

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BOA)
Indiranagar
Bangalore - 560 038

Dated : 24 JAN 1989

APPLICATION NO. 1533 / 88(F)

W.P. NO. _____

Applicant(s)

Shri G.B. Purohit
To

V/s The Deputy Collector of Central Excise (P&E),
Bangalore & another

1. Shri G.B. Purohit
Inspector of Central Excise
Office of the Superintendent of
Central Excise, Range C
DCM Compound
Davanagere - 577 003
2. The Deputy Collector of
Central Excise (P&E)
Office of the Collector of
Central Excise
Central Revenue Building
P.B. No. 5400
Queen's Road
Bangalore - 560 001
3. The Collector of Central Excise
Belgaum Collectorate
71, Club Road
Belgaum - 590 001
4. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Respondent(s)

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/9044/INTERIM ORDERXX
passed by this Tribunal in the above said application(s) on 20-1-89.

*Issued
11-IV-1989
24-1-89*
Encl : As above

Parvatheshwar
DEPUTY REGISTRAR
(JUDICIAL)

JPC

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE TWENTIETH DAY OF JANUARY, 1989

Present: Hon'ble Justice K.S.Puttaswamy ... Vice Chairman
Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 1533/88(F)

Shri G.B.Purshot,
Office of the Supdt.of
Central Excise, Range C,
DCM Compound,
DAVANAGERE-577003. ... Applicant

(In person)

vs

1. The Dy.Collector of Central
Excise (P&E), Central Revenue
Building, P.B.No.5400,
Queen's Road, BANGALORE-560001

2. The Collector of Central
Excise, Belgaum Collectorate,
71, Club Road,
BELGAUM-590001. ... Respondents

(Shri M.S. Padmarajaiah, Advocate)

This application having come up for hearing
before the Tribunal today, Hon'ble Member (A) made the
following:

ORDER

The applicant before us joined service in
the Bangalore Collectorate of the Central Excise and
Customs Department on 10-12-1977 as a Stenographer
(Ordinary Grade) (OG). He passed in two papers of
the departmental examination for promotion to the post
of Inspector of Central Excise and, by order dated
20-4-1983 issued by the Collector of Central Excise,
Bangalore ('the Collector for short'), was promoted
as Inspector of Central Excise ('Inspector' for short)



7.1.142

along with six others and posted to Mangalore. The order stated that the persons promoted therein would be on probation for two years within which period they were required to pass the departmental examination for the post of Inspector. Pursuant to this order, the applicant reported for duty as Inspector on 30-4-1983 and worked in that capacity continuously at different places in the State of Karnataka till, by an order dated 5-9-1988 issued by the Collector he was reverted to the post of Stenographer Grade III (the post of Stenographer OG held by him earlier had been redesignated as Stenographer, Grade III, in the meanwhile). During the period up to 5-9-1988, the applicant completed the departmental examination for the post of Inspector by passing the remaining papers of the examination after his promotion as Inspector. In this application, he challenges the validity of the order dated 5-9-1988 and the reasons stated therein for his reversion which were, that his promotion in 1983 was erroneous and a review Departmental Promotion Committee (DPC) which met on 17-3-1988 had found him unfit for promotion "in all subsequent DPCs".

2. The respondents have, in their reply, resisted the application. The applicant's promotion as Inspector in 1983 was made on the recommendations of a DPC which met on 8-4-1983. Promotion to the post of Inspector had to be made by selection from four different feeder posts which included, inter alia, Upper Division Clerks (UDCs) and Stenographers both with five years of service. No quotas were prescribed for each feeder cadre.

P. J. Shrivastava

Therefore, a combined seniority list of persons working in the different cadres had to be prepared and submitted for consideration by the DPC for the purpose of promotion. Persons working in the different feeder posts had to be arranged "in the order of continuous length of service" in their own grades, "subject to the condition that inter se seniority of officers in the same grade is not disturbed" - this procedure was laid down in a letter dated 23-1-1974 addressed by the Central Board of Excise and Customs ("the Board" for short) to all Collectors in the country. The "combined consideration list" of persons submitted to the DPC held on 8-4-1983 for promotion as Inspectors was not in accordance with the instructions issued by the Board inasmuch as the name of the applicant had been included in it while names of UDCs who had longer continuous length of service in their cadre had been left out. This error had been pointed out to the Board in a representation received by it and as a result, the Board wrote to the Collector on 9-9-1987 to hold a review DPC to reconsider the recommendations made by the DPC at its meeting held on 8-4-1983 and at all subsequent meetings held thereafter. When the combined consideration list earlier submitted to the DPC on 8-4-1983, was recast in accordance with the Board's instructions of 23-1-1974 for submission to the review DPC which met on 17-3-1988, the name of the applicant was excluded as he did not come within the zone of consideration. The review DPC then considered his case for promotion as on date subsequent to 8-4-1983



[Signature]

when meetings of the DPC were held in the past, but on each such date, the applicant was found unfit for promotion on the basis of his confidential character roll as of that date. That was why the applicant had to be reverted by the impugned order dated 5-9-1988 to the post of Stenographer earlier held by him.

3. The applicant who presented his case personally contended that the order of the Collector dated 5-9-1988 reverting him was illegal and so were the proceedings of the review DPC held on 17-3-1988 in which his name was left out of the combined consideration list as on 8-4-1983 and he was held to be unfit for promotion on subsequent dates as well. If a mistake had indeed been committed in including the name of the applicant in the zone of consideration for promotion presented to the DPC on 8-4-1983 and he had been recommended for promotion on that basis, it was no fault of his. For a mistake committed by the respondents, the applicant could not be reverted from the post of Inspector after he had held it for over 5 years from 30-4-1983 to 5-9-1988. Relying on a judgement of the Chandigarh Bench of this Tribunal rendered in CHUNILAL & OTHERS VS UNION OF INDIA, ATR 1988 (2) CAT 46, the applicant submitted that his reversion from the post of Inspector, for no fault of his entailed civil consequences to him, and as such, the respondents could not have done so without giving him an opportunity of being heard. The reversion order was, therefore, void and had to be struck down as offending the audi alteram partem rule of natural justice.

W
P

4. On the other hand, according to the applicant, the combined consideration list submitted at the original meeting of the DPC which met on 8-4-1983 was a perfectly valid list which was in accordance with the Board's instructions of 23-1-1974. While laying down that the names of eligible UDCs and Stenographers(OG) should be arranged in the list with reference to their continuous length of service in their respective cadres, the Board had also said that the inter se seniority of officers in the same grade should not be disturbed. The recruitment rules provided that for promotion as Inspector, a UDC or a Stenographer (OG) should have put in 5 years of service in his cadre. While preparing the combined consideration list for the original DPC in 1983, the respondents had found that after S.Mahboob, UDC, who had continuously held that post from 6-9-1976 and was, therefore, eligible for promotion, the next person in the seniority list of UDCs was S.K.Hodlur who had been appointed as UDC on 30-9-1978/ had not completed 5 years as on 8-4-1983. His name, therefore, could not be included in the consideration list. That being so, persons junior to him in the cadre of UDC could also not be included in the said list, even if they had the prescribed minimum length of service of 5 years, as that would go against the injunction in the second part of the Board's instruction of 23-1-1974 that the inter se seniority of officers in the same grade should not be disturbed. That was why, after the name of Mahboob, the name of the applicant was included in the consideration list as he was the seniormost

D. J. K.

Stenographer (OG) awaiting promotion at the time and he fulfilled the minimum service requirement as on 8-4-1983, having held the post of Stenographer (OG) since 1977. Therefore, the consideration of the applicant for promotion on 8-4-1983 and his consequent promotion on the recommendation of the DPC held on that date were valid. That being so, his reversion by the impugned order dated 5-9-1988 on the ground that his earlier promotion was a mistake was bad in law and had to be struck down.

5. The applicant submitted further that even assuming that his earlier promotion as Inspector in 1983 was a mistake, he himself was not aware of it at the time or afterwards until 5 years had elapsed and his reversion was ordered on 5-9-1988. On the other hand, his promotion on the recommendation of a duly constituted DPC, his continuation in that post for over 5 years, and the numerous transfers he underwent during the period gave him the unmistakable impression that he had been validly promoted. He was a Stenographer before his promotion and after promotion he had lost touch with stenography altogether as the work of Inspector did not involve stenography. Because of his promotion to the post of Inspector in 1983 the applicant had also not been considered for promotion to higher grades of stenographers and in the ministerial line. Persons promoted as Inspectors were to be on probation in that post for two years and the applicant had completed that period in 1985, had passed the Departmental Examination for Inspectors fully in 1986 and was eligible for confirmation long before 1988. The respondents were, therefore estopped from reverting the applicant after so much had happened in the 5 years and odd when he worked as Inspector.

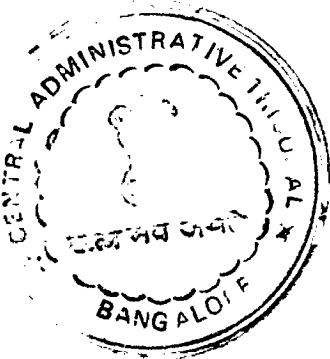
6. Shri M.S. Padmajaiah, learned counsel for the respondents sought to refute the contentions of the applicant. The applicant had been reverted not by way of punishment and so there was no question of his being given an opportunity of being heard. It was a case of mistake committed by some officials which could be rectified without reference to the applicant. No estoppel could operate against the correction of an error. The instructions of the Board required the maintenance of inter se seniority only in respect of eligible officials in the same cadre, and so if Hodlur was not eligible those UDCs below him in the UDC's cadre who were eligible should have been included in the combined consideration list submitted to the DPC on 8-4-1983 since they/put in longer service in the cadre than the applicant and their omission while including the name of the applicant was a clear mistake. The applicant was therefore rightly left out of the zone of consideration as on 8-4-1983 submitted to the review DPC on 5-9-1988. The review DPC had also, on a consideration of the character roll of the applicant, declared him unfit for promotion on all subsequent occasions when promotions were made and this Tribunal cannot displace the recommendation of a duly constituted DPC in the matter.
7. We have given the matter the most anxious consideration. We may first examine whether the combined consideration list submitted to the DPC on 6-4-1983 was in accordance with the instructions of the Board contained in its letter dated 23-1-1974. The relevant portion of the letter states that "the Board have decided that for the purpose of promotion to the grades of Head Clerk and Inspector(OG), the names of the eligible UDCs and

D. J. V.

Stenographers (OG), should be arranged in the combined consideration list with reference to their continuous length of service as UDC and/or Stenographer (OG) taken together subject to the condition that the inter se seniority of officers in the same grade is not disturbed." (Emphasis supplied) Clearly the direction to arrange the officials in the order of their length of service is in respect of eligible UDCs and Stenographers (OG). Shri S.Mehboob, a UDC, had been working as UDC from 6-9-1976. In the combined consideration list submitted to the DPC on 8-4-83, his name appeared at S.No.9. There were 10 vacancies which were expected to arise upto 31-3-1984. Therefore, a tenth name had to be added in the combined consideration list. In the seniority list of UDCs as on 8-4-1983, the person immediately next to Mehboob was a certain S.K.Kedlur, who was appointed as UDC on 30-9-1978. He did not possess the minimum experience qualification of five years in that post on 8-4-1983 and so was not eligible for consideration. However, after him in the same seniority list, there were 7 more UDCs who had worked in that cadre for a longer period than the applicant had in his own cadre as Stenographer (OG). There were 30 UDCs below Mehboob, including Kedlur, who had been assigned deemed dates of appointment prior to 27-12-1977 when the applicant was appointed as Stenographer (OG): even if the actual date of appointment were taken into account, 7 persons had joined as UDCs before the applicant had joined as Stenographer (OG). Thus, if the instructions of the Board to arrange eligible UDCs and Stenographers(OG) in the order of their continuous length of service had only ^{had f)} been followed and actual service is to be reckoned,

the tenth name in the combined consideration list submitted to the DPC on 8-4-1983 should have been N.K.Lalitha who joined service as UDC on 6-9-76 and was next in seniority in that cadre to Hadlur, and not the applicant. There were six more persons who would also have figured above the applicant in the combined consideration list, if it had been extended by seven. Thus the inclusion of the name of the applicant at S.No.10 of the original combined consideration list immediately after Mehboob was indeed not in accordance with the Board's instructions of 23-1-1974, and but for his inclusion in that list, he would not have been recommended for promotion by the DPC. Therefore, the contention of the respondents that the applicant's name was placed in the combined consideration list submitted to the DPC which met on 8-4-1983 ^{by 15} was a mistake has to be accepted.

8. We have next to address ourselves to the consequences of the mistake noticed above. Could this mistake be rectified in 1988 after the expiry of five years without giving the applicant an opportunity of being heard? An opportunity of being heard has to be given to a Government official, before a punishment is visited upon him. Can it be said that the rectification of the error committed by the respondents in 1983 by convening a review DPC to reconsider the recommendations made on 8-4-1983, deleting the applicant's name from the zone of consideration be called a punishment? We think not. The respondents had no intention of punishing the applicant but only to rectify the earlier action which was not in accordance with the instructions on the subject. We, therefore, see no merit in the applicant's contention that he should have been given an opportunity of being heard before his earlier promotion in 1983 was cancelled. In this connection, the facts on which



the Chandigarh Bench rendered judgement in Chundlal's case were different from those obtaining here and so that decision is of no help to the applicant. We are also of the view that a palpable mistake committed by its officials does not create estoppel against the Government preventing it from rectifying it. An act performed in violation of the service rules or instructions on the subject, cannot, in our opinion, create estoppel in favour of the official who benefitted by that action.

9. Therefore we find nothing wrong in the reversal of the recommendation of the original DPC (which met on 8-4-1983) by the review DPC which met on 17-3-1988. But if the applicant's name could not be considered for promotion as on 8-4-1983 as not being senior enough, what about subsequent occasions till 5-9-1988 (the date of his reversion) when promotions to the post of Inspector were considered by the DPC in which he would have been excluded from consideration at the time because he was already working as Inspector? The respondents say that the case of the applicant for promotion was indeed considered by the review DPC as on those dates also but he was found unfit on the basis of his confidential reports for a period of five years preceding each of these dates. The first such occasion was as on 28-5-1984 on which date a meeting of the DPC for promotion to posts of Inspector had been held and the second as on 3-10-1985. We have perused the proceedings of the review DPC and we find that determining the fitness of the applicant both as on 28-5-1984 and on 3-10-1985, the DPC took into account also confidential

1. f. 1/2

reports received by the applicant after his promotion as Inspector in 1983. This was clearly impermissible. The reports written on the work of the applicant as Inspector should not have been looked into for the purpose of assessing the applicant's fitness for promotion to that very post. Moreover, one would have expected some sympathetic consideration of the applicant's case as he had already worked as Inspector for over five years when the review DPC met on 17-3-1988 and had become practically useless as a stenographer. The grading given to him at the DPC meeting on 8-4-1983 on the basis of which he was promoted should have been maintained, for the purpose of promotion on 28-5-1984 and again on 3-10-1985 since that grading was in respect of the period he was working in the feeder post of Stenographer (OG). The attempt, to our mind, as far as possible should have been to see that/he was not reverted from the post of Inspector in 1988 after five years by giving him promotion at least in his turn in the combined consideration list before 1988. We even felt tempted to direct the respondents to straightway regularise the applicant's promotion as Inspector from the date his immediate junior in the combined consideration list, Shri R. Viswanatha was promoted, subsequent to 1983 and prior to 1988, but we desist to from doing so, leaving it to the respondents/take a decision in the matter, bearing in mind considerations of equity and our observations above.

10. In the view we have taken above, we direct the respondents to undertake a fresh review of the recommendations of the DPC which met on 28-5-1984 and 3-10-1985 and consider the case of the applicant

D. J. K.



for promotion as on those dates, ignoring the confidential reports earned by him as Inspector and taking into account only reports earned by him as Stenographer (OG) for five years (or such period as may be considered appropriate) prior to his promotion as Inspector. We sincerely hope that in doing so, the respondents will approach the matter with sympathy and try as far as possible to see that the applicant is not required to be reverted and continues as Inspector albeit with a reduced seniority. This exercise should be completed within two months from the date of receipt of this order. If after doing so, the applicant is restored to the post of Inspector, as we hope he will be, his pay and allowances during the period till and after his restoration may be regulated according to the rules.

11. The application is disposed of on the above terms leaving the parties to bear their own costs.

Sd/-

VICE CHAIRMAN 20/1P7

Sd/-

MEMBLR(A)

TRUE COPY

R. Venkateshwaran
DEPUTY REGISTRAR (JDLT 2011)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated :

27 JAN 1989

To

1. Shri Sanjeev Malhotra
All India Law Journal
Hakikat Nagar, Mal Road
Delhi - 110 009
2. Administrative Tribunal Reporter
Post Box No. 1518
Delhi - 110 006
3. The Editor
Administrative Tribunal Cases
C/o Eastern Book Co.,
34, Lal Bagh
Lucknow - 226 001
4. The Editor
Administrative Tribunal
Law Times
5335, Jawahar Nagar
(Kolhapur Road)
Delhi - 110 907
5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

I am directed to forward herewith a copy of the undermentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr Justice K. S. Puttaswamy Vice-Chairman/~~Member~~ and Hon'ble Mr P. Srinivasan Member (A) with a request for publication of the order in the journals.

Order dated 20-1-89 passed in A. Nos. 1533/88(F).

Yours faithfully,

B. V. Venkata Reddy
(B. V. Venkata Reddy)
Deputy Registrar(J)

*Issued
K. N. Iyer
27-1-89*

9c

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O. Complex(CBD), 1st floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lines, Jabalpur (M.P.).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o-Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmadabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 009 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)

sd/-
(B.V. Venkata Reddy)
Deputy Registrar (J)

dc

*48862
K.V.R
27-1-89*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE TWENTIETH DAY OF JANUARY, 1989

Present: Hon'ble Justice K.S.Puttaswamy ... Vice Chairman
Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NO. 1533/88(F)

Shri G.B.Purhit,
Office of the Supdt.of
Central Excise, Range C,
DCM Compound,
DAVANAGERE-577003. ... Applicant

(In person)

vs

1. The Dy.Collector of Central
Excise (P&E), Central Revenue
Building, P.B.No.5400,
Queen's Road, BANGALORE-560001
2. The Collector of Central
Excise, Belgaum Collectorate,
71, Club Road,
BELGAUM-590001. ... Respondents

(Shri M.S. Padmaraiah, Advocate)

This application having come up for hearing
before the Tribunal today, Hon'ble Member (A) made the
following:

ORDER

The applicant before us joined service in
the Bangalore Collectorate of the Central Excise and
Customs Department on 10-12-1977 as a Stenographer
(Ordinary Grade) (OG). He passed in two papers of
the departmental examination for promotion to the post
of Inspector of Central Excise and, by order dated
20-4-1983 issued by the Collector of Central Excise,
Bangalore ('the Collector for short'), was promoted
as Inspector of Central Excise ('Inspector' for short)

P.S. 42

along with six others and posted to Mangalore. The order stated that the persons promoted therein would be on probation for two years within which period they were required to pass the departmental examination for the post of Inspector. Pursuant to this order, the applicant reported for duty as Inspector on 30-4-1983 and worked in that capacity continuously at different places in the State of Karnataka till, by an order dated 5-9-1988 issued by the Collector he was reverted to the post of Stenographer Grade III (the post of Stenographer OG held by him earlier had been redesignated as Stenographer, Grade III, in the meanwhile). During the period up to 5-9-1988, the applicant completed the departmental examination for the post of Inspector by passing the remaining papers of the examination after his promotion as Inspector. In this application, he challenges the validity of the order dated 5-9-1988 and the reasons stated therein for his reversion which were, that his promotion in 1983 was erroneous and a review Departmental Promotion Committee (DPC) which met on 17-3-1988 had found him unfit for promotion "in all subsequent DPCs".

2. The respondents have, in their reply, resisted the application. The applicant's promotion as Inspector in 1983 was made on the recommendations of a DPC which met on 8-4-1983. Promotion to the post of Inspector had to be made by selection from four different feeder posts which included, inter alia, Upper Division Clerks (UDCs) and Stenographers both with five years of service. No quotas were prescribed for each feeder cadre.

P. J. S. - 14

Therefore, a combined seniority list of persons working in the different cadres had to be prepared and submitted for consideration by the DPC for the purpose of promotion. Persons working in the different feeder posts had to be arranged "in the order of continuous length of service" in their own grades, "subject to the condition that inter se seniority of officers in the same grade is not disturbed" - this procedure was laid down in a letter dated 23-1-1974 addressed by the Central Board of Excise and Customs ("the Board" for short) to all Collectors in the country. The "combined consideration list" of persons submitted to the DPC held on 8-4-1983 for promotion as Inspectors was not in accordance with the instructions issued by the Board inasmuch as the name of the applicant had been included in it while names of UDCs who had longer continuous length of service in their cadre had been left out. This error had been pointed out to the Board in a representation received by it and as a result, the Board wrote to the Collector on 9-9-1987 to hold a review DPC to reconsider the recommendations made by the DPC at its meeting held on 8-4-1983 and at all subsequent meetings held thereafter. When the combined consideration list earlier submitted to the DPC on 8-4-1983, was recast in accordance with the Board's instructions of 23-1-1974 for submission to the review DPC which met on 17-3-1988, the name of the applicant was excluded as he did not come within the zone of consideration. The review DPC then considered his case for promotion as on date subsequent to 8-4-1983

P. S. Nair

when meetings of the DPC were held in the past, but on each such date, the applicant was found unfit for promotion on the basis of his confidential character roll as of that date. That was why the applicant had to be reverted by the impugned order dated 5-9-1988 to the post of Stenographer earlier held by him.

3. The applicant who presented his case personally contended that the order of the Collector dated 5-9-1988 reverting him was illegal and so were the proceedings of the review DPC held on 17-3-1988 in which his name was left out of the combined consideration list as on 8-4-1983 and he was held to be unfit for promotion on subsequent dates as well. If a mistake had indeed been committed in including the name of the applicant in the zone of consideration for promotion presented to the DPC on 8-4-1983 and he had been recommended for promotion on that basis, it was no fault of his. For a mistake committed by the respondents, the applicant could not be reverted from the post of Inspector after he had held it for over 5 years from 30-4-1983 to 5-9-1988. Relying on a judgement of the Chandigarh Bench of this Tribunal rendered in CHUNILAL & OTHERS VS UNION OF INDIA, ATR 1988 (2) CAT 46, the applicant submitted that his reversion from the post of Inspector, for no fault of his entailed civil consequences to him, and as such, the respondents could not have done so without giving him an opportunity of being heard. The reversion order was, therefore, void and had to be struck down as offending the audi alteram partem rule of natural justice.

P. J. *W*

4. On the other hand, according to the applicant, the combined consideration list submitted at the original meeting of the DPC which met on 8-4-1983 was a perfectly valid list which was in accordance with the Board's instructions of 23-1-1974. While laying down that the names of eligible UDCs and Stenographers(OG) should be arranged in the list with reference to their continuous length of service in their respective cadres, the Board had also said that the inter se seniority of officers in the same grade should not be disturbed. The recruitment rules provided that for promotion as Inspector, a UDC or a Stenographer (OG) should have put in 5 years of service in his cadre. While preparing the combined consideration list for the original DPC in 1983, the respondents had found that after S.Mahboob, UDC, who had continuously held that post from 6-9-1976 and was, therefore, eligible for promotion, the next person in the seniority list of UDCs was S.K.Hodlur who had been appointed as UDC on 30-9-1978/ had not completed 5 years as on 8-4-1983. His name, therefore, could not be included in the consideration list. That being so, persons junior to him in the cadre of UDC could also not be included in the said list, even if they had the prescribed minimum length of service of 5 years, as that would go against the injunction in the second part of the Board's instruction of 23-1-1974 that the inter se seniority of officers in the same grade should not be disturbed. That was why, after the name of Mahboob, the name of the applicant was included in the consideration list as he was the seniormost

D. J. S. 169

Stenographer (OG) awaiting promotion at the time and he fulfilled the minimum service requirement as on 8-4-1983, having held the post of Stenographer (OG) since 1977.

Therefore, the consideration of the applicant for promotion on 8-4-1983 and his consequent promotion on the recommendation of the DPC held on that date were valid. That being so, his reversion by the impugned order dated 5-9-1988 on the ground that his earlier promotion was a mistake was bad in law and had to be struck down.

5. The applicant submitted further that even assuming that his earlier promotion as Inspector in 1983 was a mistake, he himself was not aware of it at the time or afterwards until 5 years had elapsed and his reversion was ordered on 5-9-1988. On the other hand, his promotion on the recommendation of a duly constituted DPC, his continuation in that post for over 5 years, and the numerous transfers he underwent during the period gave him the unmistakable impression that he had been validly promoted. He was a Stenographer before his promotion and after promotion he had lost touch with stenography altogether as the work of Inspector did not involve stenography. Because of his promotion to the post of Inspector in 1983 the applicant had also not been considered for promotion to higher grades of stenographers and in the ministerial line. Persons promoted as Inspectors were to be on probation in that post for two years and the applicant had completed that period in 1985, had passed the Departmental Examination for Inspectors fully in 1986 and was eligible for confirmation long before 1988. The respondents were, therefore estopped from reverting the applicant after so much had happened in the 5 years and odd when he worked as Inspector.

D. J. - U.S.

6. Shri M.S. Padmarajaiah, learned counsel for the respondents sought to refute the contentions of the applicant. The applicant had been reverted not by way of punishment and so there was no question of his being given an opportunity of being heard. It was a case of mistake committed by some officials which could be rectified without reference to the applicant. No estoppel could operate against the correction of an error. The instructions of the Board required the maintenance of inter se seniority only in respect of eligible officials in the same cadre, and so if Hadlur was not eligible those UDCs below him in the UDC's cadre who were eligible should have been included in the combined consideration list submitted to the DPC ^{had} on 8-4-1983 since they/put in longer service in the cadre than the applicant and their omission while including the name of the applicant was a clear mistake. The applicant was therefore rightly left out of the zone of consideration as on 8-4-1983 submitted to the review DPC on 5-9-1988. The review DPC had also, on a consideration of the character roll of the applicant, declared him unfit for promotion on all subsequent occasions when promotions were made and this Tribunal cannot displace the recommendation of a duly constituted DPC in the matter.

7. We have given the matter the most anxious consideration. We may first examine whether the combined consideration list submitted to the DPC on 8-4-1983 was in accordance with the instructions of the Board contained in its letter dated 23-1-1974. The relevant portion of the letter states that "the Board have decided that for the purpose of promotion to the grades of Head Clerk and Inspector(DG), the names of the eligible UDCs and

P. J. R. C.

Stenographers (OG), should be arranged in the combined consideration list with reference to their continuous length of service as UDC and/or Stenographer (OG) taken together subject to the condition that the inter se seniority of officers in the same grade is not disturbed." (Emphasis supplied) Clearly the direction to arrange the officials in the order of their length of service is in respect of eligible UDCs and Stenographers (OG). Shri S.Mehboob, a UDC, had been working as UDC from 6-9-1976. In the combined consideration list submitted to the DPC on 8-4-83, his name appeared at S.No.9. There were 10 vacancies which were expected to arise upto 31-3-1984. Therefore, a tenth name had to be added in the combined consideration list. In the seniority list of UDCs as on 8-4-1983, the person immediately next to Mehboob was a certain S.K.Kedlur, who was appointed as UDC on 30-9-1978. He did not possess the minimum experience qualification of five years in that post on 8-4-1983 and so was not eligible for consideration. However, after him in the same seniority list, there were 7 more UDCs who had worked in that cadre for a longer period than the applicant had in his own cadre as Stenographer (OG). There were 30 UDCs below Mehboob, including Kedlur, who had been assigned deemed dates of appointment prior to 27-12-1977 when the applicant was appointed as Stenographer (OG); even if the actual date of appointment were taken into account, 7 persons had joined as UDCs before the applicant had joined as Stenographer (OG). Thus, if the instructions of the Board to arrange eligible UDCs and Stenographers(OG) in the order of their continuous length of service had been followed and actual service is to be reckoned,

? f b w

the tenth name in the combined consideration list submitted to the DPC on 8-4-1983 should have been N.K.Lalitha who joined service as UDC on 6-9-76 and was next in seniority in that cadre to Hadlur, and not the applicant. There were six more persons who would also have figured above the applicant in the combined consideration list, if it had been extended by seven. Thus the inclusion of the name of the applicant at S.No.10 of the original combined consideration list immediately after Mehboob was indeed not in accordance with the Board's instructions of 23-1-1974, and but for his inclusion in that list, he would not have been recommended for promotion by the DPC. Therefore, the contention of the respondents that the applicant's name was placed in the combined consideration list submitted to the DPC which met on 8-4-1983 ~~was~~ ^{by} a mistake has to be accepted.

8. We have next to address ourselves to the consequences of the mistake noticed above. Could this mistake be rectified in 1988 after the expiry of five years without giving the applicant an opportunity of being heard? An opportunity of being heard has to be given to a Government official, before a punishment is visited upon him. Can it be said that the rectification of the error committed by the respondents in 1983 by convening a review DPC to reconsider the recommendations made on 8-4-1983, deleting the applicant's name from the zone of consideration be called a punishment? We think not. The respondents had no intention of punishing the applicant but only to rectify the earlier action which was not in accordance with the instructions on the subject. We, therefore, see no merit in the applicant's contention that he should have been given an opportunity of being heard before his earlier promotion in 1983 was cancelled. In this connection, the facts on which

the Chandigarh Bench rendered judgement in Chunilal's case were different from those obtaining here and so that decision is of no help to the applicant. We are also of the view that a palpable mistake committed by its officials does not create estoppel against the Government preventing it from rectifying it. An act performed in violation of the service rules or instructions on the subject, cannot, in our opinion, create estoppel in favour of the official who benefitted by that action.

9. Therefore we find nothing wrong in the reversal of the recommendation of the original DPC (which met on 8-4-1983) by the review DPC which met on 17-3-1988. But if the applicant's name could not be considered for promotion as on 8-4-1983 as not being senior enough, what about subsequent occasions till 5-9-1988 (the date of his reversion) when promotions to the post of Inspector were considered by the DPC in which he would have been excluded from consideration at the time because he was already working as Inspector? The respondents say that the case of the applicant for promotion was indeed considered by the review DPC as on those dates also but he was found unfit on the basis of his confidential reports for a period of five years preceding each of these dates. The first such occasion was as on 28-5-1984 on which date a meeting of the DPC for promotion to posts of Inspector had been held and the second as on 3-10-1985. We have perused the proceedings of in the review DPC and we find that/determining the fitness of the applicant both as on 28-5-1984 and on 3-10-1985, the DPC took into account also confidential

D. J. V.

reports received by the applicant after his promotion as Inspector in 1983. This was clearly impermissible. The reports written on the work of the applicant as Inspector should not have been looked into for the purpose of assessing the applicant's fitness for promotion to that very post. Moreover, one would have expected some sympathetic consideration of the applicant's case as he had already worked as Inspector for over five years when the review DPC met on 17-3-1988 and had become practically useless as a stenographer.

The grading given to him at the DPC meeting on 8-4-1983 on the basis of which he was promoted should have been maintained, for the purpose of promotion on 28-5-1984 and again on 3-10-1985 since that grading was in respect of the period he was working in the feeder post of Stenographer (OG). The attempt, to our mind, as far as possible should have been to see that he was not reverted from the post of Inspector in 1988 after five years by giving him promotion at least in his turn in the combined consideration list before 1988. We even felt tempted to direct the respondents to straightway regularise the applicant's promotion as Inspector from the date his immediate junior in the combined consideration list, Shri R. Viswanatha was promoted, subsequent to 1983 and prior to 1988, but we desist to do so; leaving it to the respondents to take a decision in the matter, bearing in mind considerations of equity and our observations above.

10. In the view we have taken above, we direct the respondents to undertake a fresh review of the recommendations of the DPC which met on 28-5-1984 and 3-10-1985 and consider the case of the applicant

P. J. 45

for promotion as on those dates, ignoring the confidential reports earned by him as Inspector and taking into account only reports earned by him as Stenographer (OG) for five years (or such period as may be considered appropriate) prior to his promotion as Inspector. We sincerely hope that in doing so, the respondents will approach the matter with sympathy and try as far as possible to see that the applicant is not required to be reverted and continues as Inspector albeit with a reduced seniority. This exercise should be completed within two months from the date of receipt of this order. If after doing so, the applicant is restored to the post of Inspector, as we hope he will be, his pay and allowances during the period till and after his restoration may be regulated according to the rules.

11. The application is disposed of on the above terms leaving the parties to bear their own costs.

Sd/-

VICE CHAIRMAN 20/1/77

TRUE COPY

Sd/-

MEMBLR(A)

for undersigned
DEPUTY REGISTRAR (JDL) *20/1/77*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE