

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O. A. NO. 1335/2001

NEW DELHI THIS 9th DAY OF SEPT 2002

Hon^{ble} Shri Govindan S. Tampi, Member (A)

Shri S K Mathur,
Ex. Chief Producer,
Under Director General, Doordarshan,
presently R/o 211, Mavilla Apartments,
Mayur Vihar, Delhi 110091.

(By Shri B S Mainee, Advocate)Applicant

V E R S U S

1. Union of India through
The Secretary,
Information & Broadcasting,
Shastri Bhawan, New Delhi.
2. The Director General,
Doordarshan, Mandi House,
New Delhi.

..... Respondents.

(By Shri S. Mohd. Arif, Advocate)

O R D E R

Issuance of directions to the respondents to consider the promotion of the applicant in the non functional grade from the date of promotion of his juniors with full consequential benefits alongwith payment of backwages and revision ⁱⁿ retirement benefits including ^{release of} full pension and commutation amount and payment of interest @18% p.a., are the reliefs sought for in this O.A.

2. Heard S/Shri B S Mainee and S. Mohd. Arif learned counsel for the applicant and the respondents respectively.

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3. Shri S.K. Mathur, the applicant who joined as a Cameraman with the respondents on 1.6.1967 was promoted to Group 'B' Service in 1974 and to Group 'A' since 1990. The applicant had an excellent record of service both on account of his superior academic credentials as well as the experience and expertise gained over the years by participating in both Indian and Foreign Festivals. On 22.9.99, the applicant was transferred from Doordarshan Kendra Delhi to the Headquarters of the Directorate and the same was followed by another transfer order posting the applicant to Jullundar, though he was to retire on superannuation on 31.8.2000, and in terms of the Government policy, those nearing retirement are adjusted as far as possible in the places they choose to settle after retirement. The applicant's protest against the arbitrary transfer outside Delhi did not evoke any positive response. On his being relieved from Delhi, he was on leave on medical ground upto 29.3.2000 which continued after his joining Jullander on 31.3.2000, till his day of superannuation formally. The applicant was placed under suspension on 30.8.2000 i.e. just a day prior to his retirement on superannuation on 31.8.2000, which has come in the way of his getting Gratuity, pension or commuted pension. Though Provisional pension was released and a lump sum was paid on April 2001. Gratuity and commutation value have not been paid, though on the actual date of superannuation no charge sheet served on him or no enquiry initiated and thus no proceedings were on. Further during the above period as many as 11 individuals junior to the applicant were promoted in the non-functional grade of Rs. 14,300/- to Rs.18,300/- which was denied to the applicant in a totally wrongful

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and arbitrary manner. The applicant's representation against the discriminatory treatment meted out to him was rejected on 8.12.2000 on referring to the pendency of some vigilance case initiated against him. The withholding of the gratuity which amounts to Rs. 4,00,000/- has been extremely harsh. His representation against the same has not been even replied to. Hence this O.A.

4. The grounds raised by the applicant are as below:

- i) as no proceedings had been initiated against him till his superannuation and as his suspension has become infructuous on his date of retirement on 31.8.2000, he should be entitled for further reliefs;
- ii) the gratuity could have been held back only, if an enquiry has been initiated and a charge sheet has been issued and not on the basis that an enquiry is contemplated;
- iii) 2 (two) individuals junior to the applicant have already been promoted to non functional selection grade retrospectively from 1997 which was denied to him in spite of the fact that at the relevant time there was nothing against his Integrity;
- iv) Hon'ble Supreme Court has repeatedly laid down that unless a Charge Sheet is issued and decision on the charge sheet issued has been taken promotion cannot be denied;
- v) the transfer of the applicant from New Delhi to Jullander when he had less than one year to go on superannuation was also improper.

5. Shri Mainee appearing on behalf of the applicant forcefully re-iterated the points raised by him and also relied upon the decision of the Hon'ble Supreme Court in D.D. Suri Versus A.K. Barren and Others (1997 (1) SCG 968), State of Kerala and Others Versus M. Padmanabhan Nair (SLP 9425/84) and D.V. Kapur Versus UOI and Others (1990 (4) SCG 314) and few decisions of Karnataka High Courts and this Tribunal; all of which according to him supported his case. It is also pointed out by him that unless the charge sheet has been issued proceedings cannot be deemed to have started and mere contemplation would not adversely effected the concerned individual. In the circumstances the applicant was entitled for consideration for promotion with all consequential benefits; pleads Sh. Mainee. He also pleaded relying upon the orders of the Hon'ble Apex Court to the effect that once the Govt. servant has been permitted to retire, suspension has become infructuous and that as his junior had got retrospective promotions, relating to the period when there

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was nothing against the applicant he could not have been denied promotion. OA should therefore succeed, according to Shri Mainee.

6. Hotly contesting the pleas raised by the applicant respondents ~~og~~ argue in their counter affidavit, strongly endorsed by their counsel Shri Arif that CBI had registered a PE against the applicant regarding the irregularities and financial improprieties committed by him during 1997-98 and on the basis of CBI's report dated 14.8.2000, the applicant was placed under suspension on 28.8.2000/30.8.2000, just before he had retired on superannuation on 31.8.2000. He was granted subsistence allowance as per rules. Charge sheet is yet to issue in the case. In terms of Rule 9(4) read with Rule 9(6) of the CCS (Pension) Rules, proceedings are deemed to have been initiated w.e.f. his date of suspension on 30.8.2000. While he has been granted provisional pension, gratuity and promotion had been correctly withheld, in terms of Rule 69 ibid. As the P.E. instituted by CBI was under consideration and the applicant's presence in Doordarshan Kendra, Delhi would have resulted in the tampering of the records, a decision was taken to shift him from the Kendra first to Headquarters Office and then outside. Hence the orders of 22.9.99 shifting him to Headquarters and 28.10.99, transferring him to Jullandhar.

7. The applicant's representation for cancellation of orders transferring him from Doordarshan Kendra Delhi to Headquarters office and thereafter to Jullandhar could not be accepted in the above circumstances. Enquiries had been initiated by the CBI about the conduct of the individual which had serious financial implications while he was working as Chief Producer Doordarshan Kendra. The allegations related to the abuse of his official position in award of contracts and disbursement of payments to a number of firms including those owned by the members of his family. His suspension ordered immediately prior to his superannuation on 31.8.2000 was prelude to major penalty proceedings. The respondents also point out that his

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case for grant of non-functional selection grade also could not have been considered as he had not been cleared from the vigilance angle at the time when his case came up for consideration for promotion. Shri Arif pointed out that an officer who was tuiilty of abusing his official position to procure monetary benefits for the members of his family and near relations cannot, as of right claim that the Department should go out of the way to grant him benefits. The respondents had acted correctly and in accordance with the rules and their action could not thereby questioned. The respondents could not have been expected to keep an officer against whom serious charges of impropriety were under examination in the same post where his improper activities had come to adverse notice and permit him to perpetuate the same. Thus in the totality of circumstances the OA has no merit at all and has to be dismissed according to Shri Arif.

8. Rival contentions raised in this OA by the opposite parties have been carefully deliberated upon. The applicant is aggrieved that he has been denied promotion, which has been given to his juniors. On the ground that proceedings had been contemplated against him and his retiral benefits like DCRG have been held back on the ground of his suspension, which had become infructuous with his retirement on superannuation. He is also upset that he had been posted out of Delhi when he had less than a year to go for superannuation. On the other hand the respondents hold that the benefits being claimed by him almost as of right, couldnot have been granted, on account of his none-too-flattering a record and the vigilance case pending against him.

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9. Facts are not disputed. The applicant who began his career as a cameraman in 1967 with the respondents had risen to the rank of Chief Producer in Doordarshan Kendra, Delhi. He was transferred out of Doordarshan Kendra to Head Office and thence to Ludhiana in September-October, 1999, where he was placed under suspension on 28.8.2000/30.8.2000, immediately before his superannuation on 31.8.2000. On 28.9.2000 i.e. within a work from his date of retirement, respondents issued orders promoting among others, 11 officers junior to him, to non-functional selection grade in Jr. Administrative Grade, but retrospectively from 1997. Applicants complaint is that as no proceedings have been initiated against him in 1997, he could not have been denied promotion, to the non -functional grade in which his juniors have been placed. The applicants plea on this ground cannot be termed as being without any basis. The three circumstances in which the case of any government servant can be dealt with separately, in terms of DoPT's OM dated 14.9.1992 are suspension, issuance of charge sheet in disciplinary proceedings or filing of prosecution. None of the three circumstances existed in 1997, the period from which the applicant's juniors have been promoted, and therefore, the applicant's case could not have been overlooked by the Departmental Promotion Committee, even if it had not only in 2000. This situation would obtain even if by the time DPC met the government servant had retired on superannuation, as the DPC had met for filling up the vacancies which existed when the applicant was still in service. The

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respondents have taken the plea that in terms of Rule 9(4) of the CCS Pension Rules read with 9(6) *ibid* the departmental proceedings in the case of the applicant should be deemed to have been instituted from the date on which the applicant has been placed under suspension on 28.8.1999/30.8.1999 and therefore, the applicant's case fell in one of the special categories mentioned in DOPT's OAs of 14.9.1992. This, however, is not correct as Rule 9(6) may clearly states that the situation envisaged by it relates Rule 9 of the Pension Rules. Therefore, while it would be relevant to deal with withholding of ~~CSA~~^{SRG} it would not help the respondents in respect of the applicant's right of consideration for promotion in his turn and if he is found fit he ~~would~~ be entitled for promotion as to the non functional selection grade with consequential benefits from the day his immediate junior has been found fit as there had been no proceedings initiated against him at the time/when the relative vacancies arise. This would, however, not be applicable to pensionary benefits as Rule 9 of the CCS Pension Rules, dealing with withholding of pensionary benefits has specifically provided that the proceedings are deemed to have been instituted from the date of issue of chargesheet or date of suspension whichever is earlier. As the charge had not been issue, the date of suspension is relevant and withholding of pensionary benefits from that date is proper and legal and cannot be assailed.

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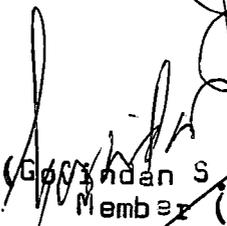
10. Learned counsel for the applicant was at considerable pains to show that with the retirement on 31.8.2000, the suspension had ceased to be effective, as brought out in a few decisions of the Hon'ble Apex Court and this Tribunal. In D.D. Suri Vs A K Barren (1976 1 SCC 968) the Hon'ble Apex Court has held that once a person under suspension has been retired or has been permitted to retire, the suspension ceases to be in force. Similar is the finding of the Hon'ble Karnataka High Court in the case of State of Karnataka Vs R S Naik (1983 (3) SLR 285). The applicant's case would be covered by the above decisions and it has to be held that the suspension of the applicant which was ordered on 28.8.2000/30.8.2000 ceased to be in force. Once the applicant has retired on 31.8.2000. However, the applicant cannot gain any assistance from the other decisions relied upon by him State of Kerala Vs Padmanabhan Nair SLP (Civil) No.9425/84, issued by the Hon'ble Supreme Court on 17.12.84, D.V. Kapoor Vs UOI & Others (1990 - 4 SCC 314) and Tribunal Patna Bench decision dated 10.9.99 in Narendar Prasad Vs UOI & Others in OA 294/98 as facts are different and also as in this case proceedings have been duly initiated by suspension before the applicant's retirement in terms of Rule 9(4) and Rule 9(2) of the CCS (Pension Rules) and the subsequent retirement of the applicant did not change the position as far as the disbursement of pensionary dues is concerned, pensionary dues would follow the results of the proceedings.

11. Applicant is also aggrieved that he had been transferred out of Doordarshan Kendra Delhi to Headquarters and from there to Jullunder, both within one year of his retirement. This was vitiated by malafide, alleges the applicant. Tribunal is not generally inclined to interfere in matter of transfer which are squarely in the turf of the executive, as has been held by the Hon'ble Supreme Court in the cases of SxxkxxAxxkxxkxx UOI Vs S.L. Abbas (1993 (2) SLR 585(SC)) and Gujarat Electricity Board Vs A.R. Sungomal Poshani (AIR 1989 SC 1433). Even if ~~xxx~~ it would on the first sight appear that the transfer of the applicant outside Delhi, just ten month before his superannuation was avoidable, I do not feel, that in the circumstances of the case, when the applicant's integrity was in doubt, the respondents were wrong in posting him away so that he would not tamper with the evidence and / or influence the witnesses. Even otherwise with the retirement of the applicant, this issue has ceased to have any relevance.

12. In view of the above findings and discussions, I hold that the OA has to succeed partially and it is accordingly disposed of with the following directions:

- i) the respondents shall consider the case of the applicant for promotion to the non-functional selection grade in Jr. Administrative Grade, from the dates on which his juniors have been so promoted, if he has not been so ~~for consideration~~ considered and if he is found fit on such consideration they shall grant him promotion with consequential benefits as have been granted to his juniors.
- ii) the applicant's request for release of the DCRG and revised pensionary benefits have no basis on account of the pending disciplinary proceedings and are left for the respondents to decide at the culmination of the disciplinary proceedings.
- iii) the applicant's challenge to the order of the respondents transferring him to Jalandhar has no merit and is dismissed. It has also become infructuous with his retirement on superannuation.

No costs.


(Govindan S. Tampi)
Member (A)

Patwal/