

## THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 1519/97.

Date of Order: 1-4-98.

Between:

Swapna Adhikary.

.. Applicant.

and

1. The Director General of Mines Safety  
Post and District Dhanbad 826 001, Bihar.2. Union of India, rep. by Secretary,  
Ministry of Labour, Shramshakthi Bhavan,  
New Delhi-1.

.. Respondents.

For the Applicant: Mr. Briz Mohan Singh.R. Advocate, CAT.Hyd.

For the Respondents: Mr. V.Rajeswar Rao, Addl.CGSC.

CORAM:

THE HON'BLE MR. H.RAJENDRA PRASAD : MEMBER(ADMN)

THE HON'BLE MR.B.S.JAI PARAMESWAR : MEMBER(JUDL)

The Tribunal made the following Order:-

Heard Mr.Suryanarayana for Mr.R.Briz Mohan Singh  
on behalf of the applicant and Sri V.Rajeswar Rao for the respondents

1. The applicant was proceeded against under Rule 14 of CCS(CCA) Rules, 1964 in October, 1994. The charges were a sequel to certain investigations by the CBI. One of the three charges was subsequently dropped and the proceedings ended finally in January, 1995 with imposition of penalty of censure on the applicant.

2. Parallely, a charge-also submitted by the CBI on 30-11-1994 in the Court of Sub-Judge, Bhubaneswar is stated to be pending finalisation. Meanwhile, the case of the applicant for promotion to the post of Director (Mines Safety) was duly considered by a DPC on 5-1-1996, and the results were kept in sealed cover owing to the pendency of the cases referred to above. The respondents made a reference to the CBI, for their clearance of the applicant's promotion. The CBI declined to give such clearance.

3. The learned counsel for the applicant, Mr.Y.Suryanarayan argues that althrough para-5 of DOP&T OM.22011/4/91-Estt(A) dated 14-9-92 makes it obligatory for the appointing authority consult CBI in the matter and to take their views into account where the Departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau, it was equa

incumbent on his part to initially come to atleast some provisional conclusion on the aspects mentioned in sub paras (a) to (e) of the said para. It is not known whether this was done before a reference was made in the matter to the CBI. In the absence of any indication to this effect, it is contended by Sri Suryanarayana that the CBI may not have had the benefit of having the views of the Appointing authority before them prior to giving, or withholding, their concurrence. The respondents have no doubt filed the reply received from the CBI. The issue raised on behalf of the applicant does not, however, become apparent from this reply alone. It is, therefore, necessary to ask the respondents to produce a copy of their letter addressed to the CBI (para-3(c) of the counter) as also of the notes and orders in the concerned file which may have led to this reference being made to the CBI. This may be done within four weeks.

4. Be that as it may, it is incidentally seen that paras 5.1 of the same OM lays down on an adhoc basis where departmental (or in this instance criminal) case filed against him is not concluded before the expiry of two years from the date of the meeting of the DPC. It would, therefore, be advisable for the respondents to proceed to deal with the case of the applicant on the basis of para 5.1 if the case is not concluded by the expiry of two years from the date of the meeting of the DPC. It would not be against public interest to allow adhoc promotion to the applicant. If such a view comes to be taken, the procedure prescribed in para 5.2 could be followed in dealing with the case further. This needs to be done with reasonable expedition and dispatch.

5. The OA may be listed before the Division Bench after four weeks.

*M. S. Srinivasan*  
Deputy Registrar

To

1. The Director General of Mines Safety Post and Dist. Dhanbad-1, Bihar.
2. The Secretary, Union of India, Ministry of Labour, Shramashakti Bhavan, Rafi Marg New Delhi-1.
3. One copy to Mr. R. Briz Mohan Singh, Advocate, CAT. Hyd.
4. One copy to Mr. V. Rajeswar Rao, Addl. CGSC. CAT. Hyd.
5. One spare copy.

pvm.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.1519/97

dt.10-8-99

Between

Swapn Adhikary

: Applicant

and

1. Director General  
of Mines Safety  
Post & Dist. Dhanbad  
Bihar 826001

2. Union of India  
rep. by Secretary  
Min. of Labour  
Shramshakti Bhavan  
Rafi Marg, New Delhi 1

: Respondents

Counsel for the applicant

: R. Briz Mohan Singh  
Advocate

Counsel for the respondents

: V. Rajeswara Rao  
CGSC

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)

*R*

*D*

## Order

Oral order (per Hon. Mr. R. Rangarajan, Member(Admn.))

Heard Sri R. Briz Mohan Singh, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.

1. The applicant in this OA is a Deputy Director of Mines Safety. His prayer in this OA is for a declaration that the action of the Respondents in not reviewing and considering the applicant for promotion to the post of Director, Mines Safety, in terms of paragraphs 4 and 5 of the DOPT, OM No. 22011/4/91-Estt(A) dated 14-9-1992 <sup>to</sup> is illegal etc. and <sup>to</sup> issue consequential direction to the respondents to consider the case of the applicant for adhoc promotion in the ensuing DPC for promotion to the post of Director, Mines Safety, in terms of paragraphs 4 and 5 of the DOPT letter dated 14-9-92 with all consequential benefits.

2. From the various observations of this Bench i) on 12-11-97, and ii) on 1-4-1998 and iii) 21-9-98, it is evident that this OA has been dealt with <sup>a</sup> number of times and some views nearing disposal of this OA had already been taken. Hence, at this late stage to reconsider issues once again afresh is not considered necessary. In this connection we will only reproduce docket order dated 21-9-1998 which reads as below :

"Heard Mr. Y. Suryanarayana for the applicant and Sri V. Rajeswara Rao for the respondents.

2. The main point for consideration at this stage <sup>is</sup> ~~was~~ as to whether or not the appointing authority of the applicant examined the case of the applicant for adhoc promotion in

terms of sub para (a) to (e) of para-5 of the DOP &T Circular dated 15-9-92 prior to consultation with the CBI. For this purpose we had directed the relevant file to be produced for our perusal. Mr. N. Satya Murthy Dy. Director, M/o Labour, Government of India, who was present in the Court produced the file and we have perused the relevant notes and orders as well as the letter which followed as a reference to the CBI, seeking their concurrence for the adhoc promotion of the applicant. We are satisfied that case of the applicant for adhoc promotion was duly considered as required under Sub-para(a) to (e) of the said circular before making a reference to the CBI.

3. Shri Y. Suryanarayana expressed a desire to be shown this particular letter to satisfy himself whether the principles envisaged in the sub paras had indeed been adhered to. The learned counsel for the respondents, on instructions, claimed privilege for this document on the ground that it would be against public interest to disclose its contents to the applicant's counsel. On examining this submission in the light of the contents of the said document, we formed an opinion, after perusing the relevant notes and orders and the relevant document on the file of the Government, that no public or State interest was likely or liable to be injured if the contents only of the particular letter were disclosed. It may be mentioned here that most of the contents of this letter had in any case been already communicated to the applicant by the respondents themselves. We therefore decided to direct the learned counsel for the respondents to show to the applicant's counsel only the M/o Labour letter No.11-D dated 7-10-1997 addressed to the CBI. Accordingly, only the letter was shown to Sri Y. Suryanarayana, counsel for the applicant, by Sri V.Rajeswara Rao, standing counsel for the

respondent, and later returned to the Departmental Officer, whose presence is no longer required.


4. The case may be listed for final disposal on 28-9-98."

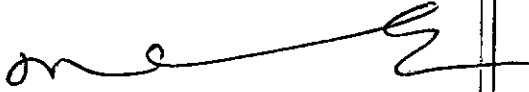
3. From the above docket order it is seen that the noting leading to the rejection of this case for adhoc promotion in terms of OM dated 14-9-92 ~~xxx~~ para 4 and 5 has been considered fully and rejected. However, the learned counsel for the applicant now submits that his case has to be placed before next DPC for consideration of his case as two years had elapsed after rejection of his case in the first instance by departmental authorities. For this he relies on para 5(1) of the said OM, which reads as below :

"5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow adhoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on adhoc basis. Where the Government servant is considered for adhoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him."

4. As can be seen from the noting dated 21-9-98, the M/o of Labour letter dated 7-10-97 addressed to the CBI, was perused by the learned counsel for the applicant. Hence, it can be taken that the rejection of his case for adhoc promotion was decided some time before 7-10-1997. Hence, two years period as mentioned in para 5(1) expires some time in the middle of October, 1999. In that view, the only direction that can be given is that the case of the applicant may be placed before DPC <sup>after middle of October, 1999</sup> for consideration of the applicant for adhoc promotion in accordance with law.

5. With the above direction the OA is disposed of.

  
(B.S. Jai Perameshwar)  
Member (Admn.)

  
(R. Rangarajan)  
Member (Admn.)

Dated : August 10, 99  
Dictated in open court

COPY TO:-

1. HDHND
2. HRRN M ( A )
3. HBSJP M (J)
4. D.R. ( A )
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

1st AND II nd COURT

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH, HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR  
VICE - CHAIRMAN  
THE HON'BLE MR. R. RANGARAJAN.  
MEMBER ( ADMN )

THE HON'BLE MR. B.S. JAI PARAMESHWAR  
MEMBER ( JUDL )

\*\*\*\*

ORDER DATE: 10/8/99

MA/RA/CP.NO  
IN  
DA.NO.

1519/92

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

O.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

6 copies

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal दस्तावेज / DESPATCH
23 AUG 1999
हैदराबाद ब्याचपीठ HYDERABAD BENCH

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;HYDERABAD BENCH: AP

MA NO.768 of 1998

in

OA No.1519 of 1997

Between:

The Director General of Minest Safety  
Dhanbad, Bihar.

2. Union of India,rep by Secretary,  
Ministry of Labour,Shramanakthi Bhavan  
Rafi Marg,New Delhi-1

.. APPLICANTS/  
Respondents

AND

SWAPAN ADHIKARY

Dy Director of Mines Safety  
Directorate General of Mines Safety

.. Repondents/  
Applicants

APPLICATION FILED U/R 8(3) of CAT (P) Rules

For the reasons state in the accompanying affidavit  
the applicants claim privilege under section 123 and 124 of the Indian  
Evidence Act,1972 to the documents directed by the Hon'ble Tribunal  
vide order dt. 1.4.98,to produce before the Hon'ble Tribunal and the  
Hon'ble Tribunal may be pleased to pass appropriate orders in the facts  
and circumstances of the case.

HYDERABAD

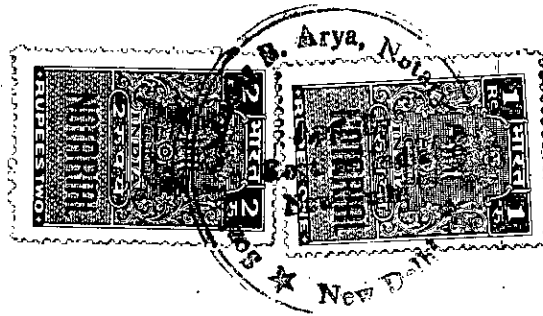
Dt.16.9.98



Counsel for the aplicants/

Respondents





**In the Central Administrative Tribunal, Hyderabad Bench**

O.A. No. 1519/97

Between

**Swapan Adhikary**

**Applicant**

And

- 1. The Director General of Mines safety, Dhanbad**  
**Respondents**
- 2. Union of India, represented by Secretary, Ministry of Labour**

**Affidavit of Dr. L. Misra, Secretary, Ministry of labour, Government of India**

I, Dr. L. Misra, Secretary to the Government of India, in the Ministry of Labour, do hereby solemnly affirm and state as follows :-

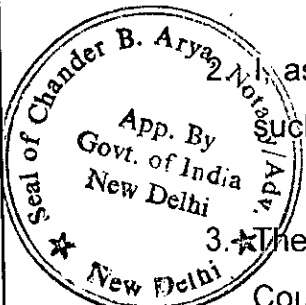
1. An order dated 1.4.98 issued by this Hon'ble Court in O.A. No. 1519/97 has been received by this Ministry on 23<sup>rd</sup> April, 1998, which inter- alia directed that :

".....It is therefore, necessary to ask the Respondents to produce a copy of the letter addressed to the CBI ( para 3(ii)© of the Counter) as also the notes and orders in the concerned file which may have led to this reference being made to the CBI. This may be done within 4 weeks....."

I, as the Secretary of the Ministry and the Head of the Department, am as such in control of and in-charge of its records.

3. The documents sought by the Court vide the above order of this Hon'ble Court pertain to the letter no. C-18011/1/97-ISH.II dated 7.10.97 written by this Ministry to the CBI, the notes recorded by the officers of this Ministry at various levels, and the minutes recorded by the Minister for Labour.

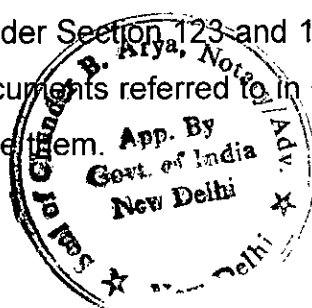
4. I have carefully read and considered each of the said documents and have come to the conclusions that the letter dated 7.10.97 to CBI and the notes of the concerned file( C-18011/1/97-ISH-II) which led to the reference being



*Reviewed*  
*11.6.98*

made to the CBI are unpublished official records relating to the affairs of the State and they contain communications made in official confidence and are documents belonging to a class the production and disclosure of which are protected under Section 123 and 124 of the Evidence Act.

5. I have carefully examined the question as to whether disclosure of the above documents could cause injury to public interest and I am bonafide satisfied that their disclosure would cause injury to public interest and that public interest would suffer thereby.
6. The disclosure of the notes and documents referred to above would lead to injury to public interest. They are steps in aid of exercise of constitutional power under Article 77 of the Constitution of India. The disclosure of the opinion expressed by the officers in the notes would affect officers' freedom and candor of expression of opinion in determination and execution of constitutional functions affecting public policy. The communication exchanged for this purpose would all fall within the same official category mentioned above. These are unpublished official records relating to affairs of a State and communications made in official confidence and public interest would suffer by their disclosure.
7. However, I hasten to point out that I have no objection whatsoever to any one of these documents in regard to which privilege have been claimed being produced for perusal by this Hon'ble Court for satisfying itself about the bonafides and genuineness of the plea of the privilege.
8. I realise the solemnity and significance attached to the exercise of powers under Section 123 and 124 of the Evidence Act, 1872 and the privilege is not being claimed on the ground of expediency or to avoid an embarrassing or inconvenient situation or because it is apprehended that the document, if produced would defeat the case of the State.
9. I, therefore, claim privilege under Section 123 and 124 of the Indian Evidence Act, 1972 in respect of the documents referred to in para 3 of this affidavit and express my inability to produce them.



I, Dr. L. Misra, do hereto solemnly affirm and say that what is stated herein above in paras 1 to 6 is true and is according to the information in my possession as derived from the official records.

Solemnly affirmed and signed at New Delhi on this 1st day of May 1998.

Sworn before me *at New Delhi*

Dr. L Misra  
Secretary, Ministry of Labour  
Deponent

I identify the deponent who has  
signed/put T.I. in my Presence

*Pachnanda*  
115798  
(VINESH PACHNANDA)  
ASSISTANT,  
M/O LABOUR



**ATTESTED**

NOTARY PUBLIC  
NEW DELHI. (INDIA)

**1 MAY 1998**

Claiming for Prejudice  
In non production  
of records

IN THE CENTRAL ADMINISTRATIVE  
TRIBUNAL : AT HYDERABAD

M.A.NO/RAO. NO:

OF 1998

IN

CA NC: 1519 OF 1997



~~Extension of time/ Vacate~~  
applications filed under Rule  
8(3) of CAT(P) Rules 1987

~~Review Application filed under  
S 22(3)(F) of CAT ACT~~

The case stands posted  
to 21-9-98 by I court.  
and this MA may be posted  
on that date as  
this applicant  
has already been  
perused by the  
Bench.

FILED ON:

FILED BY:

V. RAJESWARA RAO

S.C. FOR RAILWAYS/

ADDL. CGSC, HYDERABAD

PH NC: 272585

Not signed  
17.9.98

17.9.98

मूल/ORIGINAL

CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD.

साधारण/GENERAL

बेच केस/BENCH CASE

M.A.No. 768 of 1998

IN

O.A. No. 1519 of 1997

claiming for privilege for non  
production of records.

Mr. V. Rajeswara Rao  
COUNSEL FOR THE APPLICANT. / Resdtr

AND

Mr. R. Braiz Mohan Singh  
~~SR. ADDL. STANDING COUNSEL FOR C.G.S~~  
~~C.G. RLY.~~

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD.  
1st Floor, HACA Bhavan, Opp: Public Garden, Hyderabad. 500004.A.P.

ORIGINAL APPLICATION NO. OF 199

Applicant(S)

V/S

1519. 7.  
Respondent(S)

Sworn and Subscribed by:

R. Briz Mohan Singh.

The D.G., of Mines Safety, Post and  
District Dhanbad & another.  
(By/Central Govt. Standing Counsel)

To.

Mr. V. Rajeswara Rao. Addl. CGSC.

1. The Director General of Mines Safety Post and District Dhanbad  
826001-Bihar.
2. The Secretary, Ministry of Labour, Union of India,  
Shramshakthi Bhavan, Rafi Marg, New-Delhi. 110001.

Whereas an application filed by the above named applicant under Section 19 of the Administrative Tribunal Act, 1985 as in the copy annexed hereunto has been registered and upon preliminary hearing the Tribunal has admitted the application.

Notice is hereby given to you that if you wish to contest the application, you may file your reply along with the document in support thereof and after serving copy of the same on the applicant or his Legal practitioner within 30 days of receipt of the notice before this Tribunal, either in person or through a Legal practitioner/ Presenting Officer appointed by you in this behalf. In default, the said application may be heard and decided in your absence on or after that date without any further Notice.

Issued under my hand and the seal of the Tribunal

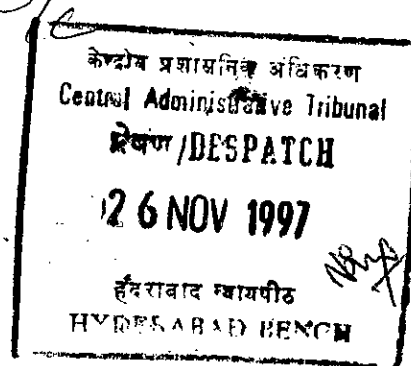
This the . . . Twelfth, . . . . . day of . . . November, . . . 1997.

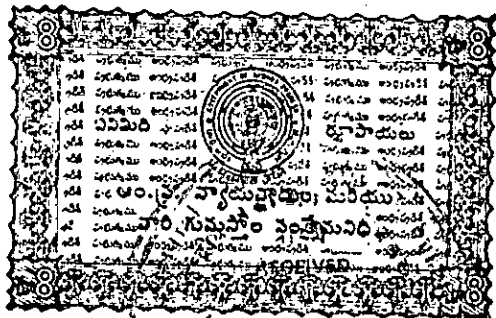
//BY ORDER OF THE TRIBUNAL//

Date:

19-11-97.

FOR REGISTRAR.





# In the Court Of the CENTRAL

ADMINISTRATIVE TRIBUNAL, HYDERABAD

O.A.No

of 1997

Between

Swapan Adhikary

Plaintiff  
Petitioner

Appellant  
Accused

AND

The Director-General of  
Mines Safety,  
Post & District Dhanbad  
Bihar  
and another.

Defendant  
Respondent  
Complainant

**VAKALAT**

ACCEPTED

*RB Singh*

*R. BRIZMOHAN SINGH.*

*Advocate*

Advocates for : APPLICANT

Filed on :

Address for Service

Phone : 598698

Sri.R. Briz Mohan Singh  
Advocate,  
3 & 38, Agarwal Chambers,  
5-9-1121, King Koti Cross Roads,  
HYDERABAD - 500 001.

**In the Court of the CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH**

**AT HYDERABAD.**

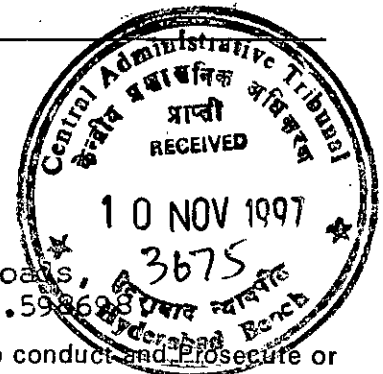
Between O.A. No. of 1997 Plaintiff  
Swapan Adhikary Petitioner  
Appellant  
Complainant

**AND**

The Director-General of Mines Safety Defendant  
Post & District Dhanbad - 826 001, Respondent  
Bihar and another. Accused  
~~I/We~~ Swapan Adhikary S/o H.D. Adhikary, aged about 50 years,  
Residing at Hyderabad and working as Deputy Director of  
Mines Safety, Ministry of Labour, Hyderabad.

do hereby appoint and retain

Sri.R. Briz Mohan Singh  
Advocate,  
3 & 38, Agarwal Chambers,  
5-9-1121, King Koti Cross Roads,  
HYDERABAD - 500 001, Tel.No.598698



Advocate/s to appear for me/us in the above Suit/case and to conduct and prosecute or defend the same and proceedings, that may be taken in respect of any application for execution or any Decree or Order passed therein I/We empower my/our Advocate to appear in all miscellaneous proceedings in the above suit matter till all Decree or Order are fully satisfied or adjusted to compromise and to obtain the return of Documents and draw any moneys that might be payable to me/ in us said suit or of matter and notice I/we do further empower my/our Advocate to accept on my/our behalf, service of all or any appeals or petitions filed in any Court of appeal reference or revision with regard to said suit or matter before the disposal of the same in this Honourable Court

*[Signature]*

Certified that the executant how is well acquainted with English and this Vakalatnama and the Contents of the Vakalatnama were read out and explained in Telugu/Urdu/Hindi to executant or he/she/they being unacquainted with English who appeared to have perfectly understood the same and signed/put his/their name or mark in my presence.

Identified by :

Advocate

Executed on this. 15

day of November 1997

MR. Sazee  
Advocate



Central Administrative Tribunal,  
Hyderabad Bench, Hyderabad.



OA/CA No. 1519 of 1997

MEMO OF APPEARANCE

V. RAJESWARA RAO  
ADVOCATE

Standing Counsel for Railways,  
Addl. Standing Counsel for Central Govt.

Counsel for..... Respondent

Address for Service :

Phone : 272

104/2 RT, Sanjeevareddy Nagar,  
HYDERABAD-500 038.

**Central Administrative Tribunal, Hyderabad Bench,  
HYDERABAD.**

OA/CA No. 1519 of 1997

BETWEEN

Swapna Adhikari

Applicant (s)

vs.

The C.G. & Muns. & City  
P & D. Officer  
Rtn. of authority

Respondent (s)

**MEMO OF APPEARANCE**



To,

I V. Rajeswara Rao, Advocate, having been authorised.....

(here furnish the particulars of authority)

by the Central/~~State Government~~/Government Servant/..... authority/corporation/  
society notified under Sec. 14 of the Administrative Tribunals Act, 1985. Hereby appear for  
applicant No...../Respondent No..... and undertake to plead and act  
for them in all matters in the aforesaid case.

Place : Hyderabad

Date : 11/1/98

Address of the Counsel for Service

V. Rajeswara Rao

04/2 RT. Sanjeevareddy Nagar,

HYDERABAD - 500 038.

V. RAJESWARA RAO

Standing Counsel for Railways,

Addl. Standing Counsel for Central Govt.

Signature & Designation of the Counsel.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD  
O.A.NO. 1519/97.

Date of Order: 12-11-97.

Between:

Swapan Adhikary.

.. Applicant.

and

1. The Director General of Mines Safety  
Post and District Lhanbad-1, Bihar.
2. Union of India, rep. by Secretary,  
Ministry of Labour, Shramshakti Bhavan,  
Pafi Marg, New Delhi-1

.. Respondents.

For the Applicant: Mr. R. Priz Mohan Singh, Advocate.

For the Respondents: Mr. V. Rajeswar Rao, Addl. CGIC.

CO. NO.:

THE HON'BLE MR. H. RAJENDRA PRASAD : MEMBER (JUN)

THE HON'BLE MR. S. S. JAI PRASAD : MEMBER (JUL)

The Tribunal made the following order:-

The applicant is aggrieved by the reported nonconsideration of his claim for promotion to the post of Director, Mines Safety, in terms of paras 4 and 5 of O.M.No.22011/4/91-Estt(A), dt.14-9-92, issued by the Dept.of Personnel and Training (A-10). His case, in short, is that a criminal case was filed against him in the Court of the Special Judge (Vigilance), Bhubaneswar, and the same is pending disposal since 1990, and it seems likely that it cannot be disposed for quite some more time which fact would result in an endless wait for him to get his due promotion in the department, if he is otherwise eligible. He submits that the delay in the disposal of the said criminal case is certainly not owing to his own actions or inaction, but due to normal delays in disposal in its turn. Under the circumstances, the applicant is of the view that his case for atleast an adhoc promotion ought to receive early consideration in terms of the O.M.referred to above. He also submits that the punishment imposed on him under Rule 16 of the CCS(CCA) Rules is merely the minimum penalty of censure which may not after all constitute a bar to his promotion, if otherwise eligible and fit, at least on an adhoc basis.

The OA is admitted. The respondents may file a reply in six weeks. As regards the interim relief, a short reply may be filed within three weeks until which time the question is left open. In the meanwhile, it is also clarified that, should the respondents feel disposed to consider the claim of the applicant for

an adhoc promotion, this Tribunal shall have no objection to such

a step, and the pendency of the case will not be a bar to such promotion without prejudice to the contentions of either party.

Post it for orders after three weeks.

CERTIFIED TO BE TRUE COPY

Court Officer, Dy. Registrar

के.टी.एस. प्रसाद (अधीक्षक)

Central Administrative Tribunal

HYDERABAD BENCH

sd/-x x

Deputy Registrar.

UNDER CERTIFICATE OF POSTING

SRI R. BRIZ MOHAN SINGH  
ADVOCATE  
3 & 38 AGARWAL CHAMBERS  
5-9-1121, 1st FLOOR  
KING KOTI CROSS ROADS  
HYDERABAD-500 001.



## Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn.))

Heard Sri R. Briz Mohan Singh, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned standing counsel for the respondents.

1. The applicant in this OA is a Deputy Director of Mines Safety. His prayer in this OA is for a declaration that the action of the Respondents in not reviewing and considering the applicant for promotion to the post of Director, Mines Safety, in terms of paragraphs 4 and 5 of the DOPT, OM No. 22011/4/91-Estt(A) dated 14-9-1992 <sup>b</sup>is illegal etc. and <sup>b</sup>issue consequential direction to the respondents to consider the case of the applicant for adhoc promotion in the ensuing DPC for promotion to the post of Director, Mines Safety, in terms of paragraphs 4 and 5 of the DOPT letter dated 14-9-92 with all consequential benefits.

2. From the various observations of this Bench i) on 12-11-97, ii) on 1-4-1998 and iii) 21-9-98, it is evident that this OA has been dealt with <sup>a</sup>a number of times and some views nearing disposal of this OA had already been taken. Hence, at this late stage to reconsider issues once again afresh is not considered necessary. In this connection we will only reproduce docket order dated 21-9-1998 which reads as below :

"Heard Mr. Y. Suryanarayana for the applicant and Sri V. Rajeswara Rao for the respondents.

2. The main point for consideration at this stage <sup>is</sup> was as to whether or not the appointing authority of the applicant examined the case of the applicant for adhoc promotion in

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

CA.1519/97

dt.10-8-99

Between

Swapan Adhikary

: Applicant

and

1. Director General  
of Mines Safety  
Post & Dist. Dhanbad  
Bihar 826001

2. Union of India  
rep. by Secretary  
Min. of Labour  
Shramshakti Bhavan  
Rafi Marg, New Delhi 1

: Respondents

Counsel for the applicant

: R. Briz Mohan Singh  
Advocate

Counsel for the respondents

: V. Rajeswara Rao  
CGSC

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)

*R*

*1*

respondent, and later returned to the Departmental Officer, whose presence is no longer required.

4. The case may be listed for final disposal on 28-9-98."

3. From the above docket order it is seen that the noting leading to the rejection of this case for adhoc promotion in terms of OM dated 14-9-92 ~~xxxx~~ para 4 and 5 has been considered fully and rejected. However, the learned counsel for the applicant now submits that his case has to be placed before next DPC for consideration of his case as two years had elapsed after rejection of his case in the first instance by departmental authorities. For this he relies on para 5(1) of the said OM, which reads as below :

"5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow adhoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on adhoc basis. Where the Government servant is considered for adhoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him."

4. As can be seen from the noting dated 21-9-98, the M/o of Labour letter dated 7-10-97 addressed to the CBI, was perused by the learned counsel for the applicant. Hence, it can be taken that the rejection of his case for adhoc promotion was decided some time before 7-10-1997. Hence, two years period as mentioned in para 5(1) expires some time in the middle of October, 1999. In that view, the only direction that can be given is that the case of the applicant ~~may~~ be placed before DPC, which will meet after middle of October, 1999 for consideration of the applicant for ~~ad hoc~~ promotion in accordance with law.

5. With the above direction the OA is disposed of.

CASE NO. 1519/92

नि.प्र.स.स.

DATE OF

सं.नि.स.स.

COPY

terms of sub para (a) to (e) of para-5 of the DOP & T Circular dated 15-9-92 prior to consultation with the CBI. For this purpose we had directed the relevant file to be produced for our perusal. Mr. N. Satya Murthy Dy. Director, M/o Labour, Government of India, who was present in the Court produced the file and we have perused the relevant notes and orders as well as the letter which followed as a reference to the CBI, seeking their concurrence for the adhoc promotion of the applicant. We are satisfied that case of the applicant for adhoc promotion was duly considered as required under Sub-para(a) to (e) of the said circular before making a reference to the CBI.

3. Shri Y. Suryanarayana expressed a desire to be shown this particular letter to satisfy himself whether the principles envisaged in the sub paras had indeed been adhered to. The learned counsel for the respondents, on instructions, claimed privilege for this document on the ground that it would be against public interest to disclose its contents to the applicant's counsel. On examining this submission in the light of the contents of the said document, we formed an opinion, after perusing the relevant notes and orders and the relevant document on the file of the Government, that no public or State interest was likely or liable to be injured if the contents only of the particular letter were disclosed. It may be mentioned here that most of the contents of this letter had in any case been already communicated to the applicant by the respondents themselves. We therefore decide to direct the learned counsel for the respondents to show to the applicant's counsel only the M/o Labour letter No.11-D dated 7-10-1997 addressed to the CBI. Accordingly, only the letter was shown to Sri Y. Suryanarayana, counsel for the applicant, by Sri V.Rajeswara Rao, standing counsel for the



3. The learned counsel for the applicant, M.Y. Uyyararajulu, argues that although para-5 of M.P.AT CM.22011/4/91-Att(2) dated 14-9-92 makes it obligatory for the appointing authority to consult him in the matter and to take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau, it was equally

incumbent on his part to initially come to atleast some provisional conclusion on the aspects mentioned in sub paras (a) to (e) of the said para. It is not known whether this was done before a reference was made in the matter to the CJI. In the absence of any indication to this effect, it is contended by Sri Suryanarayana that the CJI may not have had the benefit of having the views of the appointing authority before them prior to giving, or withholding, their concurrence. The respondents have no doubt filed the reply received from the CJI. The issue raised on behalf of the applicant does not, however, become apparent from this reply alone. It is, therefore, necessary to ask the respondents to produce a copy of their letter addressed to the CJI (para-3(c) of the counter) as also of the notes and orders in the concerned file which may have led to this reference being made to the CJI. This may be done within four weeks.

4. So what as it may, it is incidentally seen that paras 5.1 of the same OM lays down on an adhoc basis where departmental (or in this instance criminal) case filed against him is not concluded before the expiry of two years from the date of the meeting of the DFC. It would, therefore, be advisable for the respondents to proceed to deal with the case of the applicant on the basis of para 5.1, if the appointing authority forms an opinion that it would not be against public interest to allow adhoc promotion to the applicant. If such a view comes to be taken, the procedure prescribed in para 5.2 could be followed in dealing with the case further. This needs to be done with reasonable expedition and despatch.

5. The CA may be listed before the Division Bench after four weeks.

प्रमाणित प्रति  
CERTIFIED TO BE TRUE COPY

*[Signature]*  
न्यायमलय अधिकारी/उप रजिस्ट्रार (न्यायिक) *[Signature]*

Court Officer/Dy. Registrar

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

24/- 20

Deputy Registrar

1. The Director General, Mines Safety Pore and Dist. Thane, HYDERABAD BENCH

2. The Secretary, Union of India, Ministry of Labour, Shri Ashakti Bhawan, Rafi Marg, New Delhi-1.

3. One copy to Mr. R. Priz Mohan Singh, Advocate, C.A. No. 1.

4. One copy to Mr. V. Rajeswar Rao, Addl. C.A. C. C.A. No. 2.

5. One photocopy.

pvm.

Disciplinary Authority after considering the same, decided to drop the third article of charge and a revised charge sheet was served on the applicant vide Memorandum dated 24-5-1996 (Annexure VII of OS). The applicant in his written statement of defence admitted both the charges and regretted his ignorance of the relevant rules (Copy of written statement is filed as Annexure R-I). As both the charges were admitted by the applicant, there was no need to hold an oral inquiry and the disciplinary authority after duly considering the reply of the applicant and gravity of the charges, decided to impose a minor penalty of "Censure" upon the applicant and an order to this effect was made on 15-1-1997. A copy of the order was sent to the applicant by registered post.

B) It is further submitted that in the recruitment year 1995-96, there were 8 vacancies in the grade of Director of Mines Safety (Mining) (Rs. 4500-5700). As per recruitment rules, the posts were to be filled by promotion, by selection, from amongst Deputy Directors of Mines Safety (Mining) with five years' regular service in the grade. For 8 vacancies, the zone of consideration is 20. Therefore, 20 Officers were considered for promotion for the 8 vacancies. As per seniority, the applicant was placed at Sl.No.6 in the seniority list and was, therefore, also included in the zone of consideration. The meeting of the DPC presided over by the Member, UPSC met on 5-1-1996 and recommended 8 Officers for promotion. As disciplinary proceedings as well as Criminal proceedings were pending against the applicant, the recommendations of the DPC in respect of the applicant was kept in a "sealed cover" as per the instructions on the subject. (Annexure R-II).

ATTESTOR

  
DEPONENT.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH,  
HYDERABAD.

O.A.No.1519 OF 1997

BETWEEN

Shri Swapan Adhikary

.. APPLICANT.

AND

The Director General of Mines Safety,  
Post & District Dhanbad, Bihar and  
another.

.. RESPONDENTS.

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS

I, K.R.Reddy S/o. late K.Krishna Reddy, aged 56 years, R/o. 10, Shantinagar, Hyderabad do hereby solemnly affirm and sincerely state as follows:

1. The Respondents are acquainted with the facts of the case. I am representing the respondents herein and I am filing this reply affidavit on behalf of the respondents for which I am authorised to file the same.

2. In reply to paras 6 to 6.14, it is submitted as follows:

A). The Departmental action was initiated against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide Memorandum dated 28-10-1994 (Annexure II of the OA). In addition to this, Criminal proceedings were also launched against the applicant on the charge of acquisition of immovable property disproportionate to his known sources of income. The applicant submitted his written statement of defence in response to the Memorandum dated 28-10-1994. The

ATTESTOR

DEPONENT 

the Hon'ble CAT and the matter is sub-judice. Therefore, in view of the submissions made supra, the allegations made by the Applicant are denied.

3. In reply to para 6.15 to 6.22 it is submitted as follows:

(2) The applicant vide his representation dated 4-7-1997, drew the attention of this Ministry to the provisions of DOP & T OM No.22011/4/91-Estt.(A) dated 14-9-1992 (Annexure R-II) wherein it has been laid down that where the disciplinary case/criminal proceedings is not concluded even after the expiry of two years from the date of meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover, the appointing authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him the adhoc promotion keeping in view the following aspects:

- (a) Whether the promotion of the Officer will be against the 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 finalisation of the proceedings, departmental or in the 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 adhoc promotion, which may adversely affect the conduct of the Departmental case/criminal prosecution.

ATTESTOR

  
DEPONENT.

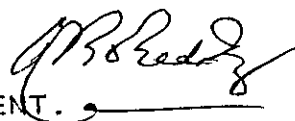
C) It is submitted that there is no basis for such allegations that the DPC held on 5-1-1996 did not consider the applicant for promotion. As has already been stated that the DPC duly considered the applicant for promotion alongwith the other Officers and gave its recommendations in respect of the applicant, which have been kept in "sealed cover". This "sealed cover" can only be opened after finalisation of the disciplinary proceedings and the prosecution case. As has already been mentioned that the Disciplinary Proceedings case has been finalised and a penalty of "Censure" has been imposed upon the applicant but the prosecution case is still pending against him. Till the prosecution case is finalised, the recommendations of the DPC, which are in the "sealed cover" in respect of the applicant, cannot be opened and given effect to. It is, therefore, submitted that the reliefs sought by the applicant are against the instructions in vogue and the application deserved to be dismissed.

D) The mere admission of the fact that there was some delay on the Applicant's part in reporting the acquisition of flat and giving tuitions by his wife in the Annual Property Returns within the stipulated time, is in itself the admission of charges leveled against him. Further, the allegations made by the applicant that there was a delay of 9 years on the part of the Respondents in proceedings against him, are denied. There was no procedural delay on the part of the Respondents as the applicant was proceeded against only after receipt of a confidential report from the CBI in September, 1993.

E) It is further submitted that the counter reply to OA No.128/1997, has already been filed by the Ministry of Labour in

ATTESTOR

DEPONENT.

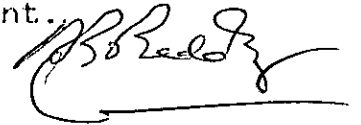


e) It is for the applicant to take necessary steps to finalise criminal case pending before the Court at Bhubaneswar and the Respondents are not party for the delay in finalisation of those proceedings.

4. In reply to para 9 of OA it is submitted that it is incorrect to say that the case of the applicant for adhoc promotion in the light of instructions contained in the DOP & T OM dated 14-9-1992, was not considered.

In view of the above submissions, there are no merits in the OA. The Hon'ble Tribunal may be pleased to dismiss the OA.

Deponent.



Solemnly sworn and signed his name  
on this 31 day of December, 1997.

Before me,

ATTESTOR.

(b) It has been further laid down that the appointing authority should also consult the CBI and take their views into account where the Departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

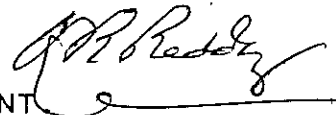
In the light of these instructions, the applicant's request that he may be considered for adhoc promotion pending finalisation of criminal proceedings launched by the CBI which may likely to take another 5 to 6 years.

(C) As has already been submitted that since the recommendations of the DPC in respect of the applicant has been placed in the sealed cover in the three DPCs held during the intervening period since the launch of disciplinary proceedings against the applicant, it was decided in the light of the above mentioned DOP & T instructions to approach the CBI for its concurrence for adhoc promotion of the applicant pending the finalisation of Criminal proceedings launched by the CBI. A letter to this effect was, therefore, sent to the CBI on 07-10-1997.

D) However, the CBI vide its letter dated 17-11-1997 (copy filed as Annexure R-III) has not given its concurrence to the adhoc promotion of the applicant by stating that the charges against the applicant are so grave that no adhoc promotion can be given to the applicant. The appointing authority has considered the matter of giving the applicant adhoc promotion in terms of DOP & T OM dated 14-9-92 and has decided that since the charges of keeping disproportionate assets by the applicant to his known sources of income are grave, the request of the applicant for adhoc promotion in terms of DOP & T OM dated 14-9-1992 cannot be acceded to. A reply has been sent to the Applicant on 8-12-1997. Copy is filed as Annexure R-IV.

ATTESTOR

DEPONENT





R. 2

Confidential.

No. 7588/RC.45(A)/90-BBS.  
Central Bureau of Investigation,  
Govt. of India,  
Office of the Supdt. of Police,  
Orissa Branch : Bhubaneswar.

Dated the 17.11.97

To

The Dy. Secretary,  
Government of India,  
Ministry of Labour/Sharam Mantralaya,  
New Delhi.

Sub:- CBI:SPE:BBS:Case No. RC.45(A)/90 against  
Shri Swapan Adhikary, Deputy Director of Mines  
Safety Oeragaum Region, Kolar Gold Fields,  
Karnataka.

Sir,

Kindly refer to your letter No.C-18011/1/97-ISH.II  
dated 7.10.97 on the above subject.

In this case Chargesheet was submitted on 30.11.94  
in the Court of Special Judge, Bhubaneswar against the  
accused for possession of disproportionate assets amounting  
to Rs. 5,58,666.69.

As per DOP & TOM dated 14.9.92, if the charges  
are grave adhoc promotion can not be considered. Since  
the accused involved in Disproportionate Assets case and  
the charge is grave ,CBI can not give any clearance in  
this regard.

This is for favour of your kind information.

Yours faithfully,

Supdt. of Police,  
CBI/ SPE/ Bhubaneswar.

क्र. सु. व. २३१० व. २३११-११  
I. S. H-II Section  
बाबरी मं. २५६५  
दिनांक/Date 25-11-97

Attested  
30/11/97

Director of Mines Safety  
Region No. II, Hyderabad

- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

**Procedure to be followed by DPC in respect of Government servants under cloud:**

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "Findings regarding suitability for promotion to the grade/post of.....in respect of Shri.....(name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri.....". The proceedings of the DPC need only contain the note, "The findings are contained in the attached sealed cover." The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

**Procedure by subsequent DPCs:**

2.2 The same procedure outlined in para. 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

**Action after completion of disciplinary case/criminal prosecution:**

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the juniormost officiating person. He may be promoted notionally with reference to the date of promotion of his junior. 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 appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there

Attested

*[Signature]*  
30/12

Director of Mines Safety  
Region No. II, Hyderabad

श्री. सु. अ.  
I. S. F.  
हाथी म. ०॥  
दिनांक/Dr

9. These orders will take effect from the date of issue.

10. As the scheme is unique in itself, there may be a need to issue certain clarifications/modifications in respect of seniority, promotions, etc., in future to accommodate certain situation, which may arise from time to time.

11. Detailed instructions regarding deployment of surplus Telephone Operators will be issued separately.

12. This issues with the concurrence of Telecom Finance Advice vide their U.O. No. 2567/FA. I/92, dated 8-9-1992.

206/1992, dated 14-9-1992.

D.P.T. O.M. No. 22011/4/91-Estt. (A), dated 14-9-1992.

Revised guidelines for promotion/confirmation of employees against whom disciplinary/court proceedings are pending or whose conduct is under investigation.

The undersigned is directed to refer to Department of Personnel and Training, O.M. No. 22011/2/86-Estt. (A), dated the 12th January, 1988.

(Sl. No. 67 of Swamy's Annual, 1988) and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants, against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment, dated 27-8-1991, of the Supreme Court in Union of India, etc., v. K.V. Janakiraman, etc. (AIR 1991 SC 2010).

As a result of the review and in supersession of all the earlier instructions on the subject\*, the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras. of this OM for their guidance.

Cases of Government servants to whom Sealed Cover Procedure will be applicable.

At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:—

(i) Government servants under suspension;

(ii) Government servants in respect of whom a charge-sheet has been issued and the disciplinary proceedings are pending; and

\* O.M. No. 39/3/59-Estt. A, dated 31-8-1960; 7/28/63-Estt. A, dated 22-12-1964; 22011/3/77-Estt. A, dated 14-7-1977; 22011/1/79-Estt. A, dated 30-1-1982 (vide Sl. No. 4 of SwamysnewS, November, 1982); 22011/2/86-Estt. A, dated 12-1-1988 (vide Sl. No. 61 of SwamysnewS, March, 1988) and 22011/1/91-Estt. A, dated 31-7-1991 (vide Sl. No. 249 of SwamysnewS, September, 1991).

Sl. No. 2565  
Dy. No. 25-11-97  
etc.

Attest  
30/12/97

Director of Mines Safety  
Section No. II, Hyderabad

- (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.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow *ad hoc* promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on *ad hoc* basis. Where the Government servant is considered for *ad hoc* promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

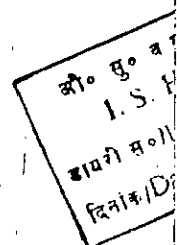
5.2 After a decision is taken to promote a Government servant on an *ad hoc* basis, an order of promotion may be issued making it clear in the order itself that—

- (i) the promotion is being made on purely *ad hoc* basis and the *ad hoc* promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the *ad hoc* promotion and revert the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the *ad hoc* promotion already made may be confirmed and the promotion treated as a regular one from the date of the *ad hoc* promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his *ad hoc* promotion with reference to his placement on the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he

Attache

*[Signature]*  
23/12



Director, I. S. P.  
23/12

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 benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee, etc. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found, as a result of the proceedings, that some blame attached to the Government servant, at least the penalty of "censure" should be imposed.

*Six-monthly review of "Sealed Cover" cases:*

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servant, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of six months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its finding in the sealed cover. Such a review should be done subsequently also every six months. The review should, *inter alia*, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

*Procedure for ad hoc promotion:*

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 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;

SA—22

11-11-97  
2565  
25-11-97

Attended  
25/11/97

Director of Miss Safety  
Region No. 11, Dardindad

would also be allowed his due seniority and benefit of notional promotion as envisaged in para. 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the *ad hoc* promotion granted to him should be brought to an end.

*Sealed cover procedure for confirmation:*

6. The procedure outlined in the preceding paras. should also be followed in considering the claim for confirmation of an officer under suspension, etc. \*[ A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC. ]

*Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion:*

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para. 2 above arise after the recommendations of the DPC, are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor-General of India.

207

*D.O.P., Lt. No. 4-54/91-SPB. II, dated 15-9-1992, to CPMG,  
Maharashtra Circle, Bombay*

#### Clarifications regarding BCR Scheme in Dept. of Posts

I am directed to refer to your Letter No. Staff/A/85/Orders, dated 14-5-1992, on the above-mentioned subject and to clarify as follows:—

2. Regarding para. (1), it is stated that with the introduction of BCR Scheme promotion to HSG-II is on completion of 26 years of satisfactory service in the basic cadre and LSG put together.

3. Regarding para. (2), your attention is invited to the guidelines regarding posting of BCR officials, issued *vide* this Office Letter No. 4-4/92-SPB-II, dated 30-3-1992 (*vide* Sl. No. 186) and subsequent clarification, dated 5-8-1992 (*vide* Sl. No. 199). In regard to officials who decline promotion general instructions which envisage debarring such officials for promotion for one year may be followed.

\* *Editors' Note:*—No longer necessary in view of the revised confirmation procedure delinking confirmation from the post.

RECEIVED  
11/11/92  
By No. 2565  
Date 25-11-92

Attested  
[Signature]  
30/11/92