

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of order : 3.4.2000.

O.A.NO. 119/97

Albert Kanare S/o Shri A.B.Kanare aged 52 years, Official Address Superintendent of Police S.P.E., Central Bureau of Investigation (C.B.I.), Jodhpur, Residential address C-1/50 Residency Road, Jodhpur.

.....Applicant.

VERSUS

1. The Union of India through the Secretary, Department of Personnel & Training, Government of India, New Delhi.
2. The Director, Central Bureau of Investigation, C.G.O.Complex, Lodhi Road, New Delhi.

.....Respondents.

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Mr.Kamal Dave, Counsel for the applicant.

Mr.Vineet Mathur, Counsel for the respondents.

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CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

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O R D E R

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PER HON'BLE MR.A.K.MISRA :

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The applicant had filed this O.A. with the prayer that the order dated 12.5.97 (Annex.A/1) passed by the respondents be quashed and the respondents be directed to allow the applicant to serve as Superintendent of Police, CBI, as allowed to the similarly situated persons. The applicant has further prayed that respondents be restrained from reverting the applicant from the post of S.P., C.B.I.

2. After hearing the learned counsel for the applicant, notices were issued to the respondents who have filed their reply to which a rejoinder was also filed by the applicant.

3. While the O.A. was pending for reply of the respondents, the applicant moved a M.A. in which reply was also filed by the respondents. Considering the facts as contained in the M.A. and the reply, it was ordered that operation of the order dated 12.5.97, Annex.M/1 (which is Annex.A/1 in the OA) be stayed. As a consequence of the said order, the applicant is continuing on the post of S.P., CBI, on ad hoc basis.

4. The applicant had challenged the order Annex.A/1 by which he was ordered to be posted as Dy.S.P., CBI, at Bangalore, on the ground that applicant was promoted as S.P., CBI, on the basis of seniority/on ad hoc basis. Thereafter, he was given extension from time to time and thus such ad hoc promotion is continuing. It is alleged that Further, the applicant is sought to be reverted on account of retention of a Government quarter at Ahmedabad after his transfer from Ahmedabad, therefore, reversion of the applicant on this count is bad in law. The respondents have decided to recover the damage rent from the applicant vide Annex.A/4 dated 23.12.96. Therefore, on the same count, the applicant cannot be penalised by reverting him from the post of S.P., CBI. It is also alleged by the applicant that he has vacated the said quarter on 29.3.97. The other ad hoc promotees have been given extension but without any sufficient reason the applicant has been ordered to be reverted. Shri P.D.Meena, who is junior to the applicant has also been ordered to be promoted on ad hoc basis. There is no bar in continuing the ad hoc promotion of the applicant. The applicant had never been communicated with any adverse remark and the criteria for ad hoc promotion is only seniority-cum-fitness.

Therefore, the order of reversion Annex.A/1 is bad in law.

5. The respondents have mentioned in their reply that the extended period of ad hoc promotion of the applicant has come to an end on 31.3.97. The competent authority in its wisdom decided not to extend the period of ad hoc promotion. As a consequence of the same, the applicant has been ordered to be reverted. For non continuance of ad hoc promotion no reasons are required to be given. However, it is stated in the reply that the applicant is guilty of mis-conduct in as much as he did not carry out the orders of his superiors in respect of vacating the official quarter. The applicant had dis-obeyed the orders of the seniors. The competent authority after taking these facts and circumstances as well as the merits of the case, did not agree to extend the period of ad hoc promotion of the applicant. The order under challenge is perfectly valid and as per law.

6. In the rejoinder, the applicant has stated that retention of Government quarter beyond the period prescribed for such occupation does not constitute mis-conduct. The quarter was initially allotted to the applicant and on his transfer his family was living in the said quarter for domestic reasons. For such unauthorised occupation of a Government quarter, damage rent would be recovered as per rules which in fact has been ordered to be recovered. Therefore, this incident cannot be considered for refusal to extend the period of ad hoc promotion.

7. We have heard the learned counsel for the parties and have gone through the case file.

8. The applicant had also submitted written arguments along with citations. It is seen from the arguments that facts of the

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case have been highlighted and much support has been sought from the rulings cited in the written arguments.

9. It is seen from the pleadings of the parties that the applicant was refused ad hoc promotion on the ground that he unauthorisedly retained the Government accommodation at Ahmedabad inspite of his transfer from Ahmedabad and did not vacate the same as per the orders of the superiors, but in our opinion unauthorised retention of Government quarter beyond the permissible period as per the rules, does not constitute any misconduct. In our opinion for such unauthorised retention of quarter, damage rent or rent at market rate could be levied and recovered from the applicant. It appears that against the proposed recovery of damage rent, the applicant had filed an O.A. in the Ahmedabad Bench of the Central Administrative Tribunal, which was registered at No. 262/98. The case came to be decided on 22.9.98. In that case, it was held that for unauthorised retention of Government quarter, the applicant is liable to pay damage rent. His prayer for quashing the order of recovery of damage rent was rejected by the Tribunal. In the order, it was also observed that unauthorised occupation of quarter did not constitute misconduct and no departmental inquiry could be initiated on this count. This conclusion of the Ahmedabad Bench of the Central Administrative Tribunal is supported by various rulings cited in the order. We are also of the opinion that unauthorised occupation/retention of a Government quarter beyond the permissible period as per rules, does not constitute misconduct and no disciplinary inquiry can be initiated on such grounds. It appears that the applicant has been found unfit for further extension of ad hoc promotion solely on the ground that he did not carry-out the orders of his superiors directing him to vacate the Government accommodation which he was retaining. But this cannot be a valid ground for refusal to extend the ad hoc promotion. There seems to be no other ground for such refusal.

B.M.

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10. Now, the question of further continuance of ad hoc promotion of the applicant is required to be disposed of. It is alleged by the respondents that the applicant was not found fit by the competent authority for further extension of ad hoc period but no material has been placed before us by the respondents in this regard which may enable us to scrutinise the action of the respondents in this regard. This is also not the case of the respondents that during the period of ad hoc promotion, the applicant was ever communicated any adverse remark necessitating reappraisal of his further continuance on the promotional post on ad hoc basis. Initially, the applicant was promoted on ad hoc basis on the post of S.P.,CBI, and was continued on the same post from time to time by grant of extension. We are at a loss to understand how all of a sudden the competent authority had come to a conclusion that applicant is not a fit officer to be continued on promotional post on ad hoc basis. This is also well settled law that ad hoc arrangement cannot be replaced by another ad hoc arrangement. From the action of the respondents, we find that while the applicant was refused extension of ad hoc promotion on the post of S.P.,CBI, his junior Shri P.D.Meena has been ordered to be promoted on ad hoc basis. This, in our opinion, cannot be permitted. No doubt, the departmental authorities are to consider the facts in respect of further continuance of applicant's ad hoc promotion but such consideration should be rational, based on sound reasons and justiciable. Refusal of extension should not be arbitrary. Keeping in view the back-ground of un-authorised retention of Government quarter for reverting the applicant, it appears that the authorities have passed the order Annex.A/l arbitrarily and without any sound reasons. We may also mention here that ad hoc arrangement cannot be for a long period and if it is allowed to continue for a long period then the same is required

to be continued till it is replaced by a regular arrangement. We are told that last DPC for such regular promotion was held in December 1994. Thereafter, in absence of such exercise, the ad hoc arrangement is continuing. Therefore, there is no reason in substituting the present ad hoc arrangement by another ad hoc arrangement. The Department is no doubt free to undertake the exercise of regular promotion and consider the candidature of each candidate as per the criteria laid down by the rules or laid down by the DPC. But so long the exercise of regular promotion is not undertaken the present ad hoc arrangement, more specially, in the case of the applicant cannot possibly be refused.

11. In view of the above discussions, we are of the opinion that the impugned order dated 12.5.97 (Annex.A/1) reverting the applicant to the post of Dy.S.P., CBI, w.e.f. 31.3.1997 is unsustainable in law and deserves to be quashed. The O.A. deserves to be accepted.

12. The O.A. is, therefore, partly accepted. The impugned order dated 12.5.1997 (Annex.A/1) is hereby quashed. The respondents shall, however, be free to reconsider afresh the case of the applicant for further extension of ad hoc promotion as Superintendent of Police, CBI, on the basis of seniority-cum-suitability or to hold regular DPC for considering the cases of ad hoc promotees for regular promotion. Till such action is taken by the respondents, the applicant shall not be reverted to the lower post of Dy.S.P., CBI.

13. Parties are left to bear their own costs.

*Gopal Singh*  
(GOPAL SINGH)  
Adm. Member

*A.K.Misra*  
(A.K.MISRA)  
Judl. Member

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7/14

Rec'd Com  
7/14/2015

Part II and III destroyed  
in my presence on 16/10/2016  
Under the supervision of  
Section Officer (1) as per  
order dated 23/08/2016

Section Officer (Report)