

**Central Administrative Tribunal
Madras Bench**

OA/310/00723/2016

Dated the 19th day of December Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

R.Srinivasan
S/o K.R.Swamy,
Chargeman/NTS,
HVF Training School,
HVF, Avadi,
Chennai 600 054. .. Applicant
By Advocate **M/s.R.Rajesh Kumar**

Vs.

1. Union of India, rep by
The Senior General Manager,
Heavy Vehicles Factory,
Avadi, Chennai 600 054.
2. The Additional Director General/AV,
AV Head Quarters, Avadi,
Chennai 600 054.
3. Ordnance Factory Board,
rep. by Chairman,
No.10-a, S.K.Bose Road,
Kolkatta 700 001. .. Respondents
By Adovacte **Mr.S.Nagarajan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“...to direct the 1st respondent to grant all consequential benefit including monetary benefits and all allowances from the date of promotion of the applicant as Chargeman (NT/Stores) i.e. 1/1/2009 along with 12% interest p.a. on the accrued amount thus arrived and to pass such or other order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant was working as a Machinist (Highly Skilled) in Heavy Vehicles Factory Training School, Avadi. He participated in the Limited Departmental Competitive Examination (LDCE) for the year 2008 for promotion to the post of Chargeman (NT/ST). There existed 5 vacancies for Chargemen NT/ST.
3. The applicant was selected as 12th rank. One Jayapal who came up in the 5th rank was promoted and appointed as Chargeman.
4. The applicant got his copy of Answer Sheet under RTI Act to know the marks. The respondents scrutinised the marks and found that candidate S.Jayapal got only 32.25 marks (instead of 35.25). So, his aggregate marks came down to 148.5 marks instead of 151.5 marks). When the applicant's paper II was scrutinised, he got 62.25 marks instead of 52.75 given. He also got enhanced marks for the paper Stores Procedure and his marks was revised from 54 to 55. So, his total marks for NT/Stores went up to 154 instead of 142.75 given. Owing to this change in marks,

applicant's rank went up to 5th rank and Jayapal's rank came down to 10th position NT/Stores.

5. Thereafter, representations were given to appoint him in the place of Jayapal. Thereupon respondents issued show cause notice to Jayapal as to why he should not be reverted. The said Jayapal filed OA 75/10 before this Tribunal and the present applicant filed an OA as 871/10. The Tribunal by a common order allowed OA 75/10 and dismissed OA 871/10. Therefore, applicant filed WP No.26731/11 and WP 26732/11 before the Hon'ble High Court of Madras. The High Court after considering the matter, set aside the order of this Tribunal and OA 75/11 happened to be dismissed. The Hon'ble High Court directed the authorities to consider the case of the applicant in OA 871/10 and grant promotion as Chargeman Gr.II NT/Stores w.e.f. 01.1.09 with all consequential benefits as per revised merit list within a period of four weeks from the date of receipt of order.

6. In compliance with the direction, the respondents had granted promotion to the post of Chargeman notionally from 01.1.09 with monetary benefits from the date of assumption of charge of Chargeman. So, the applicant has come up with OA seeking the above relief.

7. The respondents filed reply admitting that the applicant was given promotion w.e.f. 01.1.09 notionally with fixation of pay and seniority. He assumed the higher responsibility on 26.7.12. He was not granted any back wages. According to the respondents, no back wages were paid to S.Parthiban also as alleged by the applicant. He was only given notional fixation. The applicant has not done any work in the

higher post for the period w.e.f. 01.1.02. So, the applicant is not entitled to get back wages in the promotion post on the principle 'no work no pay'. He is granted consequential benefits like fixation, seniority and the same will be counted for pensionary benefits also. The respondents mainly relies on the Hon'ble Apex Court ruling in ***Paluru Ramakrishnan & Ors. Etc. v. Union of India & Anr. [AIR 1990 SC 166]*** where it was held that -

“It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to re-fixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them.”

The decision in ***Union of India Etc. Etc. v. K.V.Jankiraman Etc. Etc. [AIR 1991 SC 2010]*** stands on a different footing. In that case the respondents was denied of back wages as the DPC committed a mistake in not promoting the respondent to the post of Naik Subedhar at first and thereafter the matter was again considered and retrospective promotion was given. In this case, the respondents had conducted scrutiny of marks without delay and took action for giving promotion to the applicant immediately. The applicant as well as the said Jayapal filed OA in the Tribunal and the dispute went upto the High Court and was finally settled by the Hon'ble High Court by order in WP 26731/11 and 26732/11 on 16.4.12. So, the delay occurred cannot be fully attributed to the respondents in this case. In the facts and

circumstances we are of the view that applicant is not entitled to get back wages retrospectively from 01.1.09.

8. There is no merit in this OA and it will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

19.12.2019

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Annexures referred to by the applicant in OA No.723/2016:

Annexure A1: Order passed in OA 75/10 & 871/10 dt. 08.6.11.

Annexure A2: Order passed in WP 26731/11 & WP 26732/11 dt. 16.4.12.

Annexure A3: Order of the R1 dt. 26.7.12.

Annexure A4: Information under RTI dt. 30.4.14.

Annexure A5: Appointment of comparable official dt. 16.8.12.

Annexure A6: Letter of R3 dt. 08.12.

Annexure A7: Order in CP No.2875/13 dt. 31.1.14.

Annexure A8: Representation dt. 13.12.14.

Annexure A9: Reply by R1 dt. 14.1.15.

Annexure A10: 2nd representation dt. 27.1.15.

Annexure A11: 3rd representation dt. 25.3.15.

Annexure A12: Information under RTI dt. 22.1.16.

Annexure A13: Reply under RTI dt. 26.2.16.

Annexure A14: Letter of R3 dt. 17.7.12.