

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 747/2002

New Delhi, this the 24th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A) ..

Shri Jastinder Singh,
S/o Shri A.S. Sodhi,
R/o J-169, Saket, New Delhi-17.

(By advocate Sh. S.S. Tiwari) Applicant

Versus

1. Union of India, through
Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi.
2. Joint Secretary,
Department of Industrial Policy & Promotion,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi.

(By Advocate V.S.R. Krishna) Respondents 33

O.R.D.E.R. (ORAL)

BY HON'BLE SMT. LAKSHMI SWAMINATHAN, VC. (J)

... We have heard both the ld. counsel for the parties.

2. In this application, the applicant has submitted that the respondents have not released his entire pensionary benefits due to him after he has been acquitted from the criminal charges which were earlier pending against him. He has, therefore, prayed for directions to the respondents as stated in para 8 of the OA, including revision of his pay w.e.f. 1-1-1986 till 31-10-1986 i.e. the date of his retirement as per the revised pay scales, in terms of the Fourth Pay Commission and subsequently revision of his pay w.e.f. 1-11-1986. Another main claim of the applicant is for a direction to the respondents to consider the applicant for promotion as Assistant

Industrial Advisor -Mechanical (AIA - Mechanical) and Industrial Advisor - Mechanical (IA -Mechanical) from the date his juniors were promoted during the time when he was under suspension w.e.f. 30-4-76 to 31-10-1986 with all consequential benefits. The applicant has also prayed for 18 % interest on gratuity and other consequential benefits and cost.

3. By Tribunal's order on interim relief dt. 30-4-2002, the respondents were directed to implement the order dt. 4-10-2001. In this order, it has been noted by the respondents, *inter alia*, that the conviction order earlier passed by the competent criminal court against the applicant has been set aside by the higher Court and he has been acquitted of the charge. Accordingly, the earlier order passed by the respondents dt. 21-5-98 imposing the penalty of withholding monthly pension on permanent basis was also set aside. Sh. V.S.R.Krishna, Id. counsel has submitted that consequently to these orders and the aforesaid interim order of the Tribunal, the applicant has been granted pensionary benefits, including fixation of pay as per the recommendations of the Fourth Pay Commission which has been accepted by the Govt. of India, as well as the revision of pension from due date i.e. 1-11-1986 as Development Officer - Chemical (D.O.-Chemical).

4. From the aforesaid facts and submissions made by Id. counsel for the parties, it appears that there are only two issues for consideration, namely, (i) the question of directing the respondents to consider the applicant for promotion as AIA -(Chemical)

-3-

12

and (IA - Chemical) after 1978 for such vacancies that would have arisen in those posts and (ii) the question of interest on delayed payment of gratuity and other payments in accordance with law.

5. Sh. V.S.R.Krishna, ld. counsel has drawn our attention to Annexure-D to the reply which is an extract of the UPSC file. From this, it is seen that the applicant had been considered by the DPC against vacancies for the post of AIA (Chemical) for vacancies of 1978 where he has been assessed as "Good" which was admittedly below the bench mark of "Very Good". The respondents have submitted that, thereafter, since the applicant was continuously under suspension till his retirement from service w.e.f. 31-10-1986, it had not been considered necessary to place his case before the DPC in subsequent years. Ld. counsel has also contended that as the applicant was admittedly under suspension w.e.f. 30-4-76 to 31-10-86, his ACRs and bench mark which were duly considered by the DPC in 1978 will also hold good for subsequent years. This has, however, been disputed by Sh. S.S.Tiwari, ld. counsel that this cannot be done by presumption of the respondents. His contention is that the DPC is required to make the assessments on the ACRs and suitability for promotion of the applicant each time, which has not been done in this case.

6. We find force in the submissions made by Sh. S.S.Tiwari, ld. counsel that in the above facts and circumstances of the case, the respondents ought to have similarly placed applicant's case before the subsequent DPCs which have considered the assessments.

JZ

of the suitability of the eligible candidates after 1978, which apparently has not been done in the case of the applicant. In this view of the matter, the application is liable to succeed on this limited ground that respondents are obliged to hold the review DPCs for subsequent years in accordance with law, rules and instructions.

B

7. With regard to the claim of the applicant for payment of interest on delayed payment of gratuity amount, Sh. S.S.Tiwari, Id. counsel has relied on Rule 68 of the CCS (Pension) Rules, 1971. We also agree with his contention that the provisions of those rules together with the decision of the Govt. of India, below that Rule will be applicable to the facts of this case. In the circumstances, the contention of the respondents that no interest is payable at all, cannot be accepted.

8. In view of the above, the OA partly succeeds and is disposed of with the following directions :-

(i) Respondents are directed to hold review DPCs for any vacancies which have arisen for the posts of AIA (Chemical) and IA (Chemical) for vacancies which have arisen subsequent to 1978 in accordance with law, rules and instructions. This shall be done within three months from the date of receipt of a copy of this order with intimation to the applicant;

(ii) the Respondents shall re-consider the case of the applicant for payment of such interest as is permissible for the delay in payment of gratuity in

PL

-5-

accordance with the provisions of the CCS (Pension) Rules, 1971 with intimation to the applicant. Any amount of interest which is due to the applicant shall also be arranged to be paid to him within the period of three months of the receipt of a copy of this order. No order as to costs.

V.K. Majoyra

(V.K. MAJOYRA)
MEMBER (A)

Lakshmi Srinivasan

(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)

/vksn/