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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 107/05

Misc. Petition No.

Contempt petition No.

Review Application No.

Applicants. J. L. Nigam

Respondents. K. V. P. Gony

Advocates for the Applicant. J. L. Sarkar, A. Chakraborty

Advocates of the Respondents. CAS

Notes of the Registry	Dated	Order of the Tribunal
<p>1. The application is in re. 12.5.2005 is filed/C.P. for Rs. 10/- d. posted vide P.C. No. 206/1162/38. Dated 21-2-05</p> <p><i>SPM</i> In Dy. Registrar</p> <p>Slips taken with envelops.</p> <p><i>SPM</i></p> <p>Received this order and step for R-2 Alka Das. 13/5/05</p>	<u>12.5.2005</u>	<p>Present : Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.</p> <p>Hon'ble Mr. K. V. Prahadan, Administrative Member.</p> <p>Mr. J.L. Sarkar, learned counsel for the applicant draws our attention to the decision of the Central Administrative Tribunal, Bangalore Bench dated 13.2.2004 in O.A. No. 292/2003 and submits that the respondents are bound to conduct review DPC within six months which has not been done and this prejudiced the applicant.</p> <p>Ms. U. Das, learned addl. C.G.S.C. appear- ing on behalf of the respondents submits that she will get instructions from the respondents in the matter.</p> <p>post on 14.6.2005.</p> <p>Issue a copy of this order to Ms. U. Das, learned Addl. C.G.S.C. for the respondents urgently.</p>

K. V. Prahadan
Member (A)

G. Sivarajan
Vice-Chairman

14.6.2005

Ms. U. Das, learned Addl. C.G.S.C submits that the respondents wants four weeks more time. After hearing Mr. J. L. Sarkar, learned counsel for the applicant we are of the view that only three weeks time can be granted.

Post on 12.7.2005. No further adjournment.

K. Venkatesh
Member

R. Jagadeesan
Vice-Chairman

bb

12.7.2005

Heard Mr. J. L. Sarkar, learned counsel for the applicant and Ms. U. Das, learned Addl. C.G.S.C. for the respondents. The Standing counsel seeks for further four weeks time. We are of the view that this matter can be posted for hearing. Post on 11.8.2005 for hearing. The statement or whatever may be in the meantime.

K. Venkatesh
Member

R. Jagadeesan
Vice-Chairman

bb

Because litw alld has been adj. 11.7.05. There is no para 11.8.05. Order reserved.

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12.8.05

Heard Mr. J. L. Sarkar, learned counsel for the applicant and Miss U. Das, learned Addl. C.G.S.C for the respondents. Hearing concluded. Order reserved.

K. Venkatesh
Member

R. Jagadeesan
Vice-Chairman

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18.8.2005

Judgment pronounced in open Court, kept in separate sheets.

The O.A. is disposed of in terms of the order.

K. Venkatesh
Member

R. Jagadeesan
Vice-Chairman

Received.

25/8/05

*Inspector (law)
Central Excise, Gurukulam.*

*Received
Usha Das*

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.**

O.A. No. 107/2005

DATE OF DECISION: 18.08.2005.

Shri John Lal Ngilheia

APPLICANT(S)

Shri J.L. Sarker

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

U.O.I. & Others

RESPONDENT(S)

Ms. U. Das

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment? *✓*
2. To be referred to the Reporter or not? *✓*
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches? *✓*

Judgment delivered by Hon'ble Vice-Chairman.

G. Sivarajan

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 107/2005

Date of Order : This the 18th day of August 2005.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Mr. K.V. Prahladan, Administrative Member.

Shri John Lal Ngilneia
Additional Commissioner,
Office of the Chief Commissioner,
Central Excise and Customs,
Shillong Zone, Shillong,
Meghalaya.

... Applicant

By Advocates Mr. J.L. Sarkar, Mr. A. Chakraborty.

- Versus -

1. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi.

2. Central Board of Excise and Customs,
Government of India,
Through its Chairman,
North Block, New Delhi.

... Respondents.

By Ms. U. Das, Addl. C.G.S.C.

ORDERSIVARAJAN. J. (V.C.)

The applicant is presently working as Additional Commissioner (Group 'A' Officer) in the Office of the Chief Commissioner, Central Excise and Customs, Shillong. He has filed this application seeking for direction to promote him on ad hoc basis as Commissioner, Customs and Central Excise on the basis of D.P.C. held in December 1999 with effect from the date of promotion of his juniors/from a date following the six-monthly review immediately following the adoption of sealed cover procedure. He has also sought for subsequent monetary benefits from the date of his promotion/ad-hoc promotion.

2. The brief facts are that the applicant was recruited through UPSC and initially joined as Assistant Collector (Group - A, IRS) in the Central Excise and Customs in 1973. He was promoted as Deputy Collector in 1981 and subsequently promoted as Additional Collector in 1990. The designation of Collector was changed in the year 1991 to Commissioner. As such, he is an Additional Commissioner. The next promotion of the applicant is to the post of Commissioner of Central Excise and Customs. A DPC for selection and appointment to the said post was convened in December 1999 and the result was kept under sealed cover since 1999. It is the grievance of the applicant that he has not been promoted on the plea of pendency of departmental/ criminal proceedings. It is also his case that six-monthly review under the scheme of sealed cover system has not been done for ad hoc promotion and this has been causing undue loss and injury to the applicant by way of depriving him of his rights. It is further stated that



while the applicant was working as Additional Commissioner of Central Excise and Customs, Belgaum, Karnataka, contraband silver was seized by Customs and Central Excise on 23.2.1992 on the basis of information received and some delay occurred in submission of the recorded information and formal departmental proceedings was initiated against the applicant and other officers. The applicant was placed under suspension from 15.01.1993 to 15.12.1993. Charge sheet under CCS (CCA) Rules 1965 was issued to the applicant on 22.11.1993 alleging production of bogus informer with intent to misappropriate the informer reward. The departmental proceeding culminated by imposing penalty of reduction of pay by three stages for three years with culminated effect by order dated 29.05.1998 and the period of penalty expired on 30.05.2001. Criminal proceedings with the same allegation was instituted and a charge sheet dated 16.09.2000 was filed in the Sessions Court, Dharwad, Karnataka. Criminal case, it is stated, is still pending.

3. According to the applicant, under Rule 11 of the CCS (CCA) Rules, imposition of penalty by reduction to the lower stage in the time-scale of pay for a specified period with culminative effect, though a major penalty, has no impact in the matter of promotion to higher grade. It is also stated that periodical six-monthly review ought to have been carried out since the date of adoption of the sealed cover procedure in December 1999 and the applicant should have been promoted to the post of Commissioner at least on ad hoc basis. It is further stated that the applicant submitted representations dated 18.06.2001, 13.11.2003 and 06.01.2005 (Annexures - B, C and D respectively) to the Chairman, CBEC, New Delhi.

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4. Mr. J.L. Sarkar, learned counsel appearing for the applicant had submitted that adoption of sealed cover procedure in the present case is illegal in that circumstances under which sealed cover procedure can be adopted as per the Government of India orders is absent. Counsel further submitted that the order imposing penalty of reducing the pay by three stages in the time scale of pay of Rs. 14300-400-18,300/- for a period of three years w.e.f. 1.6.98 and that too, by postponing the increments of pay during the said period with cumulative effect is not a bar for promotion to the post of Commissioner. Counsel submitted that only if the penalty imposed falls under Clause (VI) of Rule 11 it is a bar for further promotion. Counsel also took us to paragraphs 17.7.1 and 17.8.1 of Swamy's Complete Manual on Establishment and Administration (Ninth Edition-2003) (page 855 - 56) and submitted that there is a duty cast on the respondents to convene six-monthly review referred to therein and to consider the matter in the light of the guidelines contained therein. Counsel also relied on an order dated 13.02.2004 in O.A. No. 292/2003 passed by the Bangalore Bench of the Central Administrative Tribunal in similar circumstances. Counsel submitted that even if the sealed cover procedure is adopted it is not mandatory to withhold promotion. Counsel in support relied on the decision of the Supreme Court in B.C. Chaturbedy Vs. U.O.I. & Ors., AIR 1996 SC 484. Counsel further submits that penalty order was imposed on 29.05.1998 and criminal proceeding was initiated only on 16.09.2000 and therefore the respondents ought to have opened the sealed cover immediately after the penalty order was passed. Counsel submitted that at any rate the respondents should have considered the case of

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the applicant for promotion to the post of Commissioner at least on ad hoc basis.

5. No written statement is filed in this case. We have heard Ms. U. Das, learned Addl. C.G.S.C. for the respondents who sought for further time to file written statement.

6. We have considered the matter. Admittedly, in connection with the departmental proceeding the applicant was under suspension for the period from 15.1.1993 to 15.12.1993 and the charge memo was issued to the applicant on 22.11.1003 and the departmental proceedings culminated in the final order dated 29.5.1998. The pay of the applicant in the post of Additional Commissioner was reduced by three stages from Rs. 15,900/- to Rs. 14,700/- in the time scale of pay of Rs. 14,300-400-18,300/- for a period of three years w.e.f. 1.6.1998. Further, it was ordered that the applicant will not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the effect of postponing his future increments of pay. This penalty imposed squarely falls within Rule 11(v) of CCS (CCA) Rules 1965, which reads:

"(v) save as otherwise provided for in clause (iii-a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;"

In this context it is relevant to refer to Rule 11 (vi) also, which reads:

"(vi) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time-scale of pay, grade, post or service from which he was reduced, with or

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without further directions, regarding conditions of restoration to the grade or post or service from which the Government Servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

It can be seen from the provisions of Sub Rule (v) and Sub Rule (vi) of Rule 11 that whereas Sub Rule (vi) states that reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government Servant to the time scale of pay, grade, post or service from which he was reduced, such a restriction is not there in Sub Rule (v). It is on the basis of this distinction counsel for the applicant had contended that imposition of a major penalty falling under Sub Rule (v) of Rule 11 is no bar for promotion to the post of Commissioner. Here it must be noted that Sub Rule (vi) of Rule 11 speaks of the bar only for promotion to the time-scale of pay, grade, post etc. from which it was reduced by way of penalty. In other words, it does not deal with the situation of promotion to a higher post than that of the post he had held at the time of departmental proceeding. It is unnecessary for us to deal with these provisions any further since the Government had issued circulars on 12th January 1988 available in the Book - Dr. Awasthi on 'Central Civil Services Rules' published in 1999 (Occurring in pages 104 to 108). (To the same effect are the Office orders of Government of India Department of Personnel and Training O.M. No. 22011/2/99-Estt (A) dated 21.11.2002 and O.M. No. 22011/2/2002 - Estt. (A) dated 24.2.2003 available at pages 222 to 226 of Swamy's compilation of CCS CCA Rules, 29th Edition 2005). Paragraph 2 deals with cases where sealed cover procedure is applicable. The circumstances in which sealed cover procedure is to be adopted are as follows :

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- (i) Government Servants under suspension
- (ii) Government Servants in respect of whom disciplinary proceedings are pending (or a decision has been taken to initiate disciplinary proceedings;)
- (iii) Government Servants in respect of whom prosecution for a criminal charge is pending (or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution)
- (iv) Government Servants against an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise.

The bracketed portion in (ii) and (iii) above and (iv) are not their in the 2002 and 2003 orders. Paragraph 2.1 deals with the procedure to be followed by D.P.C. in respect of those under cloud, which reads:

"(2.1) Procedure to be followed by D.P.C. in respect of those under cloud - The Departmental Promotion Committee shall assess the suitability of the Government Servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending or contemplated against them or where the investigation is in progress. The assessment of the D.P.C. including "Unfit for Promotion", and the grading awarded by it will be kept in a sealed cover. The cover will be suspended '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/investigation against Shri The proceedings of the D.P.C. 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 D.P.C. in respect of the suitability of a Government Servant for his promotion are kept in a sealed cover."

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Paragraph 3.1 provides that 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 and his case for promotion may be considered by the next D.P.C. in the normal course and having regard to the penalty imposed. Paragraph 4 deals with the six-monthly review of sealed cover cases: The relevant portion reads thus:

*"(4) six monthly review of "sealed cover" cases - It is necessary to ensure that the disciplinary case/criminal prosecution/investigation instituted against any Government Servant is not unduly prolonged and all efforts to finalize expeditiously the proceedings should be taken so that the need for keeping the case of 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 Servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjusted his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, *inter alia*, cover the following aspects:*

- (i) The progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion;"

Paragraph 6 deals with the procedure for ad hoc promotion, which read thus :

"(6) Procedure for ad hoc promotion. - Inspite of the six-monthly review referred to in a para 4 above, there may be some cases, where the disciplinary case/investigation/criminal prosecution against the Government Servant are not concluded even after the expiry of two years from the date of the

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meeting of the first D.P.C., 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 to 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 no 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 or the investigation is not directly or indirectly attributable to the Government Servant concerned.
- (e) Whether there is any likelihood of misuse of official position, which the Government Servant may occupy after *ad hoc* promotion, which may adversely affected 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. Where the investigation as contemplated in para 2(iv) above is still pending, the CBI or the other authorities concerned should be consulted."

Paragraphs 6.1 and 6.2, which are relevant reads thus:

"(6.1) 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 D.P.C. held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion and *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

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without taking into account of the pending disciplinary case/criminal prosecution/investigation against him.

(6.2) After 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 the ad hoc promotion and revert at any time the Government Servant to the post from which he was promoted."

7. In the instant case it is not clear as to whether the respondents had conducted six-monthly review as contemplated under Rules mentioned above. It is also not clear as to whether the respondents had considered the case of the applicant for giving ad hoc promotion in view of the long pendency of criminal proceedings as provided under the Rules mentioned above. The decision of the Bangalore Bench of the Tribunal in O.A. 292/2003 (Annexure - E) considering almost identical provisions in the Government orders extracted in the said order in similar circumstances had directed that if no six monthly review D.P.C. has been convened or desirability of ad hoc promotion in terms of the instructions on ad hoc promotion considered the said exercise has to be carried out within three months from the date of receipt of the order. In the circumstances, we are also view that this O.A. can be disposed of with direction to the respondents to consider the case of the applicant for promotion/ad hoc promotion as provided in the provisions of the executive orders

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extracted above. Having regard to the fact that the applicant had undergone penalty period as early as on 30.5.2001 and the further fact that criminal prosecution launched on 16.9.2000 is still pending, the respondents are directed to consider the case of the applicant for promotion by way of six monthly review D.P.C. and/or ad hoc promotion as per provision of the executive orders extracted above within a period of three months from the date of receipt of this order and communicate the decision to the applicant immediately thereafter. These directions are necessitated only because the respondents had not acted upon the representations filed by the applicant in 2001, 2003 and January 2005

The O.A. is disposed of as above. The applicant will produce this order before the respondents for compliance.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

11 (1) MAY 2005

গুৱাহাটী বৰ্তক বিহু
Guwahati Bench

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File No. 57
Plaintiff's Side
11/5/05

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 107 /2005

Sri John Lal Ngilneia

----- VS -----

Union of India & Ors

SYNOPSIS OF THE APPLICATION

The applicant is in Group-A service and at present working as Additional Commissioner in the Office of the Chief Commissioner of Central Excise and Customs, Shillong Zone. While working as Additional Commissioner, Belgaum, Karnataka contraband silver was seized by Customs and Central Excise on 23/2/1992 on the basis of information received. It was alleged against the applicant that bogus informer was produced for misappropriating informer reward. The applicant was suspended from 15/1/1993 to 15/12/1993.

Charge-Sheet under CCS(CCA) Rules, 1965 was issued against the applicant on 22/11/93 and he was imposed with major penalty by order dated 29/5/98(Annexure-A) reducing pay by three stages in the time scale for three years. The penalty expired on 30/5/2001.

DPC for promotion as Commissioner was held in December, 1999 which was kept in sealed cover.

Six monthly review was not held and as such the applicant was deprived of adhoc promotion as Commissioner also.

Criminal proceeding against the applicant was also started for the same allegation and charge-sheet has been filed in court on 16/9/2000, the criminal proceeding is still pending though the applicant has always co-operated.

The applicant has not been given promotion as Commissioner after breaking the sealed cover nor his case has been considered by six monthly review for promotion as Commissioner on adhoc basis. The action of non promotion of the applicant is illegal and not supported by any Rule or law.

In a similar circumstances the Hon'ble CAT, Bangalore Bench by order dated 13/2/2004 (Annexure-E) has been pleased to pass order directing to review sealed cover of the applicant in that case.

The applicant prays for promotion as Commissioner/Adhoc promotion as commissioner with consequential benefits.

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 107 /2005

Shri. John Lal Ngilneia Applicant

..... Versus

Union of India & Ors Respondents

I N D E X

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Filed by:


Anupam Chakraborty
11/5/05
ADVOCATE

In The Central Administrative Tribunal
Guwahati Bench :: Guwahati.

O.A. No. /2005

Shri John Lal Ngilneia
Additional Commissioner,
Office of the Chief
Commissioner Central Excise and
Customs, Shillong Zone, Shillong,
Meghalaya.

Filed by the Office and
through P. Chakrabarty
11/5/2005

.....Applicant

.....Vs.

1. Union of India,
Through the Secretary,
Ministry of Finance, Department of
Revenue, Govt. of India, North
Block, New Delhi.

2. Central Board of Excise and
Customs, Govt. of India,
Through its Chairman, North Block
New Delhi.

.....Respondents

Details of the Application :

1. Particulars of the order against which the application is
made :

This application is made for the six monthly review for promotion to the post of Commissioner of Central Excise and Customs and Ad-hoc promotion under the sealed cover procedure, and also for opening the sealed cover for regular promotion in view of the fact that penalty period imposed by disciplinary proceeding has been over, and the criminal proceeding on the same issue having started belatedly.

By chance

2. Jurisdiction:

The Applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by the constitution of India.

4.2 That the applicant is a Group-A Officer of the Government of India in the Department of Central Excise and Customs now working as Additional Commissioner in Chief Commissioner Office, Shillong. The applicant was recruited through UPSC and initially joined as Assistant Collector (Group-A, IRS) in Central Excise and Customs in 1973,

promoted as Deputy Collector in 1981, and thereafter promoted as Additional Collector in 1990. From 1991 the designation of Collector has been changed to Commissioner and as such his designation is Additional Commissioner.

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4.3 That his next promotion is to the post of Commissioner of Central Excise and Customs. It is stated that DPC for promotion to Commissioner has already been held in December, 1999 and the result is kept under sealed cover since 1999. It is stated that number of officers' promotion was kept in sealed cover for the same allegations leading to departmental/criminal proceedings, some have already been promoted, but most unfortunately the applicant has not been promoted on the plea of pendency of departmental/criminal proceeding, though the applicant has no hand or negligence in the pendency of the proceedings.

4.4 That in the case of the applicant the six monthly review under the scheme of sealed cover system has not been done for Ad-hoc promotion, and this has been causing undue loss and injury to the applicant by way of depriving the applicant of his rights from enunciated policy of the Government of India.

4.5 That the fact of the disciplinary proceeding is that while working as Additional Commissioner of Central Excise and Customs, Belgaum, Karnataka, Contraband silver was seized by Customs and Central Excise on 23.02.1992 on the basis of information received. Some delay occurred in

submission of the recorded information. Formal departmental proceedings was started against the applicant and other officers. The applicant was placed under suspension from

15.01.1993 to 15.12.1993. Charge-sheet under Central Civil Services (classification, control and appeal) Rules, 1965 was issued to the applicant on 22.11.1993 alleging production of bogus informer with an intent to misappropriate the informer reward.

4.6 That the applicant fully co-operated in the departmental proceeding which ended with imposition of penalty of reduction in pay by three stages for three years by order no.F.No.C-14011/30/93-AD.V dated 29.05.1998. The period of penalty expired on 30.05.2001.

The order of punishment is as under:

"NOW, THEREFORE, the President, after considering all the relevant material and commission's advice has ordered that the pay of Shri J.L. Ngilneia, Addl. Commissioner be reduced by 3(three) stages from Rs.15,900/- to Rs.14,700/- in the time scale of pay of Rs. 14,300-400-18,300 for a period of 3 (three) years w.e.f. 1.6.98. It is further directed that Shri J.L. Ngilneia will not earn increments of pay during the period of reduction and that on the expiry of the period, the reduction will have the

effect of postponing his future increments of pay."

As already stated the period of penalty has expired w.e.f. 30.05.2001. The applicant had filed an OA in the Central Administrative Tribunal, Principal Bench against the penalty which has been dismissed.

Zulfiqar

A copy of the order dated 29.05.98 is enclosed as Annexure-A.

4.7 That the aforesaid penalty is a major penalty under Rule 11(V) of the CCS (CCA) Rules, 1965. It is pertinent to state that the said penalty is not a bar to the promotion of any Government servant and as such is/was not a bar for promotion of the applicant.

Rule 11(VI) of the said rules deals with reduction to lower time scale of pay, grade, post or service and shall ordinarily be a bar to promotion under the rule. In case of applicant there was no bar to promotion. His DPC was conducted earlier in point of time and was kept under sealed cover. After the above penalty, the sealed cover ought to have been opened and if found fit, his promotion given effect to from the date his junior was promoted or any earlier date when he could be earlier promoted. The penalty imposed subsequently should be given effect to in the promotional post of Commissioner of Central Excise and Customs but applicant has been denied the same promotion.

4.8 That the D.P.C. was held in 1999. Criminal proceeding in the same allegation was instituted and the date of filing charge-sheet in court (Session Court, Dharwad, Karnataka) is 16.09.2000. The criminal proceedings can, therefore, have no effect in the promotion of the applicant as Commissioner and the sealed cover procedure is not applicable for the said criminal proceedings.

4.9 That the criminal proceedings for the same allegation as narrated above is illegal.

4.10 That even after the period of penalty after the departmental proceedings was over on 30.05.2001, the recommendation of the D.P.C. in December, 1999 was not opened and the applicant denied promotion as Commissioner. It is reiterated that the sealed cover procedure for the D.P.C. of December, 1999 is not applicable for this criminal proceedings with charge sheet filed in court on 16.09.2000

4.11 That the applicant has always been co-operating in the criminal proceedings also, but unfortunately the proceedings is pending and being delayed on which the applicant has no hand.

4.12 That the recommendations of the D.P.C. of December, 1999 is still being kept in sealed cover, which is not supported by any procedure and law.

4.13 That the applicant is victim of multiple vexation, and double penalty one by way with-holding of promotion and another reduction in lower stage in the time scale of pay, which is not contemplated or supported by any rule or procedure. It is stated that there is specific rule made under Article 309 of the Constitution of India viz. the CCS(CCA) Rules, 1965 mandating the circumstances when the penalty is a bar for promotion on imposition of major penalty. The penalty in case of the applicant is no bar for promotion. It is submitted that when the rule is clear no extraneous aid is called for.

4.14 That the case of applicant for promotion on ad-hoc basis after six-monthly review under the sealed cover procedure has also not been considered and as a result the applicant has been suffering irreparable loss.

4.15 That the applicant submitted representation dated 18.06.2001 to the Secretary, Department of revenue, (with copies to (CBEC), and representations dated 13.11.2003 and 06.01.2005 to the Chairman CBEC, New Delhi for promotion to the grade of Commissioner of Customs and Central Excise but to no effect.

Copies of the representations dated
18.06.2001, 13.11.2003 and
06.01.2005 are enclosed as Annexure
B, C and D respectively.

4.16 That the causes of withholding promotion, and sealed cover procedure in the case of the applicant has been dealt with non-application of mind and in casual routine manner.

4.17 That sealed cover procedure is a system which ought to be adopted for cause of discipline and justice. The respondent could promote the applicant after the D.P.C., treating the same as ad-hoc, and it is not mandatory that sealed cover procedure must be adopted.

In B.C. Chaturbedy-vs-U.O.I. & others the Hon'ble Supreme Court held as under:

"Two courses in this behalf are open to competent authority, viz. sealed cover procedure which is usually followed, or promotion, subject to the result of pending disciplinary action. Obviously, the appropriate authority adopted the latter course and gave the benefit of promotion to the appellant. Such an action would not stand as an impediment to take pending disciplinary action to its logical conclusion. The advantage of promotion gained by the delinquent officer would be no impediment to take appropriate decision to pass an order consistent with the finding of proved misconduct."

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:: 9 ::

It is stated that different benches of the Hon'ble CAT have passed orders for Ad-hoc promotion in such cases. In the case of an applicant in the same case in the respondent department the Hon'ble CAT, Bangalore Bench has been pleased to pass order dated 13.02.2004 in OA No.292/2003 (Shri G.S. Shivakani -vs- U.O.I. & others) directing to review of the sealed cover of the applicant.

Z. Ali

Copy of the order dated 13.02.2004

is included as Annexure-E.

5. Grounds for reliefs with legal provisions:

5.1 For that the sealed cover procedure has been applied and continued after the completion of departmental proceeding, without any authority of law.

5.2 For that D.P.C. was held in December, 1999 and criminal proceeding commenced by filing charge sheet in court on 16.09.2000, and sealed cover procedure is not applicable for the same.

5.3 For that the applicant was imposed major penalty under Rule 11(V) of CCS(CCA) Rules, 1965 which is no bar for promotion.

5.4 For that the six monthly review under sealed cover procedure has not been carried out in case of the applicant and Ad-hoc promotion denied.

5.5 For that withholding of promotion and also reduction in time scale of pay are independent penalties under CCS(CCA) Rules, and imposition of both by the same proceedings is illegal.

5.6 For that in any event of the matter there was no reason for not opening the sealed cover of D.P.C. of December, 1999 on 30.05.2001. In fact of the case it ought not to have been adopted after order of ~~opened on 29.05.98.~~ RJ

5.7 For that denial of promotion as Commissioner of Customs, ad-hoc and regular in the facts and circumstances of the case is violative of the Articles 14 and 16 of the constitution of India, and that speedy trial is also be a fundamental right of the applicant.

6. Details of the remedies exhausted

The applicant declares that there is no other efficacious remedies under any Rule and this Hon'ble Tribunal is the only forum to adjudicate the subject matter.

7. Matters not previously file or pending with any other court

The applicant declares that he has not filed any case on the subject matter before any court, forum or any other institution. However, he has submitted representations but without any result.

8. Reliefs sought for

Under the above facts and circumstances the applicant prays for the following reliefs :

8.1 The applicant be promoted/promoted on ad-hoc basis as Commissioner of Customs and Central Excise on the basis of D.P.C. held in December, 1999 w.e.f. the date of promotion of his junior/from a date following the six-monthly review immediately following the adoption of sealed cover procedure.

8.2 The applicant be paid the consequential monetary benefits from the date of his promotion/ad-hoc promotion as in prayer no.8.1 above including arrears of pay and allowances.

8.3 The applicant be paid interest on the arrears.

8.4 The applicant is entitled to the cost of the case which may kindly be quantified by the Hon'ble Tribunal.

8.5 Any other relief or reliefs as the Hon'ble Tribunal deem fit and proper.

Bohra

.. 12 ..

The above reliefs are prayed for on the ground stated in para 5 above.

9. Interim Relief

During the pendency of this application the applicant prays for the following interim reliefs:

9.1 The applicant be promoted on ad-hoc basis after carrying out the six-monthly review for promotion on ad-hoc basis under the sealed cover procedure in terms of Government instructions (Para 17.8.1, Swamy's Complete Manual on Establishment and administration, 8th edition, 2000, Page-854)

The above relief is prayed for on the ground stated in para 5 above.

10. This application is filed through the Advocate.

11. Particulars of Postal Order:

- i) IPO No : 200-116238
- ii) Date of Issue : 24-2-05
- iii) Issued from : G.P.O ,
- iv) Payable at : G.P.O ,

12. List of Enclosures

As per Index.

Verification

Verification

I, John Lal Ngilneia, son of N. Luaia, aged about 51 years, a resident of Shillong, do hereby verify that the statements made in the paragraphs 1,4,6 to 12 are true to my knowledge and statements in para 2,3 and 5 are true to my legal advice and that I have not suppressed any material fact.

And I, sign this verification on this 7 day of May, 2005.


(J. L. NGILNEIA)
Signature.

CONFIDENTIAL



F.NO.CI4011/30/93-AD.V.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(AD.V. SECTION)

New Delhi, dated the 29th May, 1998

ORDER

WHEREAS disciplinary proceedings were instituted against Sh. J.L. Ngilneia, Addl. Commissioner of Central Excise, Belgaum under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965, vide Memo. of even number dated 22.04.1993. Details of the charges are as under :-

ARTICLE OF CHARGE:-

That, while working as Additional Collector of Central Excise, Belgaum Shri J.L. Ngilneia :-

- (i) under the directions of Shri G.V. Naik, the then Collector of Central Excise, Belgaum conspired
- (ii) influenced and connived with Shri G.S. Shivakeri, Inspector of Central Excise,

in producing a bogus informer and recorded from such informer an ante dated and doctored information with an intent to make it appear if the case of seizure of 76 bars of silver valued at Rs. 2.29 Crores with the truck at Elipani on 4.2.1992 was a case resulting from such bogus information and with an intent to defraud the Government and to misappropriate the consequential reward of Rs. 27.55 Lakhs.

In so doing Shri J.L. Ngilneia fabricated and falsified records and reports to suit his intent and influenced his subordinates to fabricate and falsify record and reports.

Thus, Shri J.L. Ngilneia, the then Additional Collector of Central Excise, Belgaum failed to maintain absolute integrity, devotion to duty and conducted himself in a manner unbecoming of a Government servant. He thereby contravened the provisions of Rule 3(1)(i),(ii)&(iii) of C.S.(Conduct) Rules, 1964.

*Affected
Rakesh D
Advocate*

AND WHEREAS the Disciplinary authority has also observed that Shri G.S. Shivakeri revealed in this statement dated 3.7.92 that after the seizure of Silver on 24.2.92, he was pressurised by the Collector and the Addl. Collector to create the records to show that the seizure was done on the basis of prior information received by Shri J.L. Ngilneia. Accordingly, he brought his friend Sh. Basav Raj to the residence of Sh. Ngilneia in the morning on 25.2.92 to write the information about the transportation of the contraband Silver. Though the information was written on 25.2.92 but the same was back dated 23.2.92. The DRI-I was also prepared on 25.2.92. According to the provision of Customs Preventive Manual, the DRI-I was required to be sent within 24 hours of the seizure, but the said DRI-I report was sent on 25.2.92, code number of the informer, his name and full address were, however, not indicated. The statement of Sh. G.S. Shivakeri dated 3.7.92 is corroborated by the statement given by Sh. Basav Raj on 14.7.92. Sh. Raj has confirmed that he knew Sh. Shivakeri and had gone to the residence of Sh. Ngilneia as requested by Shri Shivakeri in the morning on 25.2.92 and had written the information as directed by them. Therefore, the statement of Sh. Shivakeri and Sh. Basav Raj clearly prove beyond doubt that Sh. Ngilneia had no other information prior to the information received on phone from Sh. A.K. Dhar. The evidence furnished by Sh. G.S. Shivakeri and Sh. Basav Raj are also corroborated by the evidence given by Sh. J.L. Ngilneia himself in his statement dated 27.7.92. Sh. J.L. Ngilneia has retracted from statement dated 27.7.92 after a lapse of over 2 years which only indicates that the retraction made in the affidavit is an after thought. Moreover, it is difficult to accept that a senior officer like Sh. Ngilneia could have been coerced to give a statement. His affidavit sworn on 7.9.94 is an after-thought, is also borne out from the fact that in his letter dated 13.12.93 in response to the Charged Memo, and an another letter dated 15.3.94, he reaffirmed the contents of his statement dated 27.7.92. This also observed that the statement of Sh. Shivakeri, Basav Raj and Ngilneia were recorded by different persons at different places on different dates. It appears from the documentary, oral and circumstantial evidence on record that Sh. Ngilneia had no other advance, information about the movement of contraband silver. He has recorded a bogus information slip from a bogus informer and thought it was actually written on 25.2.92 and the date was shown as 23.2.92. Sh. Ngilneia could not produce any worthwhile evidence, oral or documentary, to show that he had the advance information regarding the transportation of contraband silver in the morning on 23.2.92. In the circumstances, the charges relating to falsely creating an additional source of information and ante dating the same stand proved against Sh. J.L. Ngilneia, Addl. Commissioner.

AND WHEREAS the matter has been examined in consultation with UPPC, after taking into account all the aspects of the case, Commission has advised for imposing the penalty of reduction of his pay by 3(three) stages on Sh. J.L. Ngilneia for a period of 3(three) years with further direction that

AND WHEREAS on denial of the charges, an oral enquiry was conducted. I.O. held the charges as partly proved. A copy of I.O.'s report was supplied to C.O. on 1.8.96 for making his submission, which he made in December, 1996.

AND WHEREAS Shri J.L. Ngilneia has contended that secret information on the movement of contraband silver was already received by him from a local informer with the assumed name of Shri Basav Raj in the morning of 23.2.1992. The follow up action leading to the seizure of silver was a result of that information available with him. He has also contended that the Directorate of Revenue Intelligence was also required to prepare a DRI-I report which they did not prepared primarily with a view to put up a fake informer at a later date and mis-appropriate the reward money. Sh. S.C. Mathur, Dy. Director of Revenue Intelligence, who claimed to have received the secret information was not produced as a witness in the enquiry. Statements of the various officers were recorded\obtained under threat and coercion. The Department had with-held some important documents as required by him for his defence. Shri Basav Raj, a key witness, but he was not produced before the enquiry. Statement of Sh. G.S. Shivakeri and himself were obtained under threat, coercion and inducement.

AND WHEREAS the Disciplinary authority has examined the case records and has observed that there are various documents which reveal that Shri A.K. Dhar spoke to Shri J.L. Ngilneia around 3.30 P.M. on 23.2.92 and the truck number, was the same as communicated by him to Shri Ngilneia even congratulated Shri A.K. Dhar on 24.2.92 after the seizure was effected. If Shri Ngilneia had independent information, could have shared it without disclosing the sources to Shri Dhar. It also appears from the records that the Preventive Staff for seizure operation has assembled in the Divisional Office at about 6 P.M. on 23.2.92 and left for Nipani at about 7 P.M. on that day. If Shri Ngilneia had the information about the contraband in the morning on 23.2.92, itself, he would have given instruction to the Inspector to mobilise the Preventive Staff immediately. Shri G.S. Shivakeri, Inspector has admitted that he has received the information from Shri Ngilneia at about 4 P.M. on 23.2.92. It shows that information was received by Shri J.L. Ngilneia from Shri A.K. Dhar only at 3.30 P.M. and immediately thereafter, he conveyed it to the Inspector to mobilise the Preventive Staff. Shri Ngilneia has admitted in his statement dated 27.7.92 that he had contacted Shri G.S. Shivakeri, Inspector at about 4.00 P.M. to give the information received from Shri A.K. Dhar. He is also admitted to have congratulated Shri A.K. Dhar on 24.2.92 after the seizure of Silver. Shri G.S. Shivakeri, contacted Shri Basav Raj, who was known to all this indicates that Sh. Ngilneia had no independent information regarding the transportation of contraband Silver other than the information received from Shri A.K. Dhar.

He will not earn increments of pay during the period. The reduction will have the effect of postponing his future increments of pay. Commission's advice has been considered carefully. It being fair, just and reasonable, is accepted. A copy of the Commission's advice is enclosed.

NOW, THEREFORE, the President, after considering all the relevant material and Commission's advice has ordered that the pay of Shri J.L. Ngilnela, Addl. Commissioner be reduced by 3 (three) stages from Rs. 15,900/- to Rs. 14,700/- in the time scale of pay of Rs. 14,300-16,100-18,300 for a period of 3 (three) years w.e.f. 1.6.98. It is further directed that Shri J.L. Ngilnela will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

H.S.
(HARIBAN SINGH)

UNDER SECRETARY TO THE GOVT. OF INDIA

10

Shri J.L. Ngilnela,
Addl. Commissioner,
(Through : The Commissioner of Central Excise, Bolpur).

From: J.L. Ngilneia,
Addl. Director,
DGICCE, D-Block,
I.P. Estate,
New Delhi-11002.

Dated: 18.6.2001

To: The Secretary,
Dept. of Revenue,
Ministry of Finance,
Govt. of India,
North Block,
New Delhi.

(Through proper channel)

Sir,

Sub: Prayer for Promotion - Regarding.

I was imposed a penalty of reduction in pay by three increments vide Order F.NO.C-14011/30/93-AD.V dated 29.5.1998 (copy attached) which is being challenged in the High Court of New Delhi. The period of penalty had expired on 30.5.2001.

I was in the Zone of consideration for promotion when the DPC met in 1999. I have reason to believe that I have been empanelled in the Select List by the same DPC but its findings kept in sealed cover in the currency of the penalty.

C&AG vide its Circular No.NGE/38/1990(497-N.2/39-90 dated 30.8.1990 (copy attached) has held that a punishment is not necessarily a bar for promotion. And DOPT vide its Memo No. 22011/4/91-Estt(A) dated 14.9.1992 (copy attached) laid down guidelines to be followed for consideration of promotion under certain circumstances.

Under the above circumstances the benign Secretary is requested to kindly favourably consider my promotion at the earliest.

Yours faithfully,


(J.L.NGILNEIA)
ADDL. DIRECTOR OF INSPECTION

Encl:As above

copy to:

After read
Khushwant Singh

- 1) The Chairman, CBEC, North Block, New Delhi.
- 2) Member (P&V), CBEC, North Block, New Delhi.

From: **J.L.Ngilneia**
Additional Commissioner of Central Excise,
Lane-F, Milan Nagar,
P.O. C.R.Building,
Dibrugarh - 786 003.

To: **The Chairman,**
CBEC, North Block,
New Delhi-110 001.

Date: 13. 11. 2003

(Through proper channel)

Sir,

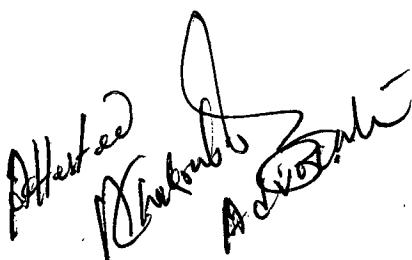
Subject:- **Prayer for promotion to the grade of Commissioner.**

I would like to inform you that I was imposed a penalty of reduction in pay by three stages for a period of three years w.e.f. 01.06.1998 by the Department vide its Order F.No.C-14011/30/93-AD.V dated 29.05.1998 in connection with the seizure of contraband silver at Nipani in Karnataka on 24.02.1992. The period of penalty had since expired on 30.05.2001.

The DPC which met in December, 1999 had considered my name for promotion but its findings have been withheld in the then currency of penalty. Meanwhile, the CBI of Bangalore had filed chargesheet against me and others on the same case on 16.09.2000 in the Court of District and Session Judge at Dharwad which has yet to frame the charges against me even after a lapse of more than three years.

In this connection I would like to remind you that this undue delay on the part of the trial Court has already caused me **prejudice, extreme worry and anxiety, heavy expense and disturbance to my vocation and peace** after having subjected me to suffer prolonged Departmental proceedings on the same case where no loss of revenue has been caused to the Government and on which the Department has found it sufficient for the imposition of the least of the major penalties envisaged in the CCS(C) Rules on me. I would rather add that chargesheet filed in the Court in the same case I was already punished by the Department amounts to superfluous action or a "personal vendetta" to cause maximum harassment to someone on a slightest pretext in opportune moment.

Whatever the case may be, the Hon'ble Supreme Court vide its judgement reported in 1998(2)JCC(SC)256 holds that the right to speedy trial flowing from Art.21 of the Constitution encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial i.e. it begins from the time of commission of alleged offence and continues at all stages that may result from impermissible and avoidable delay till it consummates into a finality. In cases where the trial is for an offence punishable with imprisonment for a period not exceeding 7 years, the Court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed. Now the time taken from the date of commission of the alleged offence till date is well over 10 years and yet the Court has not even framed the charges against me. This undue delay has in fact already denied me justice and further denial of promotion to me by the Department due to further delay in finalisation of the case by the Court will be against all norms of natural justice as the delay in this case is in no way attributable to me.



Contd...page-2

Page-2

I have joined this Department in 1973 and I am now left with very few years for superannuation. As per C & AG's Circular No. NGE/38/1990(497-N2/39-90) dated 30.08.1990 punishment is not necessarily a bar for promotion as the promotion is to be given on the basis of general service records. And as per Govt. of India, Dept. of Personnel & Training's O.M No.22022/4/91-Esst(D) dated 14.12.1992 ad hoc promotion can be given on the basis of the totality of an individual record of service without taking into account the criminal prosecution (refer Para 5 and 5.1 ibid).

In view of the above, even if I cannot be given regular promotion I may kindly be considered for promotion to the grade of Commissioner on ad hoc basis pending final decision of the prosecution case by the Court without further delay to meet the interest of justice.

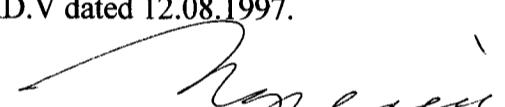
Thanking you.

Yours faithfully,


(J.L.NGILNEIA)

Copy to:-

The Secretary, UPSC, Shah Jahan Road, New Delhi, for information with reference to his advice letter No.F.3/128/97-SI dated 12.01.1998 in response to the MoF, DoR's letter F.No.C-14011/14/48/93-AD.V dated 12.08.1997.


(J.L.NGILNEIA)

From: **J.L.Ngilneia,**
Additional Commissioner,
Customs & Central Excise,
Chief Commissioner Office,
Crescens Building, M.G.Road,
Shillong - 793 001.

To: **The Chairman,**
CBEC, North Block,
New Delhi - 110 001.

Date: 06. 01. 2005

(Through proper channel)

Sir,

Subject:- Prayer for promotion to the grade of Commissioner of Customs & Central Excise.

In continuation of my representation dated 13. 11.2003 I would like to inform you that I was imposed a penalty of reduction in pay by three stages for a period of three years w.e.f. 01.06.1998 by the Department vide its Order F.No.C-14011/30/93-AD.V dated 29.05.1998 in connection with the seizure of contraband silver at Nipani in Karnataka on 24.02.1992. The period of penalty had since expired on 30.05.2001. Meanwhile, the CBI of Bangalore on the advice of the CVC had filed chargesheet against me and others on the same case I was already punished on 16.09.2000 in the Court of District and Session Judge at Dharwad which has yet to frame the charges against me even after a lapse of more than four years in contrary to the Hon'ble Supreme Court's Judgement reported in 1998(20JCC(SC)256 which holds that the right to speedy trial flowing from Art.21 of the Indian Constitution encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial i.e. it begins from the time of alleged offence and continues at all stages that may result from impermissible and avoidable delay till it consummates into a finality. In such cases the Court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed.

*Attested
Nambiar
P.D.C.I.*

Now the time taken from the date of commission of the alleged offence till date is well over 12 years. This undue delay has in fact already denied me justice and further denial of promotion to me by the Department would further cause me **prejudice, extreme worry and anxiety, heavy expense and disturbance to my vocation and peace** in a case where no loss of revenue has been caused to the Government.

Moreover, as per C & AG's Circular No.NGE/38/1990(497-N2/39-90) dated 30.08.1990 read with Paras 5 and 5.1 of the Govt. of India, Dept.of Personnel's O.M No.22022/4/91-Esst(D) dated 14.12.1992, punishment is not necessarily a bar for promotion as the promotion is to be given on the basis of general service records without taking into account the criminal prosecution.

In view of the above, I may kindly be considered for promotion to the grade of Commissioner of Customs & Central Excise pending final decision of the prosecution case by the Court without further delay.

Thanking you,

Yours faithfully,

Sd/-
(J.L.Ngilneia)
Additional Commissioner.

Copy to:-

The Member (P&V), CBEC, North Block, New Delhi-110 001 for information and necessary action.


J. L. NGILNEIA.
Additional Commissioner
Office Of The Chief Commissioner
Central Excise & Customs
Shillong.

ANNEXURE - E.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.292/2003

DATED THIS THE 13TH DAY OF FEBRUARY, 2004

SHRI. S.K. HAJRA, MEMBER (A)

SHRI. MUKESH KUMAR GUPTA, MEMBER (J)

Shri G.S.Shivakari,
Inspector of Customs,
O/o the Assistant Commissioner,
Central Excise,
Behind T.V. Station,
Kupnoor,
Gulbarga District.

...Applicant.

(Shri L.Narayanaswamy & Associates)

And

1. Union of India
Ministry of Finance,
Department of Revenue,
Central Block,
New Delhi-110 001,
Represented by its
Secretary.
2. The Commissioner of Central Excise,
Queens Road, C.R.Building
Bangalore.
3. Sri Enkappa Onkar,
Superintendent of Customs & Central Excise,
Air Cargo Customs,
MSIL Building, Air Cargo Complex,
Vimanapura, Airport, Bangalore-17.
4. Sri S.Chandrashekhar Bankapur,
Superintendent of Customs & Central Excise,
Opp. Mallige Nursing Home,
Race Course Road,
Bangalore.
5. Sri J.Vishwanathan,
Superintendent of Central Excise(Tech.)
Bangalore Central Excise Commissionerate-I.
III Floor, C.R.Building, Queens Road,
Bangalore.Respondents.

(Shri V.N.Holla, ACSGC for R1 & 2.)

*After 1st
Rukhshanda
Advocate*

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ORDER (Oral)

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SHRI S.K. HAJRA, MEMBER(A)

The applicant who is an Inspector of Customs has filed this OA. seeking the following reliefs:

- a) Issue a writ mandamus in the nature of direction to the respondent No.2 to consider the case of the applicant for promotion to the post of Superintendent of Central Excise and Customs w.e.f. 28.8.1997;
- b) Issue directions to the respondent to pay the consequential monetary benefits w.e.f. from the date of promotion of his juniors to respondents 3 to 5; and
- c) Grant such other relief or reliefs as this Hon'ble Tribunal deems fit to grant in the facts and circumstances of the case including costs of this application to meet the ends of justice."

2. The learned counsel for the applicant argued as follows: The impugned action of the respondent in not considering the case of the applicant for promotion to the post of Superintendent of Central Excise is arbitrary and opposed to the principles of natural justice. The punishment of reduction of pay of the applicant imposed in departmental enquiry expired on 31.3.2001. That being so, the applicant is liable to be considered for promotion. The pendency of a criminal case against the applicant does not 'debar him' from promotion. The instructions issued by the DOP&T on seniority and promotion requires the respondents to review the sealed cover cases every 6 months to assess the progress made in the disciplinary proceedings/criminal prosecution. Review of sealed cover in the case of applicant was not carried out in accordance with the aforesaid instruction of the DOP&T.

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3. The learned counsel for the respondents argued as follows:

4. A criminal case is pending against the applicant. According to the instructions in OM, dated 10.4.89, the suitability of the officer for promotion should be assessed by the DPC and when such occasions arise for assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of imposition of the penalty, he should be considered suitable for promotion. The officer should not actually be promoted during the currency of the penalty. The applicant was considered in the annual DPC for 2000-01 held on 16.6.2000 for promotion to the grade of Superintendent and he was placed in the select panel with a remark that he would be promoted to the grade of Superintendent after expiry of penalty period. Subsequently it was noticed by the DPC held on 27.3.2001, the official had again been charged on 16.9.2000 for prosecution in a case filed by CBI, Bangalore in the Court of Principal and District Sessions Judge, Dharwad. In view of the criminal prosecution, the DPC decided to place the applicant's case in a sealed cover and he was not promoted for the pendency of the criminal prosecution. The sealed cover was also followed for the year 2001-02 and 2002-03.

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5. We perused the pleadings and heard counsel for both side.

6. MA.No.210/2003 filed by the applicant for condonation of delay is allowed in the interest of justice.

7. Para 17.7.1 and 17.8.1 of Swamy's Complete Manual on Establishment and Administration (Ninth Ediction-2003) (page 855-56) read as follows:

17.7.1 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 a 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 DPC which had adjudged his suitability and kept its findings 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.

17.8.1 In spite of the six-monthly review referred to in para.17.7.1 above, there may be some cases where the disciplinary case/criminal prosecution against Government servant are 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;

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(c) Whether there is no likelihood of the case coming to a conclusion in the near future;

(d) Whether the delay in the finalization 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 alter 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."

8. There is no material to show that review of sealed cover as required in the aforesaid instruction was carried out by the respondent department. The respondent department is directed to carry out review of the sealed cover of the applicant every 6 months in terms of the instructions quoted above, if it has not been done so far and considered his desirability for ad hoc promotion in terms of instructions on adhoc promotion (para 17.8.1 of the aforesaid Manual). This exercise is to be carried out within 3 months from the date of receipt of copy of the order. OA. is accordingly disposed of. No costs.

Sd-

(MUKESH KUMAR GUPTA)

MEMBER(J)

Sd-

(S.K.HAJRA)

MEMBER(A)