

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

1. original Application No. _____
2. Misc Petition No. _____
3. Contempt Petition No. 13/06 (OA 107/05)
4. Review Application No. _____

Applicant(s) Shri John Lal Ngine

Respondents Shri K.M. Chandrasekhar & ors

Advocate for the Applicant(s) Dr. J.L. Sarkar, S.N. Tamuli

Advocate for the Respondent(s).....

Notes of the Registry	Date	Order of the Tribunal
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This contempt petition has been filed by the applicant praying for invoking the power of this Hon'ble Tribunal u/s 17 of the A.T. Act, 1985 in the matter of OA 107/05 passed by this Tribunal.

Laid before Hon'ble Court for orders.

[Signature]
30.3.06
S.O (J)

31.3.2006 Present: The Hon'ble Shri K.V.

Sachidanandan, Vice-Chairman

The case of the applicant is that he is working as Additional Commissioner and was under suspension w.e.f. 15.1.1993 to 15.12.1993, disciplinary proceeding was initiated and penalty of reduction of pay by three stages for three years was imposed, which according to the applicant, is a minor penalty. In 2000 a criminal proceeding was initiated against the applicant which is still pending. The applicant has earlier approached this Tribunal by way of O.A. 107/2005 and vide order dated 18.8.2005 this Tribunal while elaborately considering the facts and legal position of the case, in page 13 of the C.P., has observed as follows:-

Contd

Contd.

31.3.2006

"(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."

Further in the same order the procedure for *ad hoc* promotion is also quoted as under:

"(6) Procedure for *ad hoc* promotion. - In spite of the six-monthly review referred to in 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 meeting of the first D.P.C., which kept its findings in respect of the Government Servant in a sealed

Contdd.

- 3 -

Contd.

31.3.2006 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"

D. J.L. Sarkar, learned counsel for the applicant submits that the applicant is retiring in two years. But nothing is transpired nor any action has been taken in furtherance of the order of the Tribunal and no Review DPC has been held. Hence, this Contempt Petition against the willful disobedience of the said order by the respondents.

Considering the entire aspects of the matter this Tribunal directs to issue simple notice to the respondents.

Post on 5.6.2006. Copy of the order shall be furnished to both the parties.



Vice-Chairman

bb

05.06.2006 Learned counsel for the respondents sought for further time to file affidavit.

Post on 05.07.2006.


Vice-Chairman

mb

Pl. comply order
dated 31.3.06

21/4/06

Recd
21/4/06

Notice with order
dated 31/3/06 sent to
D/Section for issuing
to resp. nos. 1, 2 & 3 by
regd. A/D post.

4/4/06. D/No:- 442, 443
and 444
Dated:- 12/4/06.

① Service report awaited.

21/4/06

49

17.7.2006 Ms. U.Das, learned Addl.C.G.S.C. for the alleged contemnors submits that orders of this Tribunal has already been complied with and she would like to have some more time to file Affidavit to that extent. Let it be done within four weeks.

post on 18.8.2006.

Vice-Chairman

bb

18.8.2006 Ms.U.Das, learned Addl.C.G.S.C. is not present due to her personal inconvenience.

post on 20.9.2006.

Vice-Chairman

bb

20.9.2006 Ms.U.Das, learned Addl.C.G.S.C. submits that she has filed an affidavit and also the order dated 24.3.2006 in compliance of the order of this Tribunal and, therefore, this present C.P. may be closed. Dr.J.L.Sarkar, learned counsel for the applicant, submits that the said order is passed violating the orders of this Tribunal.

On going through the said order dated 24.3.2006 it is found that the said order has been passed on the strength on the opinion that they have received from the CBI and adhoc promotion of the applicant that has been directed to be considered by this Tribunal was not considered. The Division Bench of this Tribunal in its judgment and order dated 18.8.2005 passed in O.A.107/2005 after elaborately dealing with the subject on

contd.

17-8-06

No affidavit has been filed.

3
17.8.06.

24.8.06

by the Respondent Nos.
1, 2 & 3.

Di

2

Contd.
20.9.2006

procedure to be followed by the DPC i.e. six monthly review of "sealed cover", procedure of adhoc promotion and the grounds thereof and other details directed the respondents to consider the applicant's case for promotion by way of six monthly review DPC or adhoc promotion. But it appears that no DPC was held to consider applicant's case. Therefore, the order dated 24.3.2006 is passed in total violation of the orders of this Tribunal.

Ms. U. Das prays that she may be given time for passing appropriate orders by the alleged contemnors in this matter. Considering the fact that the applicant is due to retire let be case be posted on 23.10.2006 and by that time respondents are directed to comply with the order of this Tribunal dated 18.8.2005 appropriately.

Copy of this order shall be furnished to the counsel for the parties.

Vice-Chairman

bb

Received copy
21/09/06

R
B
(For JLS)

Affidavit filed by
the R No-1, 2 & 3.

22.11.06.

C.P. 13/2006 (O.A. 107/2005)

23.10.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Ms. U. Das, learned Addl. C.G.S.C. for the Respondents, submitted that Respondent Nos. 1 and 3 has already filed reply affidavit in compliance of order of the Tribunal. Dr. J.L. Sarkar, learned Counsel for the Petitioner submitted that he will file reply to the reply affidavit filed by the Respondent Nos. 1 and 3, if necessary. Learned Counsel for the Petitioner also submitted that the Respondent No. 2 has not filed reply affidavit as directed by the Tribunal. Learned Counsel for the Respondents submitted that the Respondent No. 2 has already filed reply affidavit earlier. Submissions of the learned Counsel for the parties are recorded. Post on 23.11.2006 for enquiry.

[Signature]

Vice-Chairman

/mb/

23.11.2006

Ms. U. Das, learned Addl. C.G.S.C. submits that second respondent has filed affidavit. post the case on 6.12.2006.

[Signature]

Vice-Chairman

bb

22.11.06

① Affidavit filed by all Respondents.

② Addl. Affidavit filed by Cont. Mr 1 & 3.

[Signature]

③ Additional Affidavit submitted by Respdt. NO 2

[Signature]

The case is ready for hearing.

24
15.12.06.

Received
[Signature]
29/10/06

29.10.06

An additional affidavit as compliance report alongwith order dated 19.10.06 has submitted by the Respondent No. 1 and 3.

[Signature]

06.12.2006.

Present: Hon'ble Sri K.V.
Sachidanandan
Vice - Chairman.

This Contempt Petition has been filed by the Applicant for non compliance of the Judgment and Order dated 18.08.2005 passed in O.A. No. 107/2005 wherein this Court directed the respondents to consider ad hoc promotion of the Applicant. Finally, the Respondents passed an order dated 19.10.2006 along with additional affidavit, which reads as follows:-

"10. The case has again been reviewed by the Appointing Authority in compliance of the directions of the Hon'ble CAT, Guwahati dt. 21.9.2006. On examination of the matter of grant of ad hoc promotion to Shri Ngilneia as per the directions of Hon'ble CAT in its Order dt. 18.8.05 and the DoPT Circulars referred to therein, the Appointing Authority observed as follows :

- (i) The charges against Shri Ngilneia relate to claiming of informer's reward against seizure of silver bricks. This is a serious matter as it involves monetary gain for Shri Ngilneia. The CBI too has conveyed that the charges against the officer are *prima facie* grave enough to warrant withholding of promotion.
- (ii) The prosecution launched by CBI is pending judicial decision. It may not be possible to assign a time frame for final decision in this case. However, this cannot be taken as a ground for showing leniency towards the prosecuted officer as the charge against him is grave.

Contd/-

- 53
- 8-
- (iii) Some delay in finalization of the prosecution proceedings is attributable to the stay obtained by Shri Ngilneia from the High Court through a criminal petition filed by him.
- (iv) The post of Commissioner in the CBEC set up is at a very senior level. This is, therefore, a possibility that Shri Ngilneia could misuse his official position if he is granted ad hoc promotion.
- (v) Since prosecution against Shri Ngilneia involving a grave charge is pending a judicial decision, a periodic review aimed at expending a decision would not have proved useful.

11. In view of the above, and after considering the facts and circumstances of the case, the Appointing Authority has concluded that grant of ad hoc promotion to the officer will be against public interest. Accordingly, it is decided that ad hoc promotion to Shri Ngilneia cannot be allowed, and no DPC to be held at this stage."

Therefore, Ms. U. Das, learned Addl. C.G.S.C. for the Respondents submitted that the order has already been complied with. However, on behalf of the learned Counsel for the Applicant sought for adjournment due to personal ground.

Post on 10.01.2007.

Vice-Chairman

/mb/

Reviewed
For DR. J.L. Sarkar
7/12/06

Received
(for Respondent No. 2)
19/12/06

10.1.07

Let the case be listed after six ~~week~~ weeks. In the meantime the counsel for the applicant will take instructions. Counsel for the respondents ~~has~~ submitted that he has filed written statement. Post the matter on 23.2.07.

lm

Vice-Chairman

Received
HKS
23/01/07

23.2.07.

post the matter on 1.3.07.

Vice-Chairman

lm

1.3.07.

post the matter on 2.3.07.

ce
Member

Vice-Chairman

lm

2.3.2007

After hearing counsel for the parties the C.P. is dismissed as per order typed separately.

Vice-Chairman

/bb/

Received Tm Gp4
of Order dt. 02/03/07

25/04/07

Received
Alkhan
Add case
27/4/07

9/5/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition No. 13 of 2006

In

Original Application No. 107/2005

Date of Order: This, the 2nd day of March, 2007.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN.

THE HON'BLE MRS. CHITRA CHOPRA, ADMINISTRATIVE MEMBER.

Shri John Lal Ngine
Addl. Commissioner
Directorate of Publicity
Customs and Central Excise
New Delhi.

Contempt Petitioner.

By Advocate Dr. J.L. Sarkar

- Versus -

1. Shri K.M.Chandrasekhar
Secretary, Revenue
Ministry of Finance
Government of India
North Block
New Delhi - 110 001.
2. Shri M.Jayaraman
Chairman & SPL. Secretary
CBEC, Department of Revenue
Ministry of Finance
Government of India
North Block
New Delhi - 110 001.
3. Smt. Chitra Saha
Member (P&V) Budget
CBED Department of Revenue
Ministry of Finance
Government of India, North Block
New Delhi - 110 001.

Alleged Contemnners/Respondents

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

L

ORDER (ORAL)SACHIDANANDAN, K.V.(V.C.)

This C.P. has been culminated out of the order of this Tribunal passed in O.A.107/2005 on 18.8.2005. Paragraph 6 of the said judgment which deals with procedure for adhoc promotion is quoted herein below:-

"(6) *Procedure for ad hoc promotion.* - In spite 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 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.

2. Dr.J.L.Sarkar, learned Counsel for the petitioner has drawn our notice to para 4 of the Rules which is also reproduced below:-

“(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;”

3. In furtherance of that order when the C.P. was moved simple notices were issued to the alleged contemnors on 31.03.2006 and after hearing the matter elaborately contempt notices were issued to the contemnors. The alleged Contemnors have filed affidavits and tendered unconditional apology for the delay in complying with the orders of this Tribunal and annexed compliance order dated 24.3.2006.

4. On perusal of the said order the Court was not satisfied about the compliance of the order and therefore the Contemnors requested further time to improve their affidavits. They have filed additional

affidavits annexing 19.10.2006 order. Paragraphs 10 & 11 of the said order is quoted below:-


"10. The case has again been reviewed by the Appointing Authority in compliance of the directions of the Hon'ble CAT, Guwahati dt.21.9.2006. On examination of the matter of grant of ad hoc promotion to Shri Ngilneia as per the directions of Hon'ble CAT in its order dt.18.8.2005 and the DoPT Circulars referred to therein, the Appointing Authority observed as follows:-

- (i) charges against Shri Ngilneia relate to claiming of informer's reward against seizure of silver bricks. This is a serious matter as it involves monetary gain for Shri Ngilneia. The CBI too has conveyed that the charges against the officer are *prima facie* grave enough to warrant withholding of promotion.
 - (ii) The presentation launched by CBI is pending judicial decision. It may not be possible to assign a time frame for final decision in this case. However, this cannot be taken as a ground for showing leniency towards the prosecuted officer as the charge against him is grave.
 - (iii) Some delay in finalization of the prosecution proceedings is attributable to the stay obtained by Shri Ngilneia from the High Court through a criminal petition filed by him.
 - (iv) The post of Commissioner in the CBEC set up is at a very senior level. There is, therefore, a possibility that Shri Ngilneia could misuse his official position if he is granted ad hoc promotion.
 - (v) Since prosecution against Shri Ngilneia involving a grave charge is pending a judicial decision, a periodic review aimed at expediting a decision would not have proved useful.
- 

11. In view of the above, and after considering the facts and circumstances of the case, the Appointing Authority has concluded that grant of ad hoc promotion to the officer will be against public interest. Accordingly, it is decided that ad hoc promotion to Shri Ngilneia cannot be allowed, and no DPC needs to be held at this stage."

5. We have heard Dr.J.L.Sarkar, learned Counsel for the Petitioner and also Ms. U. Das, learned Addl. C.G.S.C. for the Contemners /Respondents. We have also given due consideration to their respective pleadings, arguments and evidence placed on record. Learned Counsel for the Petitioner submitted that though six monthly review of sealed cover cases are prescribed in the rules, the same was not done in the case of the Petitioner. The rule position that has been narrated by this Tribunal in the original order is quite clear to the fact that if the disciplinary case/investigation/criminal prosecution against the Government Servant is not concluded even after the expiry of two years from the date of the meeting of first DPC which kept its findings in respect of the said Government Servant in sealed cover, his case may be reviewed, provided he is not under suspension for considering desirability of giving him adhoc promotion keeping in view certain aspects. One of such aspects is whether the promotion of the officer will be against public interest. Public interest is a matter to be decided by the administration concerned.


6. On going through the order dated 19.10.2006 passed it is clear that the charges against the Petitioner are prima facie grave enough to warrant withholding of promotion. In the said order it is further stated that if the Petitioner is granted adhoc promotion to the post of



Commissioner, he can misuse his official position since the said post in the CBEC set up is at a very senior level. Further, criminal proceeding is also pending against him.

7. In view of the above, we are of the considered opinion that there is substantial compliance of the orders of this Tribunal and the C.P. will not stand in its leg. The Hon'ble Supreme Court in its decision rendered in the case of Suresh Chandra Bahadur vs. Dhani Ram & Others, reported in (2002) 1 SCC 766 laid down the dictum "*contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage 'It is good to have the power of giant, but not good to use it always.'*"

8. Taking confidence in above dictum the C.P. is dismissed. Notices issued are discharged. The Petitioner is at liberty to approach appropriate forum, if he is further aggrieved. At this juncture, learned Counsel for the Petitioner, submitted that the Petitioner has got one year to retire and the Contemnners/Respondents may be directed to consider his case for promotion in the intervening DPCs, if any. The Petitioner may file representation in this regard, which may be considered by the Contemnners/Respondents. We are not giving any specific directions in this Contempt Petition.


(CHITRA CHOPRA)
ADMINISTRATIVE MEMBER


(K.V.SACHIDANANDAN)
VICE-CHAIRMAN

केन्द्रीय प्रशासनिक परिषद Central Administrative Tribunal	बुन्द Bench
30-3-06	
गुवाहाटी बेंच Guwahati Bench	

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GAUHATI BENCH:

GUWAHATI.

C.P.NO. 13 1/2006.

in

O.A. No. 107/2005.

Shri John Lal Nginea,
Addl. Commissioner,
Directorate of Publicity,
Customs and Central Excise,
New Delhi.

..... Contempt Petitioner.

-versus-

1. Shri K.M.Chandrasekhar,
Secretary, Revenue ,
Ministry of Finance ,
Government of India,
North Block, New Delhi - 110002.
2. Shri M.Jayaraman,
Chairman & SPL. Secretary,
CBEC, Department of Revenue,
Ministry, ~~Department~~ of Finance,
Government of India,
North Block, New Delhi - 110001.
3. Smt. Chitra Saha,
Member (P & V) 1/2 Budget)
CBED, Department of Revenue,
Ministry of Finance,
Govt. of India, North Block, New Delhi-
110001.

.... Alleged Contemner/
Respondents.

Filed by the petitioner
through Santanu Nandan Tamuli
21.3.06.

-And-

In the matter of -

A petition praying for invoking the power of this Hon'ble Tribunal under section 17 of the A.T. Act 1985 in the matter of OA No. 107/2005 of this Hon'ble Tribunal.

The petitioner most respectfully beg to state as under :

1. That the petitioner filed the O.A. No. 107/2005 seeking for a direction to promote him on Ad hoc basis as Commissioner, Customs & Central Excise on the basis of D.P.C. held in December, 1999.
2. That the Hon'ble Tribunal was pleased to ~~discuss~~ discuss the relevant executive instructions and laws in the matter ~~and was~~ and was also pleased to dispose of the O.A. with the direction to consider the case of the applicant for promotion by way of six monthly review D.P.C. and/or ~~and~~ ad hoc promotion as per provision of the Executive Orders within a period of three ~~month~~ months of this Order and to communicate the decision to the applicant immediately thereafter.

Copy of this order dated 18.8.2005 in O.A. No.107/2005 is enclosed as Annexure - A.

3. That the respondents in the OA have received the copies of the order of the Hon'ble Tribunal in September, 2005 .

The.....

The petitioner has also submitted copy of the Masaid order to the Secretary Revenue and Chair, CBEC, New Delhi on 2.9.2005.

4. That the respondents in this petition are the officers to decide and pass the orders in compliance of the order of this Hon'ble Tribunal in the said O.A. Though ~~more than~~ more than three months have elapsed the respondents in this petition have wilfully and deliberately neglected to decide and promote the petitioner on ~~an~~ ad hoc basis as Commissioner, Customs and Central Excise and this amounts to contempt of the Hon'ble Tribunal.

5. That this petition is made bona fide and for cause of justice.

Under the circumstances the petitioner most humbly prays that the Hon'ble Tribunal may be pleased to issue notice to the respondents in this petition to show cause as to why proceedings for contempt of court shall not be initiated against them for wilful disobedience and negligence to comply with the order of this Hon'ble Tribunal dated 18.8.2005 in O.A. No.107/2005, and after hearing the parties pass necessary orders/penalty for contempt of this Hon'ble Tribunal and/or pass any other order as this Hon'ble Tribunal deems fit and proper.

And for this the petitioner shall ever pray.

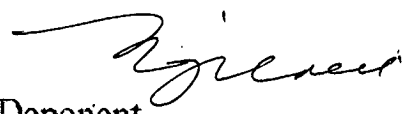
Affidavit.

AFFIDAVIT

I, John Lal Ngilnea, aged about 58 years, son of Late N.Lunia, ordinary resident of Aizwal, Mizoram now residing at New Delhi do hereby solemnly affirm and say that the statement made in paras 1 to 5 are true to my knowledge.

Guwahati

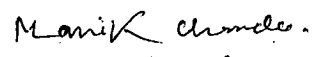
16.01.2006


Deponent

Identified by me



Advocate

Solemnly affirmed and sworn in before me
this the 16th day of January, 2006 at
Guwahati being identified by Shri
Shri S. Nath, Advocate.


Advocate

DRAFT CHARGE OF CONTEMPT.

The a;;eged contemnners have violated and deliberately neglected to comply with the direction ~~in~~ in order dated 18.8.2005 of the Hon'ble ^{Central Administrative} Tribunal, Guwahati Bench, in O.A. N°. 107/2005 and thereby committed contempt of the Hon'ble Tribunal for which they deserve to be punished under law of Conte,pt.


(Santanu Nandan Tamuli)

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darg
Himant
Chaitan 2000

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.

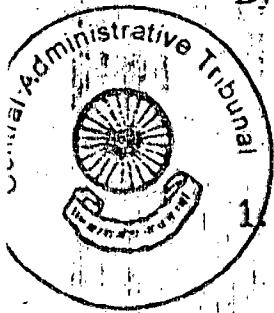
The Hon'ble Mr. K.V. Prahladan, Administrative Member.

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.

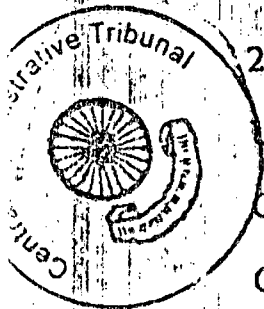
7. 2

ORDER

SIVARAJAN. I. (V.C.)

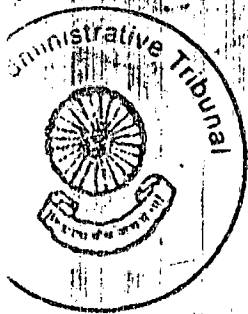
The applicant is presently working as Additional Commissioner (Group 'A' Officer) in the Office of the Chief Commissioner, Central Excise and Customs, Shillong. He has filed this application seeking for direction to promote him on ad hoc basis as Commissioner, Customs and Central Excise on the basis 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



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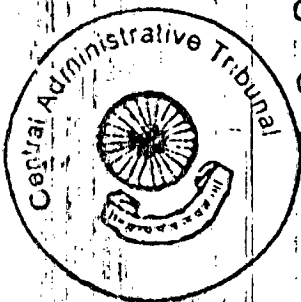
while the applicant was working as Additional Commissioner of Central Excise and Customs, Belgaum, Karnataka, contraband silver was seized by Customs and Central Excise on 23.2.1992 on the basis of information received and some delay occurred in submission of the recorded information and formal departmental 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.

[Handwritten signature]

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.

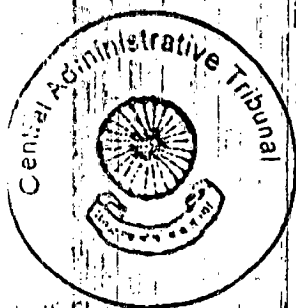
5. No written statement is filed in this case. We have heard Ms. U. Das, learned Addl. C.G.S.C. for the respondents who sought for further time to file written statement.

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;"

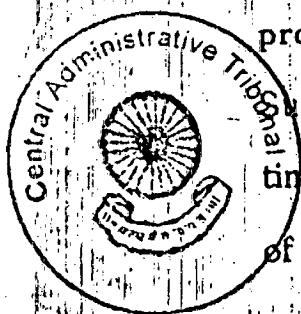
In this context it is relevant to refer to Rule 11 (vi) also, which reads:

"(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



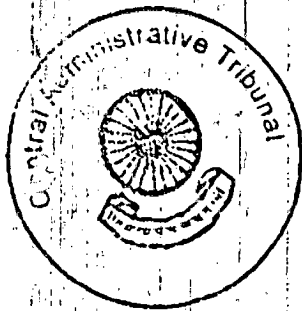
without further directions, regarding conditions of restoration to the grade or post or service from which the Government Servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

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 :



- (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."

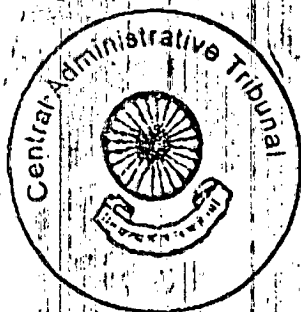
Paragraph 3.1 provides that if any penalty is imposed on the Government Servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover/covers shall not be acted upon and his case for promotion may be considered by 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 he 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*. - In spite 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

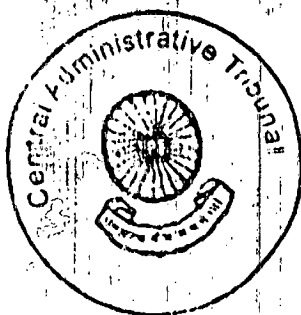


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meeting of the first D.P.C., which kept its findings in respect of the Government Servant in a sealed cover. In such a situation the appointing authority may review the case of the Government Servant, provided he is not under suspension, to consider the desirability of giving him *ad hoc* promotion keeping in view to following aspects : 7

- (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 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. 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:

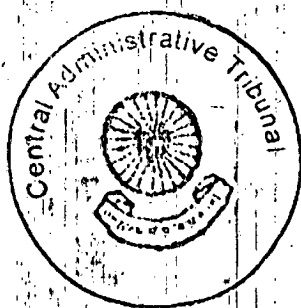
"(6.1) In case the appointing authority comes to a conclusion that it would not be against the public interest to allow *ad hoc* promotion to the Government Servant, his case should be placed before the next D.P.C. held in the normal course after the expiry of the two years period to decide whether the 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 --

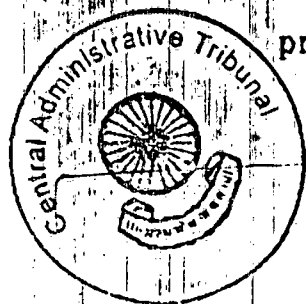
- (i) the promotion is being made on purely ad hoc basis and the ad hoc promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad hoc promotion and 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

extracted above. Having regard to the fact that the applicant had under-gone 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.



Sd/VICE CHAIRMAN

Sd/MEMBER (A)

RECEIVED
7/9/05
Central Administrative Tribunal
Section (A) (Jail)
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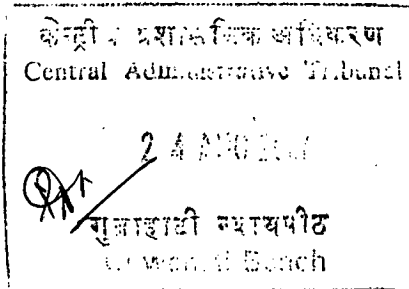
Section (A) (Jail)

Central Administrative Tribunal

मुंबई न्यायालय

7/9/05

7/9/05



Filed by
the Respondent No. 1
through
Usha Das.
Add enc
24/8/06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

CP NO. 13/2006

IN OA NO. 107/2006

SHRI JOHN LAL NGILNEIA

.....PETITIONER

-VERSUS-

SHRI K. M. CHANDRASEKHAR & ORS

.....RESPONDENTS



IN THE MATTER OF

Affidavit filed by the respondents

1) I, Shri... K. M. CHANDRASEKHAR, son of SHRI M. P. K. MENON aged about 58 years, at present working as SECRETARY, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE....., who is arrayed as respondent No. 1 in the above mentioned contempt petition. I am well acquainted with the facts and circumstances of the case and do hereby solemnly affirm and state as follows.

2) That the deponent begs to state that the judgment and order passed by the Hon'ble Tribunal has been complied with and accordingly order has already been passed on 24.3.2006 and communicated the same to the petitioner as per direction of the Hon'ble Tribunal.

A copy of the order-dated 24.3.2006 is annexed herewith and marked as Annexure-R1.

3) That the deponent begs to state that the Hon'ble Tribunal while disposing of the OA directed the respondents to consider the case of the applicant for promotion by way of six monthly review DPC and/or ad hoc promotion as per provision of



the executive orders narrated in the judgment within a period of three months from the date of receipt of the order and communicate the decision to the applicant immediately thereafter. Due to mandatory administrative procedures and formalities the respondents could not comply with the order within the time frame of three months as given by the Hon'ble Tribunal hence the deponent begs apology for the delay in complying the order passed by the Hon'ble Tribunal. The delay caused in the process of compliance was not intentional and willful hence the Hon'ble Tribunal may be pleased to consider the same and be pleased to pass appropriate order.

- 4) That the deponent begs to submit that the judgment and order passed by the Hon'ble Tribunal has been complied with and accordingly order has been passed on 24.3.2006 hence the Hon'ble Tribunal may be pleased to close the contempt petition and/or be pleased to pass any other appropriate order/orders as Your Lordships deem fit and proper.

- 5) That the statement made in paragraph 1 to 4 are true to my knowledge and records and rests on my humble submission.
- 6) That this affidavit has been filed bonafide and to secure ends of justice.

Ullas Chandra

DEPONENT



ATTESTED
[Signature]
NOTARY PUBLIC
DELHI

13 JUL 2006

1999

- 3 -

Annexure - R 1
79

F.No.C-18011/27/2005-Ad.II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi dated 24 March 2006

ORDER

Subject: O.A No. 107/2005 filed by Shri J. L. Ngilneia, Addl. Commissioner of Customs & Central Excise- reg.

In its order dated 18.8.2005, the Central Administrative Tribunal(CAT), Guwahati Bench in the O.A. No.107/2005 filed by Shri J.L. Ngilneia, Additional Commissioner has directed the Department to consider the case of the applicant for promotion by way of six monthly Review DPC. The extracts from the judgement are reproduced below :

'The applicant had under-gone penalty period as early as on 30.05.2001 and the further fact that criminal prosecution launched on 16.09.2000 is still pending, the respondents are directed to consider the case of the applicant for promotion by way of six monthly review DPC 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 immediate thereafter'

2. As directed by the CAT, Guwahati Bench, the Case of Shri J.L. Ngilneia was taken up with the Chief Vigilance Officer (CVO), Central Board of Excise & Customs(CBEC) and the Central Bureau of Investigation(CBI). In this case, it may be mentioned that the CBI, Bangalore had booked a criminal case against Shri Ngilneia and others for falsely claiming informer's reward against seizure of silver bricks near Belgaon.

3. On the advice of CVC, sanction for prosecution for offence punishable under Section 120-B read with(r/w) 420r/w Section 511 IPC and Section 13(2) r/w Section 13(1)(d) of TC Act, 1988 was granted for prosecution of Shri Ngilneia. The trial against the officer in the Court of Competent Jurisdiction is pending. In terms of instructions contained in O.M. dated 14.9.1992 of the Department of Personnel & Training(DOP&T), the desirability of giving ad-hoc promotion in such cases is considered keeping in view the following aspects :

- a) Whether the promotion of the officer will be against public interest.


*Seal of Commissioner
in 1 month period*

- 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 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 affect the conduct of the Departmental case/criminal prosecution.

The appointing authority is also required to consult the CBI and their views are taken into consideration before considering the desirability of giving ad-hoc promotion where crimination prosecution arose out of investigations.

4. Accordingly, the views of CBI, Bangalore was also obtained and they opined that the charges against Shri Ngilneia are prima-facie grave enough to warrant withholding of promotion.

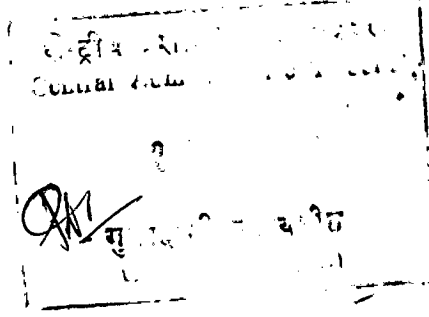
5. Therefore, in terms of DOP&T's instructions as well as opinion of CBI, it was found that there is no ground at this stage to consider the case of Shri Ngilneia for ad-hoc promotion and accordingly the representation of Shri Ngilneia is hereby rejected.


(Hawa Singh)

Under Secretary to the Govt. of India

Shri J. L. Ngilneia
Addl. Commissioner
Directorate of Publicity & Public Relations
Customs & Central Excise
I.P. Estate, C. R. Building
New Delhi

Copy to: Deputy Commissioner (CAT), Guwahati w.r.t. O.A. No. 107/05 filed by Shri J. L. Ngilneia, Addl. Commissioner.



Sh. Jayaraman
Filed by
the Respondent No. 2
Through
Usha Das
Addl. Secy.
24/8/06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI.

CP NO. 13/2006
IN OA No. 107/2006

SHRI JOHN LAL NGILNEIA
---.. PETITIONER.

-VERSUS-

- 1) SHRI K.M.CHANDRASEKHAR
 - 2) SHRI M. JAYARAMAN
 - 3) SMT. CHITRA SAHA.
- RESPONDENTS.

IN THE MATTER OF

Affidavit filed by the respondent the respondent No.2

1) I, Shri. M. JAYARAMAN son of Shri. S.V. MAHADEVAN aged about 60 yrs, was working as CHAIRMAN, CENTRAL BOARD OF EXCISE & CUSTOMS, who is arrayed as respondent No-2 in the above mentioned contempt petition. I am well acquainted with the facts and circumstances of the case and do hereby solemnly affirm and state as follows:

2) That the deponent begs to state that the judgement and order passed by the Hon'ble Tribunal has been complied with and accordingly order has already been passed on 24.03.2006 and communicated the same to the petitioner as per direction of the ~~Hon'ble~~ Hon'ble Tribunal.

A copy of the order dated 24.03.2006 is annexed herewith and marked as Annexure-R-1.



3) That the deponent begs to state that the Hon'ble Tribunal while disposing of the OA directed the respondents to consider the case of the applicant for promotion by way of six monthly Review DPC and/or adhoc promotion as per provision of the executive orders narrated in the judgement within a period of three months from the date of receipt of the order and communicate the decision to the applicant immediately thereafter. Due to mandatory administrative procedures and formalities the respondents could not complied with the order within the time frame of three months asgiven by the Hon'ble Tribunal hence the deponent begs apologyfor the delay in complying the order passed by the Hon'ble Tribunal. The delay caused in the process of compliance was not intentional and willful hence the Hon'ble Tribunal may be pleased to consider the same and be pleased to pass appropriate order.



4) That the deponent begs to submit that the judgement and order passed by the Hon'ble Tribunal has been complied with and accordingly order has been passed on 24.03.2006 hence the Hon'ble Tribunal may be pleased to close the contempt petition and/or be pleased to passed any other appropriate order/orders asYour Lordships deem fit and proper.

5- It is also stated that I retired from the Post of Chairman, CBEC on 31.05.2006, I also do state that I do not have any role at present in the office/post as mentioned above.

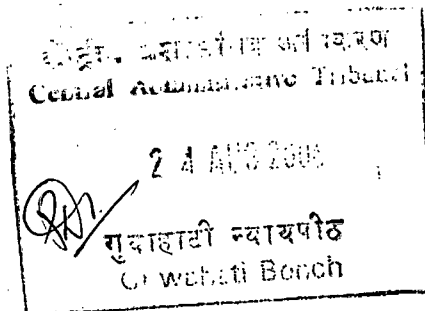
⑥ That the statements made in paragraph 5 are true to my knowledge.
9- That this affidavit has been filed bonafide and to secure ends of justice.




DEPONENT

ATTESTED

NOTARY PUBLIC
DELHI
30 JUN 2006



Filed by M. (300)
the Respondent No. 3
through
H. Das-
Addl. J. 24/8/06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

CP NO. 13/2006

IN OA NO. 107/2006

SHRI JOHN LAL NGILNEIA

.....PETITIONER

-VERSUS-

1) SHRI K. M. CHANDRASEKHAR

2) SHRI M. JAYARAMAN

3) SHRI CHITRA SAHA

.....RESPONDENTS

IN THE MATTER OF

Affidavit filed by the respondent the respondent No. 3

1) I, Shrinath.....*Chitra Saha*....., *daughter* of *Shri S. C. Mankar* aged about 59 years, at present working as *Member, B.E.*....., who is arrayed as respondent No. 3 in the above mentioned contempt petition. I am well acquainted with the facts and circumstances of the case and do hereby solemnly affirm and state as follows.

2) That the deponent begs to state that the judgment and order passed by the Hon'ble Tribunal has been complied with and accordingly order has already been passed on 24.3.2006 and communicated the same to the petitioner as per direction of the Hon'ble Tribunal.

A copy of the order-dated 24.3.2006 is annexed herewith and marked as Annexure-R1.



- 3) That the deponent begs to state that the Hon'ble Tribunal while disposing of the OA directed the respondents to consider the case of the applicant for promotion by way of six monthly review DPC and/or ad hoc promotion as per provision of the executive orders narrated in the judgment within a period of three months from the date of receipt of the order and communicate the decision to the applicant immediately thereafter. Due to mandatory administrative procedures and formalities the respondents could not comply with the order within the time frame of three months as given by the Hon'ble Tribunal hence the deponent begs apology for the delay in complying the order passed by the Hon'ble Tribunal. The delay caused in the process of compliance was not intentional and willful hence the Hon'ble Tribunal may be pleased to consider the same and be pleased to pass appropriate order.
- 4) That the deponent begs to submit that the judgment and order passed by the Hon'ble Tribunal has been complied with and accordingly order has been passed on 24.3.2006 hence the Hon'ble Tribunal may be pleased to close the contempt petition and/or be pleased to pass any other appropriate order/orders as Your Lordships deem fit and proper.
- 5) *That the para 1 to 4 are true to my knowledge and records and hence are my humble submission.*
- 6) That this affidavit has been filed bonafide and to secure ends of justice.

Naha
DEPONENT



ATTESTED
[Signature]
NOTARY PUBLIC
DELHI

3 JUL 2006

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

C.P. NO. 13/2006
IN O.A. NO. 107/2005

SHRI J. L. NGILNEIA
..... PETITIONER

- VERSUS -

SHRI K. M. CHANDRASEKHAR & ORS
..... RESPONDENTS / ALLEGED

CONTEMPTOR

IN THE MATTER OF

An additional affidavit filed by the
Respondent No. 2

formerly, [Signature]
I, M. Jayaraman, ³¹Chairman, Central Board of Excise & Customs,
North Block, New Delhi superannuated on 30.05.2006 and presently holding the post of Administrative
Member, Central Administrative Tribunal, Allahabad Bench do hereby solemnly affirm ~~[Signature]~~
and declare as under: -

1. The deponent is fully conversant with facts of the case.
2. That the deponent has gone through the judgment and order dated 18.08.2005 passed by the Hon'ble Central Administrative Tribunal in O.A No. 107/2005 and also the order dated 20.09.2006 in C.P No. 13/2006 in O.A. No. 107/2005. The Hon'ble Tribunal by its Order dated 20.09.2006 observed that it appears that no DPC was held to consider the applicant's case. Therefore, the Order dated 24.03.2006 is passed in total violation of the Orders of this Tribunal.
3. That the facts of the case relating to Shri J.L. Ngilneia are that in a case involving seizure of silver bricks, a bogus informer was created in order to misappropriate the informer's reward. Disciplinary proceedings were initiated against the officer and others in this case and an Order dated 29.05.1998 was passed by the appropriate authority reducing the pay of the officer by three stages for a period of three years, with cumulative effect. The Central Bureau of Investigation initiated criminal proceedings against the officer in the same case and the filed charge sheet on 18.09.2000. As criminal proceedings were pending against the officer, the assessment of the Departmental Promotion Committee held from 1999 onwards, to consider the promotion of Shri J.L. Ngilneia from Additional Commissioner to Commissioner, were kept in sealed cover.

[Signature]
Office of the
Central Administrative Tribunal
23-A, THORP
ALLAHABAD


Filed by
The Respondent No. 2 through
Asha Das. gr
Addl. Secy
23/11/06

5- It is also stated that I retired from the Post of Chairman, CBEC on 31.05.2006, I also do state that I do not have any role at present in the office/post as mentioned above.

⑥ That the statements made in paragraph 5 are true to my knowledge.
4- That this affidavit has been filed bonafide and to secure ends of justice.




DEPONENT

ATTESTED

NOTARY PUBLIC
DELHI
30 JUN 2006

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

C.P. NO. 13/2006
IN O.A. NO. 107/2005

SHRI J. L. NGILNEIA
..... PETITIONER

- VERSUS -

SHRI K. M. CHANDRASEKHAR & ORS
..... RESPONDENTS / ALLEGED

CONTEMPORANEOUS

IN THE MATTER OF

An additional affidavit filed by the
Respondent No. 2

formerly
I, M. Jayaraman, ³¹Chairman, Central Board of Excise & Customs,
North Block, New Delhi superannuated on 30.05.2006 and presently holding the post of Administrative
Member, Central Administrative Tribunal, Allahabad Bench do hereby solemnly affirm ~~and~~
and declare as under: -

1. The deponent is fully conversant with facts of the case.
2. That the deponent has gone through the judgment and order dated 18.08.2005 passed by the Hon'ble Central Administrative Tribunal in O.A No. 107/2005 and also the order dated 20.09.2006 in C.P No. 13/2006 in O.A. No. 107/2005. The Hon'ble Tribunal by its Order dated 20.09.2006 observed that it appears that no DPC was held to consider the applicant's case. Therefore, the Order dated 24.03.2006 is passed in total violation of the Orders of this Tribunal.
3. That the facts of the case relating to Shri J.L. Ngilneia are that in a case involving seizure of silver bricks, a bogus informer was created in order to misappropriate the informer's reward. Disciplinary proceedings were initiated against the officer and others in this case and an Order dated 29.05.1998 was passed by the appropriate authority reducing the pay of the officer by three stages for a period of three years, with cumulative effect. The Central Bureau of Investigation initiated criminal proceedings against the officer in the same case and the filed charge sheet on 18.09.2000. As criminal proceedings were pending against the officer, the assessment of the Departmental Promotion Committee held from 1999 onwards, to consider the promotion of Shri J.L. Ngilneia from Additional Commissioner to Commissioner, were kept in sealed cover.

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Filed by

The Respondent No. 2 Through

Dehar Das

Addl C.S. e


23/11/06

4. That as per directions of this Hon'ble Tribunal in its Order dated 18.08.2005, the matter of grant of ad hoc promotion to Shri J.L. Ngilneia was examined. The DoPT Circulars referred to by the Hon'ble Tribunal in its Order dated 18.08.2005 and DoPT Circular No. 22011/4/99-Estt(A) dated 14.09.1992 set out the procedures and guidelines to be followed in the case of promotion of government servants against whom disciplinary/court proceedings are pending. The above instructions provides for six monthly review to expedite disciplinary proceedings/prosecution, and in the event of such proceedings / prosecution, ~~and in the event of such proceedings~~ not concluded within a period of two years from the date of meeting of the first DPC, the appointing authority is required to 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 whether it would be in the public interest to allow ad hoc promotion, *based on the following :-*

- (a) Whether the promotion of the officer will be against public interest.
- (b) Whether the charges are grave enough to warrant continued denial of promotion.
- (c) Whether there is any likelihood of the case coming to a conclusion in the near future.
- (d) Whether the delay in 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 effect 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^(d) above is still pending, the CBI ^{and} the other authorities concerned should be consulted."

It is pertinent to mention here that the Hon'ble Tribunal while passing the Judgement and Order was pleased to quote the procedure for ad hoc promotion and also the provisions regarding consultation and taking views of the Central Bureau of Investigation where the departmental or criminal prosecution arose out of the investigations conducted by the Bureau. The Hon'ble Tribunal specifically directed


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the respondents to consider the case of the applicant for promotion by way of six monthly review DPC and/or ad hoc promotion as per provision of the executive orders extracted in the judgement. The Hon'ble Tribunal was further pleased to quote the Paragraphs 6.1 and 6.2 as follows :-

“ (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 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 whether 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 ad hoc basis, an order of promotion may be issued making it clear in the order itself that :-

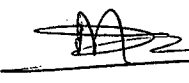
- (i) the promotion is being made on purely ad hoc basis and the ad hoc promotion will not confer any right for regular promotion; and
- (ii) the promotion shall be “ until further orders”. It should also be indicated in the orders that the Government reserves the right to cancel the ad hoc promotion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

5. That in the case of Shri J.L.Ngilneia, it is observed that the criminal proceedings against the officer were still pending . As the criminal proceedings had been launched at the instance of CBI, their views on the desirability of giving ad hoc promotion, were sought in the light of the above instructions of DoPT Circular No. 22011/4/99-Estt(A) dated 14.09.1992. The CBI opined that the charges against Shri J.L.Ngilneia were prima facie grave enough to warrant withholding of ad hoc promotion. Further, delay in finalization of the prosecution proceedings is partly attributable to the stay obtained by the applicant from the Hon'ble High Court through a Criminal Petition filed by him. It was, therefore, concluded that there was no ground to consider grant of ad hoc promotion to Shri Ngilneia. The speaking Order dated 24.03.2006 was issued to the above effect in compliance of Hon'ble Tribunal's Order dated 18.08.2005.

6. That as per para 5.1 of DoPT Circular dated 24.02.03, 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 then his case should be placed before the next DPC held in the normal course after the expiry of two years period to decide whether the officer is suitable for promotion on ad hoc basis. Thus the above instructions stipulate only when it is concluded that it would not be against public interest to grant ad hoc promotion should a proposal for promotion be placed before the DPC. Since during the course of examination of Shri Ngilneia's case in pursuance of Hon'ble Central Administrative Tribunal's Order dated 18.08.2005, it was held that there were no ground to consider his case for ad hoc promotion, the DPC was not considered necessary.

7. That in view of these facts, the case has been examined only in compliance with the order of the Hon'ble Tribunal dated 18.08.2005 and the conclusions drawn ~~were in the~~ light of the aforesaid DoPT Circulars referred to by the Hon'ble Tribunal. The gravity of the offence committed by the officer and pendency of prosecution launched by the CBI against the officer were also considered on 22.03.2006 among other factors relevant to the case to reach the said conclusion and the said decision i.e. Order dated 24.03.2006 was made in public interest. It was also understood that the case was again reviewed by the appointing authority on 17.10.06 in compliance with the direction of the Hon'ble Tribunal, Guwahati Bench dated 20.09.2006 in C.P. No. 13/2006 and the appointing authority has concluded after considering all the facts that grant of ad hoc promotion to the officer will be against public interest. Accordingly, it decided vide the office order dated 19.10.2006 that ad hoc promotion to Shri Ngilneia cannot be allowed and that in view of the instructions of the DoPT as mentioned in the judgement of the Hon'ble Tribunal, there is no case for holding of a DPC at this stage. This has been communicated to the concerned officer also.

8. That the DPC is to be held in the circumstances of the case only if the appointing authority is satisfied that the proposed ad hoc promotion to the officer is not against public interest only then, the matter needs to be placed before the DPC for further consideration of his suitability for the post on promotion. In the instant case, it was found by the appointing authority that ad hoc promotion to the officer would be against public interest and, therefore, the holding of DPC was not required in the case of the petitioner.


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9. That it may be stated that the Hon'ble Tribunal directed the respondents to consider the case within a period of three months from the date of receipt of the Order dated 18.08.2005 and communicate the decision to the applicant immediately thereafter. The Order dated 24.03.2006^{was} passed in compliance of the ~~the~~ Order of the Hon'ble Tribunal. There is some delay in the observation of the official procedure and administrative formalities, which was not at all willful and deliberate. The deponent begs apology for the delay in complying with the judgement. The Hon'ble Tribunal may be pleased to condon^e the delay as that was ~~not~~ not willful and deliberate.

10. That the deponent has retired on ³¹~~30~~.05.2006, it is submitted that the deponent has already complied with the judgement and order passed by the Hon'ble Tribunal. The deponent was a Government Officer and he has never violated the Hon'ble Tribunal's direction. The consideration of ad hoc promotion of Shri Ngilneia was reviewed in my capacity as Chairman, CBEC on 22.03.2006 and subsequently by my successor on 17.10.2006 in order to comply with the Hon'ble Tribunal's order. The deponent filed his affidavit before the Hon'ble Tribunal on 30.06.2006


11. That in view of the facts and submissions made above, the deponent most humbly and respectfully pray^s that the deponent has not violated the Hon'ble Tribunal's ~~order~~ order hence the CP maybe closed as dismissed.

In the premises aforesaid it is most Respectfully ^{Prayed} that your Lordships would graciously be pleased to close the Contempt Petition as because the order of the Hon'ble Tribunal has already been complied with and/ or ^{may}~~my~~ be pleased to pass appropriate order(s) as Your Lordships deem fit and proper.

And for this act of kindness the humble deponent as in duty bound shall ever pray.

AFFIDAVIT

Affidavit signed and verified on this ~~28th~~ day of November 2006, that the contents of the affidavits are true and correct to the best of my knowledge and based on official records. Nothing is false and the Deponent has not suppressed any material fact before the Hon'ble Tribunal.


 DEPONENT
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