

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.91/37 & O.A.491/36

O.A.91/37

Prabhakar Pandurang Deshpande,
Office of the Collector of
Central Excise & Customs,
Valuation Cell, 2nd Floor,
Nav-Prabhat Chambers,
Panade Road, Dadar(W),
Bombay - 400 028.

.. Applicant in
O.A.91/37

vs.

1. Collector of Central Excise &
Customs,
Bombay-III,
Nav-Prabhat Chambers, 4th Floor,
Panade Road, Dadar(W),
Bombay - 400 028.

2. Collector of Central Excise,
Bombay - I,
New Central Excise Building,
Opp. Churchgate Station,
M.K. Road,
Bombay - 400 021.

.. Respondents in
O.A.91/37

O.A.491/36

V.M. Pendharkar,
112/03, Type II, H.O.C. Quarters,
Kasbekar Park, Naseyani,
Tal. Panvel, Dist. Raigad-410 207.

.. Applicant in
O.A.491/36

vs.

1. Union of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Collector of Central Excise,
Bombay-III,
Nav-prabhat Chambers, 4th Floor,
Panade Road, Dadar(W),
Bombay - 400 028.

3. Collector of Central Excise,
Bombay I Collectorate,
Central Excise Building,
Opp. Churchgate Station,
M.K. Road, Bombay-400 020.

.. Respondents in
O.A.491/36

Coram: Hon'ble Member(A) S.P. Mukherji
Hon'ble Member(J) M.P. Mujumdar

Appearances:

1. Applicants in person in both the cases.
2. Mr.S.R. Atre (for Mr.P.M. Pradhan) for the respondents in both the cases.

JUDGMENT

Date: 4-1-1988

(Per S.P. Mukherji, Member(A))

Since common questions of facts and reliefs are involved in the aforesaid two applications filed under Section 19 of the Administrative Tribunals Act they are being disposed of by a common judgment as follows.

2. While working as Sub-Inspector in the Thane Collectorate of the Central Excise the two applicants along with a few others were involved in what came to be known as 'Bhivandi Conspiracy Case', for aiding and abetting smuggling during 1969-70. On completion of investigation by the Directorate of Revenue Intelligence six separate criminal cases were filed against the applicants and others involved, in the Court of Chief Metropolitan Magistrate in January, 1977. On 15-1-1977 because of the criminal cases the applicants were placed under suspension under Rule (10(1) of the Central Civil Services (CCS) Rules. All the six criminal cases were decided between 29-1-1982 and 19-3-1984 and both the applicants were given admittedly clean acquittals. In the meantime the applicant in the second case Shri Pendharkar remained absent from duty between 1972-77 and even gave his resignation which was not accepted.

He had also been chargesheeted for disciplinary proceedings in September, 1971 in connection with the one of these six cases and on completion of the disciplinary proceedings in June, 1979 he was awarded the punishment of stoppage of his next three increments. In any case on the acquittal of the two applicants the respondents on 21-11-1984 passed separate orders revoking the order of their suspension dated 15.1.77 and reinstated them as Sub-Inspectors. The issue regarding the nature of the period of suspension was left to be decided on a later date. The respondents had gone up in appeal in four out of six criminal cases, to the High Court at Bombay. After their reinstatement the cases of the applicants were considered for promotion to the upgraded posts of Inspectors as all the posts of Sub Inspectors had been abolished with effect from 1-8-1972 and corresponding number of posts of Inspectors created. The DPC which met on 21-3-1986 considered the cases of the two applicants for promotion as Inspector. They found the applicant in the first case Shri Deshpande to be fit and Shri Pendharkar the applicant in the second case as unfit for promotion. Accordingly, Shri Deshpande was promoted as Inspector on an ad hoc basis with effect from 31-3-1986, while Mr. Pendharkar has not yet been promoted.

3. The applicants have prayed that having been honourably exonerated by the Criminal Court, they should have been reinstated with full pay and allowances with effect from 15-1-1977 and promoted as Inspectors with effect from 1-8-1972. Whereas Shri Deshpande claims that his promotion should have been on a regular basis and not on adhoc basis, Shri Pendharkar has claimed promotion as Inspector since the same had been given to the other applicant Shri Deshpande

who is similarly circumstanced. The respondents' case is that they have gone up in appeal against the order of acquittal of the applicants and therefore the question of considering the period of their suspension to be ^{on} ~~on~~ duty does not arise. They have also argued that promotion to the upgraded post of Inspectors was to be made subject to their suitability and since disciplinary proceedings/trial were actually going on, the applicants could not be promoted from 1972. However, on revocation of the order of suspension and their reinstatement their cases were considered by the DPC and Shri Deshpande having been found fit for promotion was given the promotion on an ad hoc basis. Shri Pendharkar having been found unfit could not be promoted. Because of the appeal in the High Court Shri Deshpande could not be promoted on a regular basis but was promoted on an ad hoc basis.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the question of regularisation of the period of suspension is concerned FR 54-B(1) enjoins upon the competent authority that on reinstatement of a suspended officer a specific order shall have to be passed regarding (a) the pay and allowances during the period of suspension and (b) whether or not the said period is to be treated as on duty. Even where the reinstatement and revocation of order of suspension is effected during the pendency of "disciplinary or court proceedings", the order regarding treatment of period of suspension has to be passed subject to its review under sub rule(6) of FR 54(B). Thus it was incumbent on the part of the respondents to have passed an order regarding the treatment of period of suspension.

shortly after the order of revocation of suspension was passed on 21-11-1984, especially when no disciplinary proceedings were pending against them. We cannot accept the plea of the respondents that because of their filing an appeal against the order of acquittal, it was not necessary to pass any order under F.R 54(B)(1). In Abdul Rashid Khan vs. Director, Libraries Research and Museum, Srinagar and Another, 1977 SLJ 574, the High Court of Jammu & Kashmir has held that mere filing of an appeal against the order of acquittal does not stand in the way of reinstatement. In that light withholding of pay and allowances during the period of suspension after revocation of order of suspension when no disciplinary proceedings were pending and after the reinstatement of the applicant, to our mind is illegal.

5. The next question is whether the applicants are entitled to full pay and allowances once the order of suspension is revoked. A reading of the order of suspension dtd. 15th January, 1977 indicates that the applicants were suspended solely on the ground of a criminal case having been filed against them. The suspension was thus ordered under Rule 10(1) of the CCS(CCA) Rules empowering the appointing authority to place a government servant under suspension "where a case against him in respect of any criminal offence is under investigation, enquiry or trial". The revocation of the suspension order dtd. 21st November, 1984 also refers to Rule 10(5)(c) of the CCS(CCA)Rules. Since no disciplinary proceedings were pending against the applicants when the order of revocation of suspension was passed, the applicants will be entitled to full pay and allowances on their clean acquittal by the criminal court. This is so

because the suspension was exclusively based on the pendency of the trial in a criminal court. It has been held by the Supreme Court in Devendra vs. State of Uttar Pradesh AIR 1962 SC 1334 that where a Govt. servant has been suspended pending a criminal investigation or trial, the order of suspension automatically ceased to be operative as soon as criminal proceedings terminate by an acquittal or discharge of the Government servant, and that immediately after such acquittal or discharge the delinquent officer should be deemed to have been reinstated and he is accordingly entitled to recover his full salary and allowances since the date of his suspension.

6. In view of the above we feel that the applicants are entitled to full pay and allowances during their entire period of suspension between 15-1-1977 and 24-11-1984.

7. We now advert to the question of their promotion as Inspector from the Excise Department file No. II/7-1/V/TH/84 shown to us by the respondents it appears that the Government took a decision to abolish the cadre of Sub Inspectors of Central Excise with effect from August, 1972. It was laid down that the existing Sub Inspectors will be absorbed in the cadre of Inspector of Central Excise "as are found fit for promotion to this post". Accordingly 664 permanent posts of Inspectors of Central Excise were created with effect from 1-8-1972 in lieu of equivalent number of posts of Sub Inspectors of Central Excise. The applicants could not be promoted as Inspectors in 1972 because of the criminal cases pending against them and also the disciplinary proceedings pending against the

second applicant Shri Pendharker. The criminal cases ended in their acquittal by March, 1984 and the disciplinary case against the second respondent had ended in a punishment in 1979. In accordance with the established procedure their cases should have been considered for promotion as Inspector even during the pendency of the trial/disciplinary proceedings and kept in a sealed cover. Even the sealed cover procedure had been liberalised by the Government of India where the disciplinary/court proceedings could not be completed within 2 years. From the proceedings of the DPC which met on 21st March, 1986 it appears that the case of Shri Deshpande the first applicant was considered by the DPC and their recommendations kept in sealed covers in the years 1970, 1971, 1972, 1974, 1975 and 1976. The case of the second applicant Shri Pendharker was considered for the years 1972 and 1973. The former was found fit by the DPC of 1976 and the latter unfit. Even having been found fit, the first applicant was promoted as an Inspector only on an ad hoc basis on 31-3-1986 because of the pendency of the appeal against the order of his acquittal.

8. So far as the first applicant Shri Deshpande is concerned the pendency of appeal in the High Court cannot be a valid ground for either promoting him only on ad hoc basis or not opening the sealed covers and denying him retrospective promotions if his assessment was in his favour. Since the High Court has not issued any order staying the order of acquittal, the order of acquittal will continue to hold the ground, especially when the respondents have themselves revoked the order of suspension and promoted him. We therefore direct the respondents to

open the aforesaid sealed covers in respect of Shri Deshpande and if the findings of the DPC in any of the preceding years are favourable to him he should be promoted on regular basis as an Inspector from that year otherwise his promotion with effect from 31-3-1986 should be converted from ad hoc to a regular character with all consequential benefits of pay and allowances and seniority from the date of such promotion.

9. As regards the second applicant Shri Pendharkar, on his own showing he has been out of duty between 1972 and 1977. Disciplinary proceedings were pending against him between 1971 and 1979 resulting in stoppage of three increments. Sealed cover procedure was followed in his case in the years 1972 and 1973 and the DPC which met in 1976 found him unfit for promotion. The sealed covers in 1972 and 1973 should be opened and if he had been found fit for promotion as Inspector in either of these years he should be so promoted with retrospective effect from that year. In case the recommendations are not in his favour for 1972, 1973 a Review DPC should meet for the years 1974 and 1975 and assess his suitability for promotion as Inspector for these years and if he is found fit he should be so promoted from that year with all consequential benefits of pay and allowances and seniority.

10. In the facts and circumstances discussed above we allow the aforesaid two applications to the extent as indicated below :

(1) The entire period of suspension of the two applicants between 15-1-1977 and 21-11-1984 should be treated as period spent on duty with full pay and allowances.

(2) The arrears of pay and allowances as above should be made good to the applicants within a period of three months from the date of communication of this order.

(3) The applicants should be deemed to have been reinstated in service as Sub Inspector and given revised pay scales corresponding to the revised pay scales allowed to officers equivalent to that of Sub Inspectors with effect from 1-1-1973.

(4) The sealed covers for the years 1970, 1971, 1972, 1974 and 1975 in respect of the first applicant Shri Deshpande and those for the year 1972 and 1973 for the second applicant Shri Pendharkar ^{are found} should be opened and if they have been adjudged to be fit for promotion in any of these years they should be promoted as Inspector from that year on a regular basis with all consequential benefits of pay and allowances and seniority etc.

(5) If Shri Deshpande cannot be promoted as Inspector earlier than 31-3-1986 as a result of (4) above, he should be considered to be a regular Inspector with all consequential benefit of pay and allowances and seniority at least from 31-3-1986.

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(6) If Shri Bendharkar is not promoted on the basis of the aforesaid direction (4) his case for such promotion should be considered for 1974, 1975 and 1987 and each year thereafter and promotion should be given to him as Inspector on regular basis from any of the aforesaid years when he is found fit for such promotion.

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

11. A copy of this order may be placed on the case file of both the applicants.

Sd/-

(S.P. LKE JI)
ENDER(A)

Sd/-

(M.B. MUJJIDAR)
ENDER(J)

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