

**Central Administrative Tribunal  
Principal Bench**

**OA No.1864/2016**

Reserved on : 09.10.2018  
Pronounced on : 02.11.2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Biswabijoyee Panigrahi (Retd. IRS)  
Aged 61 years,  
S/o Late Dinabandhu Panigrahi  
A/127, Sahid Nagar,  
Bhubaneswar 751007,  
Odisha.

... Applicant.

(By Advocate : Ms. Tamli Wad)

Vs.

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

2. Central Board of Direct Taxes,  
Through its Chairman  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi.

.... Respondents.

(By Advocate : Shri Rajeev Kumar)

**: O R D E R (ORAL) :**

**Justice L. Narasimha Reddy, Chairman:**

This OA is filed with a prayer to direct the respondents to grant all consequential benefits as directed by this Tribunal in its order dated 01.09.2015 passed in OA No.2559/2011, by treating him to be on extraordinary leave

between 01.09.2005 and 28.08.2008 on medical grounds, to restore his pay and allowances for that period, and to grant other consequential benefits including Non Functional Selection Grade (NFSG) and notional promotion to the post of Chief Commissioner of Income Tax (for short, CCIT) against the vacancy year 2011-2012 or the vacancy year 2012-2013. Other ancillary reliefs are also claimed.

2. The applicant is an IRS Officer of 1979 batch. When he was functioning as Commissioner of Income Tax (for short, CIT) at Chennai in the year 2004, he was granted study leave. He joined the duty as CIT-XVI, Kolkata on 30.10.2008.

3. Disciplinary proceedings were initiated against him by issuing a Memorandum dated 18.06.2008. It was alleged that though his study leave expired on 31.08.2005, and his request for extension till 31.12.2005 was not acceded to, the applicant failed to join duty and remained unauthorisedly absent from 01.09.2005. The proceedings culminated in imposition of penalty of reduction of pay by four stages for a period of two years through order dated 02.05.2011.

4. During the pendency of the disciplinary proceedings, the case of the applicant was considered for promotion to

the post of CCIT by adopting the sealed cover procedure. He was not promoted because of the imposition of penalty whereas his juniors were promoted to that post.

5. The applicant filed OA No.2559/2011 challenging the Memorandum dated 18.06.2008 and the order of penalty dated 02.05.2011. The OA was partly allowed on 30.01.2012 setting aside the order of penalty, but giving liberty to the respondents to proceed further in the disciplinary proceedings by supplying a copy of the advice tendered by the UPSC, to the applicant.

6. The DPC met in April, 2012 to consider the vacancies of CCIT for the panel year 2012-2013. Complaining that the result of consideration of his case is not being declared, the applicant filed OA No.2093/2012 challenging the order of penalty dated 18.06.2008, with a prayer to declare it as *non est* on the ground that it was issued by an incompetent authority.

7. The respondents filed W.P.(C) No.4539/2012 challenging the order in OA No.2559/2011. The writ petition was allowed and the order passed by this Tribunal was set aside vide order dated 15.07.2013. The OA was remanded for fresh consideration. After such remand, the applicant got amended OA No.2559/2011 incorporating the

plea based upon the judgment of the Hon'ble Supreme Court in ***Union of India vs. B. V. Gopinath*** (2014 (1) SCC 351). The applicant retired from service on 31.07.2014 on attaining the age of superannuation.

8. Since the subject matter of OA No.2559/2011 and OA No.2093/2012 were one and the same, the applicant has withdrawn OA No.2093/2012 in the year 2015. OA No.2559/2011 was allowed on 01.09.2015 quashing the Memorandum dated 18.06.2018 following the judgment of Hon'ble Supreme Court in ***B. V. Gopinath*** (*supra*). Direction was issued to extend the consequential benefits to the applicant. However, it was left open to the respondents to issue fresh charge sheet. It is in this background that the applicant has prayed for the extension of benefits as directed in the order in OA No.2559/2011.

9. The applicant contends that once the order passed by this Tribunal in OA No.2559/2011 has become final, he is entitled to be extended the benefits of promotion with effect from the date on which his junior was promoted as CCIT, and other attendant monetary benefits. It is also stated that the Memorandum dated 18.06.2008 is deemed to be *non est*, and the applicant was entitled to be promoted in the usual course without any reference to the disciplinary proceedings. Alternatively, it is pleaded that the

punishment imposed through order dated 02.05.2011 has worked itself out and that he was to be promoted from the date on which the punishment ended.

10. The record does not disclose that any counter affidavit was filed in the OA.

11. It is stated that during the pendency of the OA, the respondents issued a fresh charge memo dated 11.12.2017, and a prayer is made for stay of further proceedings in pursuance of the charge memo.

12. Ms. Tamli Wad, Learned counsel for the applicant submits that the Memorandum dated 18.06.2008 was set aside more than once, and the result is that the applicant was entitled to be promoted against the vacancy of the panel year 2011-2012. She contends that while setting aside the charge sheet, this Tribunal, in OA No.2559/2011 specifically directed that the applicant is entitled to the consequential reliefs which include promotion that was denied to him on account of the pendency of the proceedings, as well as the difference of emoluments. She contends that though the order of the Tribunal became final, nothing was extended to the applicant so far.

13. Placing reliance upon the judgment of Hon'ble Supreme Court in ***Badrinath vs. Government of Tamil Nadu and Others*** (2008) 8 SCC 395, learned counsel for the applicant submits that there was no impediment for the applicant to be promoted once the charge sheet was set aside, and the respondents have wrongfully denied the relief to the applicant.

14. Shri Rajeev Kumar, learned counsel for the respondents submits that the charge sheet was set aside on a technical ground and availing the liberty given by the Tribunal, fresh charge sheet was issued in the year 2017. He submits that though the sealed cover was opened, the consequential promotion could not be made on account of the penalty that was imposed upon the applicant, and that the order of the Tribunal in OA No.2559/2011 does not have the effect of wiping away the disciplinary proceedings. According to him, the applicant cannot now plead that even if he were to have undergone the penalty, he would have been entitled to be promoted at a subsequent stage.

15. The disciplinary proceedings against the applicant commenced with the issuance of the Memorandum dated 18.06.2008, entailed in imposition of penalty of reduction of pay scale by four stages, for a period of two years, and it is a major penalty. The sealed cover procedure that was

adopted for him in the context of promotion to the post of CCIT was not of much use to him on account of imposition of penalty.

16. The OA filed by the applicant challenging the order of punishment yielded somewhat mixed result. The order of punishment was set aside on the ground that a copy of the advice of the UPSC was not furnished to the applicant. The writ petition filed by the respondents against the judgment in OA No.2559/2011 was allowed, and the case was remanded to the Tribunal to consider any other grounds that may have been urged by the applicant.

17. When the OA was pending before the Tribunal, after remand, the Hon'ble Supreme Court delivered its judgment in **B. V. Gopinath's** case (*supra*). Since it was found that the disciplinary proceedings in the instant case were initiated without specific approval of the appointing authority, the OA was allowed with the following directions:-

- “(i) The impugned chargesheet dated 18.06.2008 and the impugned punishment order dated 02.05.2011 are quashed and set aside;
- (ii) The applicant will be entitled to all consequential benefits;
- (iii) It would, however, be open to the respondents to proceed afresh in the matter from the stage of

obtaining approval of the competent authority for issuance of the charge memo;

(iv) There shall be no order as to costs.”

On the basis of the directions issued as above, the applicant would have been entitled to all consequential benefits, if only the matter rest at that. Availing the opportunity given by the Tribunal, the respondents issued a fresh charge sheet dated 11.12.2017. For reasons best known to him, the applicant did not challenge that charge sheet.

18. The endeavor of the applicant is to get the relief by pleading that between the date of order in OA No.2559/2011, i.e., 01.09.2015 and the date of issuance of the charge sheet dated 11.12.2017, he had a career, which is free from any blemish, and in this view of the matter, he was entitled to be extended all the benefits.

19. Even where an employee was found to be entitled to any benefit of promotion and increments, but any proceedings are either initiated or revived by the time, the actual benefit is extended, he virtually becomes disentitled to such benefit, till the conclusion of such proceedings. That actually is the situation which obtains in the present case. The direction as regards the consequential benefits in OA No.2559/2011 is neither absolute, nor



unconditional, but was always subject to the initiation of proceedings, which the Tribunal itself permitted.

20. It has also been argued by learned counsel for the applicant that the applicant was entitled for promotion and other benefits, even if, the punishment were to have remained. In other words, the penalty of reduction of pay scale by four stages had expired in the year 2013 itself, and since the applicant was in service beyond that date, he was entitled to be considered for promotion. This would be possible if only the applicant accepts or acknowledges the punishment. More than once, we have put a question to learned counsel for the applicant as to whether the applicant is ready to treat the punishment as final, but no straight forward answer was forthcoming.

21. The applicant cannot blow hot and cold at one and the same time. He cannot challenge the initiation of proceedings on the one hand and plead that the order of punishment has worked itself out, on the other hand. Further, with the issuance of a charge sheet, a totally different situation emerges.

22. The precedents relied upon by learned counsel for the applicant apply to the cases where an employee is not facing any disciplinary proceedings. Though the

disciplinary proceedings in the case of the applicant ended with the imposition of penalty in the year 2011, it is he who kept those proceedings alive in one form or the other, and he cannot claim that his service was free from blemish.

23. We do not find any basis to grant the relief claimed in the OA. The OA is accordingly dismissed. There shall be no order as to costs.

All ancillary applications stand disposed of.

**(Aradhana Johri)**  
**Member (A)**

**(Justice L. Narasimha Reddy)**  
**Chairman**

/pj/