

**Central Administrative Tribunal
Principal Bench**

OA No.2375/2017

New Delhi, this the 19th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sh. O. Ravi, Retd. IAS,
S/o late Sh. P. Obanayak,
Aged about 62 years,
R/o 802, Yamuna Tower-5,
Pocket D6, Vasant Kunj,
New Delhi-110070

- Applicant

(Applicant in person)

Versus

1. Union of India
Through its Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
Govt. of India, North Block,
New Delhi

2. Govt. of Gujarat,
Through its Chief Secretary,
New Sachivalaya,
Gandhi Nagar-382011,
Gujarat

- Respondents

(By Advocate: Mr. L.C. Singhi)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was an IAS Officer of 1983 Batch of Gujarat Cadre. For a considerable length of time, he served in the State Administration. In 2007-2012, he

was on Central Deputation as Joint Secretary in the Ministry of Home Affairs. He went back to the parent cadre in the year 2012.

2. CBI registered a case against the applicant under the provisions of Prevention of Corruption Act, 1988 and the relevant provisions of IPC. In the criminal case, a charge-sheet was also filed on 30.12.2012 and the trial is yet to commence.

3. The Screening Committee, for recommending the officer for promotion to the post of Additional Chief Secretary in the State of Gujarat, met on 20.08.2014. Since the criminal case was pending against the applicant, the sealed cover procedure was adopted. Similar exercise was taken up on 13.05.2015 and once again, the sealed cover procedure was adopted. It is stated that the officers of 1984 and 1985 batch, who were junior to the applicant, were promoted to the grade of Additional Chief Secretary.

4. The applicant submitted a representation on 04.09.2015 to the respondent stating that some IPS officers of Gujarat Cadre, who too figured as accused in the criminal cases and in whose case, the sealed cover

procedure was adopted, were promoted on ad hoc basis, but similar facility was not extended to him. Stating that the representation was not considered, he filed OA No. 389/2015 before the Ahmadabad Bench of the Tribunal. Through the order dated 11.12.2015, the Tribunal directed the respondent therein, to pass an order on his representation. Accordingly, an order dated 25.01.2016 was passed, informing the applicant that he cannot draw comparison and that promotions of IAS Officers are governed by the guidelines issued on 28.03.2000. It is also stated that when the disciplinary case/criminal prosecution is pending against them, even the adhoc promotion is impermissible.

5. This OA is filed, challenging the order dated 25.01.2016. The applicant has also prayed for a direction to the respondent to consider his case for promotion to the grade of Additional Chief Secretary in the pay scale of Rs.80,000/- on ad hoc basis, by opening the sealed cover and to extend him the consequential benefits.

6. The applicant contends that a combined reading of guidelines issued on promotion and functioning of Screening committee as well as the relevant rules would

indicate that ad hoc promotion of Officers, who are facing the disciplinary or criminal proceedings, is not prohibited. It is also stated that though there existed a similar provision in the case of IPS also, the respondents have promoted as many as four officers of that Service.

7. Respondent no.2 filed a detailed counter affidavit, opposing the OA. It is stated that the applicant figured as accused in a criminal case and in view of that, the sealed cover procedure was adopted on two occasions. It is also stated that the applicant retired from service on 31.10.2015 and the question of promoting a retired employee on ad hoc basis does not arise.

8. It is stated that the applicant cannot draw comparison with IPS officers and much would depend upon the circumstances under which they have been promoted. It is also stated that whatever has been the justification for promoting an officer on ad hoc basis while in service, the question of promoting a retired officer on ad hoc basis does not arise.

9. We heard the applicant in person and Mr. L.C. Singhi, learned counsel for the respondents.

10. The basic facts are not in dispute. The applicant became a very senior IAS officer in the State, by 2014. He has also completed a term of Central Deputation before that. However, he figured as accused in a case registered by CBI in the year 2012. The Screening Committee met on 20.08.2014 for promotion to the post of Additional Chief Secretary. The applicant was within the zone of consideration. Sealed cover procedure was adopted on account of the criminal case pending against him. A similar exercise took place on 13.05.2015.

11. It is fairly well settled that whenever the sealed cover procedure is adopted in respect of an officer in the context of promotion, the occasion to open the cover would arise only when disciplinary proceedings end in his favour or when he is acquitted in the criminal case; as the case may be. In the case of the applicant, it is not disputed that the criminal case is pending against him. Therefore, the sealed cover can be opened, as the things stand now.

12. Reliance is placed by the applicant on the guidelines issued for promotion etc. and functioning of Screening Committee. The relevant paragraph reads as under:-

“1. FUNCTIONS OF SCREENING COMMITTEES

It should be ensured while making promotions that suitability of candidates for promotion is considered in an objective and impartial manner. For this purpose, Screening Committee (hereinafter referred to as Committees) as mentioned in Annexure 1 should be formed for different grades whenever an occasion arises for making promotions/confirmations etc. The Committees so constituted shall adjudge the suitability of officers for:-

- (a) Promotions in various grades, including ad hoc promotions in cases where disciplinary proceedings/criminal prosecution are prolonged;
- (b) Confirmation; and
- (c) Assessment of the work and conduct of probationers for the purpose of determining the suitability for retention in service or their discharge from service or extending their probation.

The Committee shall also undertake the three-monthly review cases which have been placed in the Sealed Cover, as prescribed in para 19 supra”.

13. From a perusal of this, it becomes clear that the Screening Committee can recommend ad hoc promotion where disciplinary proceedings/criminal prosecution are prolonged. For the Screening Committee, to take a decision in this behalf, much would depend upon the nature of allegations against the concerned officer and the period for which the proceedings are pending. Another factor is the reason for such prolonged pendency.

14. In the communication dated 25.01.2016 issued to the applicant, the respondents relied upon Para 20 of the Promotion Guidelines issued on 28.03.2000. Para 5 of the said communication reads as under:-

“As appointment to the members of the Indian Administrative Service to various grades is made on regular basis and the provisions of one time confirmation exist in their cases, the concept of grant of ad-hoc promotions are not to be allowed in their cases even if the disciplinary/criminal prosecution instituted against them are found to have been prolonged.....”

15. On a reading of this, it becomes clear that the concept of ad hoc promotion in respect of an officer, who is facing disciplinary case/criminal prosecution, does not exist. However, a combined reading of this and the guidelines extracted in the preceding paragraph would indicate that the prohibition may not be absolute and if the facts of the case permit, the ad hoc promotion may be considered as an option, by the Screening Committee. For example, if an officer figures as an accused in a criminal case pertaining to a family dispute or an inconsequential dispute, totally unconnected with the discharge of his duties, the Screening Committee may recommend the case for ad hoc promotion, if there is acute shortage of officers or if the concerned officer is known for his integrity and efficiency.

16. The applicant has cited the instances of four IPS officers of State of Gujarat who, too, faced criminal proceedings, but were promoted. It is true that the rule in their case is also in paramateria with that of IAS. However, the circumstances under which these four officers were promoted on ad hoc basis are not immediately before us.

17. One fact, which makes substantial difference, is that the ad hoc promotion would be possible only in respect of the officers who are in service. There is no question for promoting a retired officer, on ad hoc basis, particularly when the sealed cover procedure is adopted. The benefit of promotion can be extended to him only on his being given a clean chit in the departmental proceeding or on his having been acquitted in a criminal case. Once that takes place, the sealed cover would be opened and in case the Screening Committee declared him fit, the promotion from the date, on which his immediate junior was promoted, is extended to him also.

18. Viewed from any angle, we do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/