

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6,
PRESOCOT ROAD, BOMBAY - 1.

Misc. Petition No.578/95 and 796/95
in
Original Application No. 822 / 94.

5/ this the Today day of January 1996.

Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

R.S.Rathod,
"Dilwara",
4th Floor, Near Cooperage
Telephone Exchange, Maharshi
Karve Road,
Bombay - 400 021.

... Applicant.

(By Shri M.S.Ramamurthy, counsel
for the applicant).

V/s.

1. State of Maharashtra,
through the Chief
Secretary, Government of
Maharashtra,
Bombay - 400 032.

2. Union of India,
through the Secretary,
Department of Personnel,
Public Grievance and
Pension (Department of
Personnel and Pension),
New Delhi - 110 001.

... Respondents.

(By Shri V.S.Masurkar, counsel
for the Respondents).

ORDER

(Per Shri M.R.Kolhatkar, Member(A))

This O.A. has been filed by an I.A.S. Officer
of 1979 batch in connection with his non-promotion in the
context of Disciplinary Enquiry No.7 of 1988. The
applicant had sought interim relief in following terms:

"(a) that all further proceedings in the
Disciplinary Enquiry No.7 of 1988
be stayed.

(b) that, in any event, the Respondents be
directed to grant the Junior Adminis-
trative Grade to the Applicant with
immediate effect;

(c) that, in any event, the Respondents be directed to promote the Applicant to Selection Grade immediately on ad hoc basis."

However, this Tribunal while admitting the O.A. on 3.2.1995 did not grant interim relief as prayed for, but directed the respondents to complete the enquiry of Proceedings No.7/87 by 31.5.1995. Subsequently, this Tribunal extended the time for completing the enquiry by its order dt. 2.6.1995. While disposing of M.P. No.402/95 of the Respondents the order was clarified in the context of M.P. No.495/95 by the Tribunal in its order dt. 14.8.1995 stating that what was intended to say by the order dt. 2.6.1995 was that the enquiry proceedings including the passing of the order by the Disciplinary Authority should have concluded by 23.11.1995 and that this shall be done peremptorily.

2. In the present M.P. No.578/95 filed on 16th August, 1995 the applicant has contended that the department has resorted to different strategies to prolong the inquiry and therefore the Tribunal may consider the interim relief initially applied for. The applicant relies on the case of Navin Singh V/s. Union of India (in 80/93) in which the affidavit filed in the Respondent Government, Government, Navin Singh conceded that, by the Respondent Government, Government, Navin Singh, even who belongs to Indian Forest Service when Disciplinary Proceedings were contemplated against him was granted Junior Administrative Grade on 1.6.1992. The Junior Administrative Grade, it is submitted (Rs.3950-5000) is a non-functional grade to which an All India Service Officer is entitled to be appointed by efflux of time

viz. 9 years in the present case, and the applicant being an Officer of 1979 batch is entitled to be considered for Junior Administrative Grade from 1988. It is further prayed that the applicant should be considered for promotion to the Selection Grade of the I.A.S. viz. Rs.4,800-5700 to which he became entitled in the normal course on 2.8.1993. According to the applicant ~~order~~ a similar of ad-hoc appointment to the Selection Grade was issued in the case of S.R.Shinde, I.A.S. vide notification dt. 20.2.1993 enclosed by the applicant. Of course, the promotion was on ad hoc basis, ^{but} this was in terms of the then instructions of the Government of India dt. 12.1.1988 which have since been replaced by the General Instructions of the Government of India, Department of Personnel and Administrative Reforms No.22011/4/91/Estt(A) dt. 14.9.1992 (at Ex.'H') In these instructions it is stipulated that there should be a six monthly review of the cases of the Government Officers who have been held up for promotion because of departmental inquiry pending against them. Para 5 of the instructions then goes on to add as follows:

"5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/ criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad hoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer

will be against public interest;

(b) Whether the charges are grave enough to warrant continued denial of promotion;

(c) Whether there is any likelihood of the case coming to a conclusion in the near future;

(d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and

(e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau."

3. The Respondents have opposed the M.P. for interim relief. According to the respondents the instructions referred to above by the applicant viz. instructions dt. 14.9.1992 do not apply to All India Service Officers. What is applicable to the All India Service Officers ~~are~~ the instruction No.11030/32/22/87/AIS (2) dt. 7.9.1987 which ~~are~~ annexed at Ex. R-1. They state ~~that~~ that a member of the Service who is under suspension against whom disciplinary proceedings are contemplated ~~or~~ pending on the date on which he is eligible for JAG shall not be allowed the Junior Administrative Grade during the suspension ~~when~~ ~~or~~ the disciplinary proceedings are pending. According to respondents, these instructions dt. 7.9.1987 issued under I.A.S. Pay Rules, 1954 have further been revised in respect of manner of

computation for eligibility for appointment vide instructions No.11030/22/91-AIS/(2) dt. 10.3.1993 which appear as Ex. 'B' to the sur-rejoinder filed by the Respondents, in respect of the present M.P. In other words, the instructions regarding consideration of the Officers about the ad hoc promotion dt. 14.9.1992 apply only to Officers other than ~~themselves~~ All India Service Officers.

4. The Respondents have filed M.P. No.796/95. on 8.11.1995 in which they have explained the elaborate procedure required to be gone through before a State Government can arrive at a final decision in respect of a departmental inquiry including the consultation with U.P.S.C. and have requested to grant 8 months time to implement the orders dt. 2.6.1995. The original applicant has opposed this M.P. for extension of time.

5. In this O.A. we note that although Union of India has been made a party Respondent No.2 they have not chosen to file a written statement. We are, therefore, not able to get an authoritative clarification from the Central Government as to whether instructions dt. 14.9.1992 which are very well known instructions which were issued consequent on the Judgment of the Supreme Court in K.V.Janakiram applied to All India Service Officers or whether any similar instructions have been issued in respect of All India Service Officers. The fact that the

clarification dt. 10.3.1993 does not deal with these aspect is not conclusive as to non-applicability of para materia instructions, if any, issued in Non- relation to All India Service Officers by the Central Government which will necessarily apply to All India Service Officers working even in connection with the affairs of the State Government. The applicant has made a categorical averment that although departmental proceedings ~~were~~ pending against Shri S.R.Shinde I.A.S. he was promoted on ad hoc basis to the Selection Grade and he has also produced a notification in this regard dt. 20.2.1992 which we reproduce in full for ready reference:

"No.AEO-1192/259/92/X

Government is pleased to promote Shri S.R. Shinde, IAS (MH:76) to the Selection Grade of IAS until further orders on ad hoc basis, with effect from the date of this notification in pursuance of the instructions contained in Government of India, Department of Personnel & Training's office Memorandum No.22011/2/86-Estt.(A), dt. the 12th January, 1988.

This ad hoc promotion will not confer any right on Shri Shinde for regular promotion, Government reserves the right to revert Shri Shinde at any time to the grade from which he is promoted.

By order and in the name of the Governor of Maharashtra."

This notification shows that Shri S.R.Shinde was an I.A.S. Officer and that he was promoted on ad hoc basis in terms of Department of Personnel & Training O.M. No.22011/2/86-Estt dt. 12.1.1988. The O.M. dt. 14.9.1992 in terms refers to the OM dt. 12.1.1988 and is in fact a modification of that earlier OM in terms of Supreme Court Judgment in K.V.Janakiram.

It is also clear that although the earlier OM dt. 12.1.1988 has been superseded by the present OM dt. 14.9.1992, the instructions relating to consideration of Officers facing departmental proceedings for ad hoc promotions have not been modified. In the written statement filed by the Respondent Government on 6.10.1995 opposing M.P. 578/95, the respondents have only dealt with the case of Navin Singh, I.F.S. Officer, but they have not at all dealt with the case of Shri Shinde. Regarding Navin Singh the stand taken is that the charge sheet was actually served on 14.5.1992 and he was promoted prior to that date viz. 1.4.1992. According to the case law interpreting the term service of notice it is now well settled that the true date of initiating of the departmental enquiry is the date on which competent authority took the decision on the file. Therefore, Navin Singh's case is not ^a legal authority. We are, however, not concerned with that aspect of the matter. We are mainly concerned to note that the Respondent Government have not contradicted the statement of the applicant regarding Shri S.R.Shinde's promotion on ad hoc basis. We are, therefore, required to proceed on the basis that the instructions of the Department of Personnel dt. 14.9.1992 do apply to the applicant who is an I.A.S. Officer.

6. Before taking ^a view on the prayers in M.P. No.578/95, we are, however, required to dispose of M.P. 796/95 for extension of time because

if extension of time is not granted then the departmental enquiry could be honest. We must express our unhappiness that the Government has not taken the orders of the Tribunal dt. 2-6-1995 read with the order dt. 14-8-1995 with the requisite seriousness. The order dt. 14-8-1995 made it clear that those orders were of a peremptory nature. If the respondent government had any difficulty in complying with these orders they ought to have approached this Tribunal immediately thereafter after watching the trend of the progress of the enquiry. This they have failed to do. All the same, it has come out during the course of hearing on 19-12-1995 that the departmental enquiry in fact has been concluded and the Enquiry Report in this case has been submitted to the Government on or about 27-11-1995. The counsel for the petitioner also submits that his his information is that his client has been completely exonerated in the enquiry but the counsel for the respondents stated that this is immaterial so long as disciplinary authority has not taken a final view. Counsel for the applicant all the same, would urge that because of the failure of the respondents to comply with the peremptory order, we should restrain the respondents from proceeding further in the matter of the departmental enquiry.

7: We are, however, reluctant to take the extreme step of quashing the departmental enquiry proceedings against the applicant on account of failure of the Government to comply with our peremptory order. In this connection we are required to bear in mind

the observation of Hon. Supreme Court on interpretation of Section 148 of CPC on extension of time vide Commissioner of Income Tax, Jullundur v. Ajanta Electricals, Punjab, JT 1995(7) SC 429. Although the CPC does not in terms apply to proceedings under the A.T. Act, it can be called ^{in aid of} when the problems faced are similar. Section 148 of the CPC provides that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the Code, the Court may, in its discretion from time to time, enlarge such period even though the period originally fixed or granted may have expired. The Court quoted with approval the observation of the Supreme Court in the case of Mahanth Ram Das v. Ganga Das AIR 1961 SC 882 as below:

"The procedural orders though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not however, completely estop a court from taking note of events and circumstances which happen within the time fixed."

8. Taking account of various steps detailed by the respondent government, we direct that the decision in respect of the applicant in terms of D.E. No.7/88 should be taken on or before 30-4-1996. M.P.796/95 is thus disposed of.

9. We also direct that the Government should consider the case for adhoc promotion of the applicant to the Junior Administrative Grade and thereafter to the Selection Grade in terms of the Department of Personnel O.M. dt. 14-9-1992 especially para 5 thereof by convening a review DPC,

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if necessary, within six weeks of the communication of this order. M.P.578/95 is disposed of.

M.R.K. Kolhatkar

(M.R.K. KOLHATKAR)
Member(A)

B.S. Hegde
(B.S. HEGDE)
Member(J)

M/B