO/CONF/85/71 on the subject

G.P.F. Fraud in Baroda Division it is noticed that the charge sheet was issued to the applicant under Rule 14 on 2nd Feb. 1990 in G.P.F. Fraud case. The charge sheet along with Articles of sub-charge is also in the file. On 7th January, 1988, the D.I.G. of Police, C.B.I. Bombay Region wrote the confidential letter to The General Manager, Telecommunication, Gujarat Circle Ahmedabad which is also in this file that there was sufficient evidence for initiating Regular Departmental Action for Major Penalty against the applicant and others only after their evidence recorded in the court case against the accused persons mentioned in para (2) of that letter as they are important ^{witnesses} in the court case.

On the strength of this documentary evidence, the learned advocate for the respondents submitted that there was sufficient material to revert the applicant on administrative ground by order dated 21st March, 1986. He submitted that applicant's promotion was adhoc and temporary and the order of reversion was not by way of punishment but in view of the fact of note N/13 dated 5.3.1986, as the applicant had not taken proper precautions in discharging his duties and as S.D.O.T. in Baroda Division and that during the tenure

three thefts of applicant as S.D.O.T. Godhra, had also occurred in his jurisdiction i.e. 2 at Godhra and one at Halol and hence his continuance as S.D.O.T. Godhra, was not in the interest of Department. Therefore, he submitted that the applicant could not urge that his reversion was illegal ~~xxx~~ or was violative of Article 14 and 16 of the Constitution of India. He submitted that therefore, the prayer that he ought to have been continued up to 2nd September, 1988, when his juniors were reverted as prayed in O.A./306/90 should be rejected

13. So far O.A./59/89 is concerned, learned advocate for the respondents submitted that there is no substance in the grievance of the applicant that though his junior Mr. J.G. Joshi was promoted on adhoc basis by order dated 22nd September, 1988, and some others ^{he} were promoted on adhoc basis why was not promoted on adhoc basis. He submitted that there was sufficient materials available against the applicant and now produced by the respondents to show that on 15th September, 1986, the concerned authority had decided to take action against the applicant that S.D.O.T. he was not at all competent to issue N.O.C. for obtaining international pass-port but he had done so and there was final order against him dated 6.12.1986, imposing penalty of Censure

Moreover, thereafter, the D.I.G. of Police, C.B.I. Bombay Region by letter dated 7th September, 1988, had advised for regular departmental action for major penalty against the applicant and others for which the charge sheet was served on 2nd Feb. 1990, and hence, the applicant was not granted adhoc promotion, while his juniors were given adhoc promotion on local basis. He submitted that a vigilance case should be deemed to be pending against the applicant, and therefore, the applicant cannot ^{demand} / promotion on adhoc basis.

14. Learned advocate for the applicant relying on a decision in Shaikh Mehaboob Vs. Railway Board and Others, 1982 (1) SLR page no. 455, submitted that the applicant was entitled to be given an adhoc promotion and should have been continued as such till his juniors were continued. The decision referred to deals with the question of regular promotion and reliance was placed on the Railway Board's letter dated 15/17th September, 1964. This decision has no bearing to the facts of the present case. Learned advocate for the applicant also relied on the decision in D.R. Oza Vs. Government of Gujarat reported in AIR ¹⁹⁷¹ Gujarat Page no. 39. It is held in this decision that the

guarantee under Article 16 of the Constitution of India covers even temporary employees and therefore, reversion was arbitrary and invalid. On facts of that case, the High Court, of Gujarat held that the order of the State Government was arbitrary and un-reasonable and the Government cannot arbitrarily pick out the petitioner for discrimination by reverting him without any reason and putting up other junior employees of the same class in his place even if according to the Govt., the petitioner was temporary employee. In the instant case, the respondents' action cannot be considered as un-reasonable or arbitrary because the detailed reasons are found in their files, and ~~xx~~ we have discussed the same earlier in details, The respondents, in our opinion had sufficient material to revert applicant and also in not giving him adhoc promotion later on. It is well settled that a person appointed on adhoc basis has no right to the post. An adhocist has not right to either of seniority or otherwise on the post on which his adhoc appointment is made. It only means that technically the post in question is still vacant for the person who is found eligible to occupy the quota post. In the above case, the respondents have shown satisfactorily that the order of reversion of the applicant at Annexure A/2 in O.A./306/90 was legal and valid and the action of the respondents in not promoting applicant on adhoc

basis when his junior Mr. J.G. Joshi was promoted on 2nd September, 1986, vide Annexure A/3 as found in O.A./259/89 did not suffer from any vice or illegality or arbitrariness.

15. In view of our findings above, the O.A. No. 306 of 1990 shall have to be dismissed and O.A.No. 259/89 shall have to be partially allowed. Hence, the following order:

16. ORDER IN O.A./306 OF 1990

O.A./306/1990 is dismissed with no orders as to costs.

ORDER IN O.A./259 OF 1989

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- (i) The application is partly allowed. The respondents are directed to give regular promotion to the applicant from the date on which, he would have been normally promoted but for the disciplinary proceedings which ended in exoneration of the applicant of all charges framed against him in G.P.F. fraud case as per order of Disciplinary Authority dated 27th August, 1992, provided that no further appellate or others proceedings against that order is pending.
- (ii) The respondents to decide the question of payment of arrears of pay for the period

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of notional promotion preceding the date
of actual promotion and to act accordingly
within 3 months from the date of receipt
of this order.

Sd/-.
(R.C. Bhatt)
Member(J)

Sd/-.
(K.V. Krishnan)
Vice Chairman

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