

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH

OA No.785/03

Jabalpur, this the 16th day of September, 2004.

C O R A M :

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Harmahendra Singh Gandhi  
S/o Late Sri S.S. Ghandhi  
Inspector, Central Excise Range  
III Division II, Bhopal.

Applicant

(By advocate Shri S.K.Nagpal)

Versus

1. Union of India  
through the Secretary  
Government of India  
Ministry of Finance  
New Delhi.

2. The Chief Commissioner  
Customs & Central Excise  
Revenue Building Statute Circle  
Jaipur (Rajasthan)

3. Commissioner, Customs &  
Central Excise, Manik Bagh Palace  
Indore.

Respondents.

(By advocate Shri S.P. Singh)

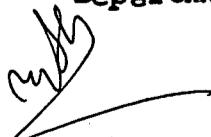
O R D E R (oral)

By M.P. Singh, Vice Chairman

By filing this OA, the applicant has claimed the following relief:

(i) Direct the respondents to consider the case of applicant for adhoc promotion with effect from the date his juniors have been promoted with all consequential benefits.

2. The brief facts of the case are that the applicant is working as an Inspector in the Central Excise Department. The applicant was suspended as he was involved in a criminal case under the Prevention of Corruption Act. The applicant was convicted by the lower court but the conviction has been quashed by the Hon'ble High Court of Madhya Pradesh. The Department filed an SLP No.643/01 which is pending before



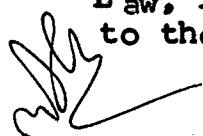
the Hon'ble Supreme Court. The applicant has been considered for promotion to the post of Superintendent but as the SLP is pending before the Hon'ble Supreme Court, the result of the DPC has been kept in sealed cover and because of this sealed cover procedure, his case is still pending, and he has not been granted promotion in the next higher grade of Superintendent. In the meanwhile, the applicant made a representation to consider him for adhoc promotion pending finalization of the criminal case against him. The respondents have rejected the representation. Hence he has filed this OA.

3. We have heard both parties at great length and considered the contentions of both the learned counsel very carefully. We find that <sup>in such situations, the procedure prescribed in</sup> as per para 17.8.1 of Swamy's Compilation on Seniority and Promotion, the required procedure to be followed by the respondents, <sup>is</sup> ~~is~~ laid down. The said paragraph is reproduced below:

Procedure for adhoc promotion

" 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 the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation, the Appointing Authority may review the case of the Government servant, provided he is not under suspension, to consider the desirability of giving him adhoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is 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 adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

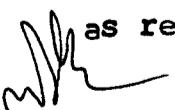
The Appointing Authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau."

Further procedure to be followed by the respondents is laid down in subsequent paragraphs namely, paras 17.8.2, 17.8.3, 17.8.3, 17.8.4, and 17.8.5.

4. In this case, we find that the respondents have kept the result of the recommendations of the DPC for promotion to the next higher grade of Superintendent in sealed cover and they are not considering the applicant for adhoc promotion as provided in para 17.8.1 of Swamy's Compilation reproduced above. Learned counsel for the applicant has also drawn our attention to a judgement of the Madras Bench of the Central Administrative Tribunal dated 10.1.89 in OA No.785/86 in the case of R Krishnamoorthy v. Secretary to Government of India and others (1989) 10 ATC 530. In that case, the Tribunal held that:

"Seniority and promotion - promotion - protracted criminal proceedings - Whether promotion to be denied during - Criminal proceedings protracted for over two years after DPC meeting - The employee neither being responsible for the delay nor being suspended but being superseded several times due to the pendency of the criminal proceedings - Held, such an employee should be considered for adhoc promotion in accordance with OM dated 12.1.88 - Supersession - Constitution of India, Articles 14 & 16."

5. We find that the present case is squarely covered on all fours by the judgement of the Tribunal dated 10.1.89. In view of this fact, we direct the respondents to consider the case of the applicant for adhoc promotion as requested by him in terms of para 17.8.1 of Swamy's



Compilation on Seniority and Promotion, within a period of three months from the date of receipt of a copy of this order. 

The OA is disposed of as above. No costs.

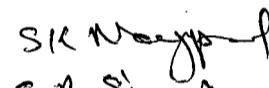
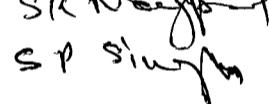
  
(A.K. Bhatnagar)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

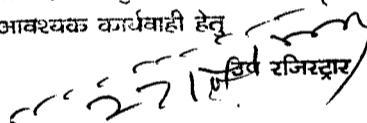
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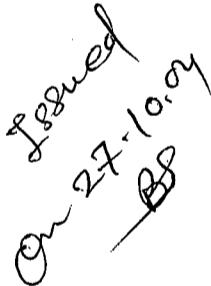
कृतांकन सं ओ/न्या.....जबलपुर, दि.....  
कार्यालयिता उत्तोषिता:-

(1) अमित, उत्तोषिता वार एसोसिएशन, जबलपुर  
(2) उत्तोषिता श्री/मीर्ती/रु. .... के काउंसल  
(3) उत्तोषिता श्री/मीर्ती/रु. .... के काउंसल  
(4) उत्तोषिता, लोपा. अदलपुर न्यायदीठ

  
S.K. Nagpal  
  
S.P. Singh

सूचना एवं आवश्यक वर्गीकरण हेतु

  
R.J. Singh  
रजिस्ट्रार

  
J. S. Bhatnagar  
On 27.10.09