

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>OA No. 490/2005.</u></p> <p><u>28.02.2007.</u></p> <p>Mr. Ashindra Gautam counsel for the applicant. Mr. V. S. Gurjar counsel for the respondents.</p> <p>Heard. The OA has been disposed of by a separate order.</p> <p><i>[Signature]</i> (J. P. SHUKLA) ADMINISTRATIVE MEMBER</p> <p><i>[Signature]</i> (M. K. GUPTA) JUDICIAL MEMBER</p> <p><u>P.C./</u></p>

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 490/2005.

Jaipur, this the 28th day of February, 2007.

CORAM : Hon'ble Mr. M. K. Gupta, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Vishamber Dayal
S/o Shri Badri Prasad
Aged 47 yeas,
R/o Sector-7, Vidyadhar Nagar,
Jaipur.

... Applicant.

By Advocate : Mr. Ashindra Gautam.

Vs.

1. Union of India through
Registrar General of India,
Department of Census, Ministry of Home Affairs,
2/A, Mansingh Road,
New Delhi.
2. Director,
Directorate of Census Operation,
Rajasthan, 6-B, Jhalana Dungri,
Jaipur.

... Respondents.

By Advocate : Shri V. S. Gurjar.

: O R D E R (ORAL) :

The relief claimed in this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, reads as follows :-

"(i) That by an appropriate order or direction the Respondents may kindly be directed to conduct the regular D.P.C. for promotion of Junior Supervisor to the post of Senior Supervisor and further directed to consider the candidature of the applicant according to final seniority list of Junior Supervisor dated 7/07/2003 (Annexure A/1).

(ii) Any other appropriate order or direction which the Hon'ble Tribunal deems just and proper may also be passed in favour of applicant."

This is second round of litigation. On earlier occasion the applicant herein had preferred OA No.343/2004 which had been dismissed vide order dated 4.3.2005.

2. The factual background is as under :-

The applicant was appointed as Date Entry Operator in the pay scale of Rs.330-560 and joined the said post on 15.5.1981. The said scale was revised to Rs.1200-2040 on 1.1.1986. He was declared Quasi Permanent in the said post w.e.f. 10.09.1986 and thereafter promoted to next higher post of Junior Supervisor on regular basis vide order dated 3.6.1987. On implementation of the recommendation of the Fifth Central Pay Commission, said scale was revised to Rs.4500-7000. Later it was further revised in terms of Registrar General of India OM dated 6.1.1998, w.e.f. 1.1.1996 to Rs.5000-8000. He was placed under suspension w.e.f. 21.3.2001 under sub-rule (i) of Rule 10 of CCS (CCA) Rules 1965. A charge memorandum dated 23.3.2001 under Rule 14 of the CCS (CCA) Rules 1965 resulted in imposition of penalty vide order dated 4.10.2001 withholding two increments with cumulative effect w.e.f. 1.3.2002. During the currency of aforesaid penalty, Smt. Gyan Batra, applicant's immediate junior had been promoted to next higher post of Senior

Supervisor against the resultant vacancy of Senior Supervisor created for Census-2001 on purely temporary basis w.e.f. 16.4.2003 up to 29.02.2004 or till the post exists, whichever earlier vide order dated 9.4.2003. On expiry of aforesaid penalty, applicant herein made representation to respondents claiming promotion for said post of Senior Supervisor.. Vide order dated 19.7.2004 he was promoted to the said post after reverting Smt. Gyan Batra. Smt. Gyan Batra as well as the applicant herein approached this Tribunal vide OA No.305 and 343/2004 respectively. Vide common order dated 4.5.2005, OA preferred by Smt. Gyan Batra was allowed, while the application filed by the applicant herein had been dismissed.

3. It would be expedient to extract the observation made therein which would clinch the issue raised, which reads as under :-

"6. The question which requires our consideration in the present case is whether the applicant in OA No.343/2004 (Shri Vishambhar Dayal) could have been promoted during the currency of penalty. Further question which requires our consideration is whether the person who was undergoing penalty on the due date when the right of consideration accrued could have been promoted subsequently by reverting a person and that too without giving any show cause notice to the affected person. According to us, the action of the respondents is highly illegal and is not in consonance with instructions/law on the point. At this stage, we may refer the decision of the Supreme Court in the case of L. Rajaiah v. Inspector General of Registration & Stamps, Hyderabad & Ors., 1996 SCC (L&S) 883, whereby it has been held that even though the penalty imposed on the appellant was that of stoppage of increment and not that of withholding of

promotion, currency of the former penalty, held, did disentitle him to be considered for promotion. Admittedly, in the instant case, the applicant in OA 343/2004 (Shri Vishambhar Dayal) was undergoing penalty of stoppage of two grade increments with cumulative effect and he could not draw his increment as on 1.3.2003. As such, he could not have been promoted to the post of Senior Supervisor. It is also admitted case between the parties that the applicant could have been earned his next implement only on 1.3.2004. As such, he was also disable to earn increment prior to that date. It is also admitted case between the parties that the applicant in OA 305/2004 (Mrs. Gyan Batra) was given extension as Senior Supervisor for a further period upto 28.2.2005. Such extension was given on the basis of order dated 9.4.2003 whereby applicant Mrs. Gyan Batra was found suitable for promotion and applicant Shri Vishambhar Dayal was undergoing penalty. Thus, in view of law laid down by the Supreme Court in the case of State of Tamil Nadu & Ors. V. S. Thangavel & Ors., 1997 SCC (L&S) 518, the eligibility has to be seen on the due date namely when the person was empanelled in the list for promotion after due consideration as per rules. In the instant case, such a right accrued in 2003 when the applicant was undergoing penalty. As such, it was not legally permissible for the respondents to revert Mrs. Gyan Batra and thereby making vacancy available for Shri Vishambhar Dayal when the penalty has not ceased to be operative. At this stage, we may also refer to the decision of the Apex court in the case of Union of India v. K. V. Jankiraman, 1993 SCC 387 (Sic), which deals with the sealed cover procedure to be adopted where departmental proceedings and criminal proceedings are pending against an employee. The Apex court has held that non promotion of an employee till date on which he was held guilty and penalized would not amount to double penalty. It was further held that where a person has been found guilty in disciplinary proceedings or found to be guilty by criminal court, the sealed cover should not be acted upon and his case for promotion will be considered in usual manner by next DPC. Thus, at the most Shri Vishambhar Dayal could have been considered for promotion in usual manner by next DPC and it was not legally permissible for the respondents to revert a junior person who has already been promoted, when Shri Vishambhar Dayal was not eligible for consideration for promotion on account of undergoing punishment during the relevant period in view of law laid down by the Apex Court in the case of L. Rajaiah (supra), whereby the Apex Court in para-4 has held that " since he was undergoing punishment during the relevant period, he is not eligible for consideration for promotion. Therefore, his juniors have stolen

march over the appellant as Senior Assistants. He cannot thereby have any grievance. However, he is entitled to be considered for promotion according to rules after 1.3.1994."

7. Thus, in view of what has been stated above, OA 305/2004 is allowed and the impugned order dated 19.7.2004 (Annexure A/1 in OA 305/2004) so far as it relates to reversion of Mrs. Gyan Batra to the post of Junior Supervisor is hereby quashed and set aside. However, OA 343/04 is dismissed and we uphold the order dated 4.8.2004 (Annexure A/1 in OA 343/2004) whereby the promotion order in favour of the applicant, Shri Vishambhar Dayal, was not given effect to. With these observations, OAs 305/2004 & 343/2004 stands disposed of with no order as to costs."

4. The grievance of the applicant is that respondents vide order dated 25.4.2005 continued promotion of smt. Gyan Batra along with others up to 31.10.2005 or till the Census post exists, whichever earlier. It is contended that at least at this stage applicant should have been considered and promoted particularly when his juniors stands promoted to the next higher post.

5. The respondents contested the claim laid and raised the plea of res judicata. It was further stated that order dated 4.3.2005, vide which OA No.343/2004 filed by the applicant had been dismissed, having not been challenged before the higher court has attained finality. Shri V. S. Gurjar, Learned Counsel for respondents contended that the issue raised and adjudicated by this Tribunal on an earlier occasion cannot be reopened and the same is barred under Order 2 Rule 2 of CPC read with Section 11 of CPC. It was further clarified though the

provisions of CPC are not applicable but the principle laid down therein would squarely be attracted in the proceedings before this Tribunal. It was further pointed out that no DPC has been held after the one vide which the aforesaid officials including Smt. Gyan Batra were promoted in the year 2003 and further that the matter was taken up by the Ministry of Finance to regularize the vacancies in the said grade. With reference to communication dated 21.2.2007 it was made out that the matter is "under active consideration of IFC" and "a regular DPC shall be convened as soon as the posts of AD (Data Centre) are regularized by the Ministry of Finance."

6. We have heard the Learned Counsel for the parties and perused the pleadings.

7. It is an admitted fact that the penalty imposed upon the applicant ended in February 2004. The DPC vide which the officials were promoted had been held in the year 2003. On the said date the applicant had no right of promotion as he was undergoing penalty. A Coordinate Bench of this Tribunal in the aforesaid judgment as extracted herein above has clearly ruled that it was not legally permissible for the respondents to revert Smt. Gyan Batra and thereby making vacancy available to the applicant when the penalty has not ceased to be operative. At the most, it was held that the applicant

could have been considered "in usual manners by next DPC". Since it is not the case of the parties that any DPC held thereafter, the said right has yet not accrued. In view of the aforesigned contents of communication dated 21.2.2007, we hope and trust that the respondents would abide by the undertaking as communicated therein. In the circumstances, we find no justification in the contention raised by the applicant that he should have been considered and promoted at least after the penalty had been undergone by the applicant. We make it clear as and when the regular DPC is held, the applicant would have a right of consideration in the fairest manner.

8. Accordingly, the aforesaid OA is disposed of. No costs.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER


(M. K. GUPTA)
JUDICIAL MEMBER

P.C./